



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

Appeal Number: HU/07570/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 18 January 2022**

**Decision & Reasons Promulgated
On 1 February 2022**

Before

**UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE SYMES**

Between

**ENTRY CLEARANCE OFFICER
SHEFFIELD**

Appellant

And

**QAMAR SHARIF MAKKI SAEED
[NO ANONYMITY ORDER]**

Respondent

Representation:

For the appellant: Mr Tony Melvin, a Senior Home Office Presenting Officer

For the respondent: Ms Karen Reid of Counsel, instructed by Reiss Edwards Ltd, solicitors

Decision and reasons

1. The Entry Clearance Officer appeals with permission from the decision of the First-tier Tribunal allowing the claimant's appeal against a decision on 27 March 2019 to refuse the claimant entry to the UK under Appendix FM of the Immigration Rules HC 395 (as amended) and/or Article 8 ECHR as the dependant adult parent of the sponsor, Mr Hashem Sheikh Mohamed.

2. **Mode of hearing.** The hearing today took place face to face.
3. The claimant is a citizen of Somalia, who left Somalia before 2014, becoming ordinarily resident in Yemen, but who has now been living in Egypt for 30 months, following conflict in Yemen. She is 75 years old and in poor health.
4. The claimant has three sons. One is somewhere in Somalia, but has not been heard from since 2015. Her other two sons are settled in the UK, and together they supervise and pay for their mother's care in Egypt. Her former carers, whom they paid to help their mother, have left Egypt: the sons take turns in spending time in Egypt to help their mother.

Appendix FM Section EC-DR: Entry clearance as an adult dependent relative

5. Sub-paragraphs EC-DR 1.1. (a) -(c) of Appendix FM are met. Sub-paragraph EC-DR 1.1.(d) requires an applicant to meet all the requirements of section E-ECDR: Eligibility for entry clearance as an adult dependent relative. Sub-paragraphs E-ECDR.1 and 2.1-2.3 are not contentious in these proceedings. The difficulty for the claimant is that the Entry Clearance Officer did not consider that she met sub-paragraph E-ECDR.2.4, which required her to show that 'as a result of age, illness or disability, [she requires] long-term personal care to perform everyday tasks'.
6. Sub-paragraph E-ECDR.2.5 required the claimant to demonstrate that she must be unable 'even with the practical and financial help of the sponsor, to obtain the required level of care in the country where [she is] 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'.
7. The refusal letter did not dispute that the financial requirements at E-ECDR.3.1- E-ECDR.3.2 were met.

Entry Clearance Officer decision

8. The Entry Clearance Officer's decision was that the claimant could not bring herself within the requirements of paragraph EC-DR.1.1.(d) of Appendix FM, on the basis that she had not demonstrated a need for long-term personal care due to age, illness or disability, which was not available to her in Yemen. The refusal letter did not engage with whether such care was available in Egypt, where the claimant is living.
9. The Entry Clearance Officer considered whether there were exceptional circumstances under paragraph GEN.3.2 which would render refusal a breach of Article 8 ECHR because it would result in unjustifiably harsh consequences for the claimant, a relevant child or another family member. The Entry Clearance Officer considered that there were no such circumstances in this case.

First-tier Tribunal decision

10. First-tier Judge James allowed the appeal. Following an appeal to the Upper Tribunal, that decision has been set aside, although evidence given to the First-tier Judge remains relevant.

Upper Tribunal proceedings

11. On 28 September 2020, Upper Tribunal Judge Coker, set aside the decision of the First-tier Tribunal. She considered that there was no evidence that the claimant's neighbours, who were paid to care for her by the sponsor and his brother, would leave Egypt as claimed, nor was there any reference in the First-tier Tribunal decision to evidence that visits by the sponsor and his brother could not continue, and that with the financial support her sons provided, the situation could not continue as it then was.
12. In relation to Article 8 ECHR, the First-tier Judge had erred in importing consideration of private life matters into her decision, without giving proper weight to the public interest in immigration control.
13. Following a hearing on 29 November 2021, Upper Tribunal Judge Gleeson gave directions for an updated witness statement, updated evidence, and for the Entry Clearance Officer to reconsider their position, as well as for a hearing bundle and skeleton arguments. There were delays in compliance but the Upper Tribunal today did have the required evidence and submissions before it.
14. We are grateful to both representatives for skeleton arguments which have enabled the Upper Tribunal to focus its attention on the key issues in this appeal. We have admitted documents filed in response to the Entry Clearance Officer's skeleton argument settled by Mr Melvin, in the interests of justice. Mr Melvin did not object.

Upper Tribunal hearing

15. The Upper Tribunal heard oral evidence from the sponsor, Mr Mohamed, against his witness statements of 9 December 2021 and 15 January 2021. In his first witness statement, the sponsor set out the history of his mother's presence in Egypt. He said that the claimant used to be a strong woman, and had looked after him and his brothers since his father was killed in the early years of the war in Somalia.
16. The family who had looked after the claimant had left at short notice in October 2021, and the claimant was not able to remain in their accommodation. New accommodation had to be found. The sponsor travelled to Egypt the same day, to help his mother. Her claimant's tourist visa had been renewed at 6 month intervals for 2 ½ years but there was never any guarantee of another visa. Renewal every 6 months required her to queue for 4-5 hours to submit the application, and the same again

to collect it the next day. Their mother could not manage that alone: she did not speak Egyptian Arabic, and the standing and waiting was too much for her.

