



**Upper Tribunal
(Immigration and Asylum Chamber)**

OA/10795/2013

Appeal Number

THE IMMIGRATION ACTS

Heard at Sheldon Court
On 16th July 2014
Prepared 17th July 2014

Determination Promulgated
On 21st July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

HABIBA HUSSEIN OMAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr J Halligan (Counsel, instructed by Immigration Advice Service)
For the Respondent: Mr J Mills (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant applied for entry clearance to the UK as an adult dependent relative under Appendix AM of the Immigration Rules, the application was made on the 28th of March 2013. It was refused by the ECO, the date of the decision being the 10th of April 2013. The Appellant appealed the decision by Notice and Grounds of Appeal of the 3rd of May 2013.
2. The appeal was heard by First-tier Tribunal Judge Hubball at Sheldon Court on the 10th of March 2014. He allowed the appeal in a determination promulgated on the 25th of March 2014. In the determination he found that the Appellant did meet the requirements of the Immigration Rules relying on documentary evidence submitted and the evidence of the Sponsor, her son, who he found to be a credible witness.
3. The Respondent sought permission to appeal by an application dated the 2nd of April 2014. In the grounds it was argued that the Judge had erred in respect of the evidence and Appendix FM-SE, it was unclear that the evidence had been prepared as required. Evidence suggested that care could be obtained for the Appellant. Accordingly it was argued that the Judge had erred and there was inadequate evidence to show that the Appellant could not access appropriate

medication or support in Ethiopia. Permission was granted by First-tier Tribunal Judge Brunnen on the 7th of May 2014.

4. For the Upper Tribunal hearing the Appellant submitted photographs taken of him with his mother. The submissions of the Respondent and the Appellant are set out in full in the Record of Proceedings. The submissions first addressed the issue of whether there was an error of law and then, on the basis that if an error was found, the approach to be taken to the Appellant's circumstances in respect of article 8.
5. As an out of country appeal the facts had to be established and the case decided as matters stood at the date of the decision, the 10th of April 2013. The Immigration Rules do not require the submission of specified evidence with the application but whatever evidence is submitted has to relate to the position at the date of the decision and that applies to consideration of article 8 as well as the position under the Immigration Rules. The Immigration Rules form the starting point for the consideration of the proportionality of the decision.
6. The requirements for entry clearance as a dependent relative are set out in section EC-DR of Appendix FM. Paragraph E-ECDR.2.4 provides: The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.
7. Paragraph E-ECDR.2.5 provides as follows: The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because-
 - (a) it is not available and there is no person in that country who can reasonably provide it;
 - or
 - (b) it is not affordable.
8. The evidential requirements are set out in Appendix FM-SE in the section dealing with adult dependent relatives. Paragraph 35 provides: Independent evidence that the applicant is unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country where they are living should be from:
 - (a) a central or local health authority;
 - (b) a local authority; or
 - (c) a doctor or other health professional.
9. It appears from the Refusal Notice that no evidence in support had been provided with the application but it may have been supplied with the Notice and Grounds of Appeal. At paragraphs 78 to 84 the Judge considered the medical evidence that was available. At page 12 of the Respondent's bundle was a letter from the Kamara Higher Clinic dated April 26, 2013, and so post-decision. That letter appears to be signed by a Dr Seid, it is in English and there is no indication that it is a translation from a document in Ethiopian.
10. The letter states that the Appellant had been receiving treatment for the previous 6 months but does not state what for, that she had hearing difficulties and needed help with day to day tasks, had difficulties with her arm and cannot manage her own care. The letter went to state that people like her would be looked after by their families and were often the victims of crime. The letter clearly does not state that the care she needed was either unavailable or unaffordable and did not state how, if she received no assistance, she was able to get to and from the clinic.

11. The second letter was from the Eldina Higher Clinic, this referred to an examination of March 18, 2013 and was signed by a Dr Tadesse but was undated and gave no address. This set out the diagnosis and medication that was prescribed but concluded that the Appellant was to take her medication regularly and to have regular follow up in the clinic. That did not state that she needed help, that it was either unavailable or unaffordable and did not indicate how it was that she had been able to travel to or from the clinic.
12. The third letter is from the Tikur Anbessa Hospital and is dated "17-feb-14", about 10 months post-decision. The letter gave the results of an examination but did not state when the examination had been carried out or by whom or what their qualifications were. This set out her condition in more detail and concluded that she could not live on her own, that she needed to be cared for and emotional support and "We understand that she has no family or friends that can help her or arrange her care in Ethiopia." The letter did not state that care could not be obtained in Ethiopia.
13. This evidence was taken by the Judge to support the Sponsor's evidence relating to the Appellant's condition and the inability to obtain support for her in Ethiopia. On that basis he allowed the appeal finding that the Appellant met the requirements of paragraph E-ECDR.2.5.
14. While this evidence did not have to be submitted with the application it has to meet the requirements of paragraph 35 of the Appendix FM-SE. There is nothing in any of the letters that states that it is not available and there is no person in that country who can reasonably provide it, or that it is not affordable.
15. The nearest evidence there is to show that the Appellant actually requires full-time assistance is the last letter. This letter is not in accordance with paragraph 35 of Appendix FM-SE as there is nothing to show that it is from any of the specified sources in terms of authority and it cannot be said who signed it or how they were qualified. In any event little weight could be attached to it as there is nothing to show that it related to the Appellant's condition at the date of the decision, some 10 months before it was dated.
16. I find that the determination contained an error of law and the Judge relied on evidence that did not meet the requirements of the Immigration Rules in terms of what had to be shown for the Appellant to come within the rules and the evidence did not meet the requirements for specified evidence. The evidence of the Sponsor was insufficient for the purposes of the rules, although it could support medical evidence properly submitted and admissible.
17. In short there was no admissible evidence to show that the Appellant, at the date of the decision, met the requirements of the Immigration Rules to be admitted to the UK as an adult dependent relative. Accordingly there was no basis for the Judge to find that the Appellant met the requirements of the Immigration Rules and the appeal had to be dismissed on that basis.
18. For the Appellant it was submitted that her circumstances are such that she ought to be admitted under article 8. For this the Immigration Rules are the starting point for the assessment of the public interest and the balancing of the competing interests. I accept that the Appellant's health is not good and appears to continue to deteriorate and is a cause for significant concern for the Sponsor whose support for his mother is impressive.
19. However I am unable to find that the situation is such that the Appellant can properly be admitted to the UK as matters stood at the date of the decision. It is clear that at that time she was able to access medical treatment and to travel to clinics and hospitals and was able to receive medical treatment. She was also able to travel around to collect money sent to her

although I accept that there is evidence she had been mugged once in doing so. That regrettably is a problem elderly people suffer in the UK too.

20. Life was clearly difficult but the evidence submitted that related directly to around that time did not show that she was then in need of constant care or could not obtain it and suggests that some level of help was available. If the situation has changed since then, and the evidence suggests that it has, that is not something that I can take into account as there is no evidence to suggest a predictable prognosis along those lines.
21. The determination contained an error of law in respect of the Appellant's ability to meet the requirements of the Immigration Rules. The appeal is dismissed under the Immigration Rules and article 8.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

I re-make the decision in the appeal dismissing the appeal of H H O.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing the appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 18th July 2014