17. The sponsor travelled to Egypt on 19 October 2021: his mother was overwhelmed as she had not seen him for over 2 years because of the Covid pandemic. She had thought she would die without seeing him again. He helped her find new accommodation, which was rented for just 6 months, from 20 October 2021 to 20 March 2022, but could be renewed for a similar term thereafter. We have seen the tenancy agreement.
18. The claimant was struggling. She had depression, anxiety, high cholesterol and rheumatoid arthritis, and required help and daily care. She needed help with cooking, washing, going to the lavatory, remembering to take medications, changing her clothes, and walking. She had severe back pain, caused by a narrowing of her spine at level L4-5: an orthopaedic surgeon had recommended spinal surgery at a cost estimated at United States \$18960. The surgery had its own risks.
19. The claimant found it difficult to trust people, after her experiences in Somalia and the Yemen. She was vulnerable: the sponsor found it incredibly hard to leave her there. Her anti-depressants had been increased because of the effect of the pandemic. His mother had not been vaccinated at all as Egyptians were given priority, and neither the claimant nor the sponsor was confident that she would be given a genuine vaccine.
20. The brothers found it awful to see their mother struggling. Each of them had spent periods of 6 weeks in Egypt since October 2021, caring for their mother, including helping her to renew her 6-month tourist visas and the practical help she needed. The sponsor's brother was there at the moment, but he was due to return and the sponsor would then go out.
21. The costs of travel were high and the pandemic risk to the sponsor and his family was significant. It was difficult with his work: he had two employers, disabled students whom he transported to school. This was not work he could perform remotely. He also had his own young school age children, and a wife who was studying. If the sponsor continued to travel to Egypt for long periods as he had been doing, he would lose both jobs and be unable to support his mother, his wife, or his family, which would impact his mental health.
22. In his second witness statement, dated 15 January 2021, the sponsor explained that he had come to the UK from Somalia in July 2006, to escape the risk of recruitment by Islamic militants there. After 3 years, he was given refugee status. He got a job with Islington Council in 2011 as a bus driver, and also as an Uber driver. and in 2016, he became a British citizen. The claimant had also left Somalia for Yemen in 2008, though the sponsor did not find this out for some time, from relatives who also travelled to Yemen. The claimant and the sponsor's other brother were settled in a refugee camp in Yemen. He visited his mother in Yemen

twice, the most recent visit being in August 2017. It was a difficult and dangerous trip, which took over 40 hours.

23. Due to the humanitarian crisis in Yemen, the claimant moved to Egypt. The brothers tried to find carers in Yemen and in Egypt, but could not find an appropriate affordable carer. They had contacted care homes and agencies, but not found anything they could afford, as the claimant needed 24/7 assistance all day. She was suspicious of strangers, because of her past history in Yemen and Somalia. She found it really hard to form new or trusting relationships with people.
24. Her previous doctor in Yemen advised that she should not return there, due to civil unrest, disruption to communication channels, and the failing health service there. The claimant's mental health was worsening and her self-care too. If the claimant came to the UK, he and his brother could take care of her properly. It was not practical to leave his family and children who also needed him, in a situation where he was the sole breadwinner and would lose his job if he was not available to work.
25. In his oral evidence, the sponsor adopted his witness statement and explained in cross-examination that there were no carers available at any price in Egypt at present, because of the pandemic. The support provided by himself and his brother was an emergency measure and unsustainable. He felt guilty all the time: in their culture, mothers were to be looked after by sons, and that was what his mother expected. The sponsor and his brother were ready to pay whatever was needed for his mother's care: everything they had was hers, if she needed it, and they would borrow money or use credit cards to pay for her spinal treatment in the UK if she came here. There was no question of her medical conditions being a burden on the UK state.
26. There was no re-examination and no questions from the Tribunal.
27. A witness statement from Mr Abdulrahman Ali Hussein confirmed the ending of the residential care he and his wife had been able to provide to the claimant. His wife provided support, washing the claimant's clothes, combing her hair, doing her makeup, preparing her to get up and go to bed, and helping her to shower or use the bathroom. The claimant always needed to be reminded and told which medication to take, and when, because she could neither read nor write.

Other evidence

28. The claimant's bundle contains medical evidence from a Dr Abrazik on 20 November 2020, indicating that the claimant had back pain and bilateral thigh and leg pain from June 2020, and 'became out of control with painkilling medications'. She had limited lumbar range of motion and very limited walking distance, as well as bilateral lower limb relative weakness and parathesia. Following investigations, she was diagnosed with severe lumbar canal stenosis at multiple levels, mostly L4-5, which would require

decompression surgery, special peri-operative and post-operative care, including ICU admission, blood transfusion, and special nursing care due to her age and associated medical conditions. She would then need 3-6 months of physical therapy.

29. A year later, on 2 November 2021, Dr Mohamed A Abdelrazek noted that the claimant's mental health had deteriorated in self-isolation. She contracted Covid and needed a short period of hospitalisation, which significantly affected her mental health. She was 'very depressed and in low mood'. The people with whom she had previously lived had travelled, and her son had come to help her. Her antidepressant and antipsychotic medications were raised to high doses. The spinal operation had not been performed and if not done, she would have pain for the remainder of her life. Carers were high cost and currently, with the Covid pandemic, unavailable in Egypt.
30. Evidence of the flights taken by the claimant's sons, of the various visas with which she has been issued, and of her present accommodation, were produced and not challenged. The claimant also produced evidence of restrictions imposed on Egyptian citizens who were unvaccinated re-entering Egypt. The claimant's case is that it is less likely that her visa will be renewed when it expires next time, if she has not managed to arrange a vaccination by a trusted provider. The sponsor says that she will take a PCR test to come to the UK and they can then arrange vaccination here.

Submissions

31. Mr Melvin relied on his written submissions and on the refusal letter. He accepted that the claimant's unvaccinated status presented difficulties. He did not challenge the evidence of the sponsor that no family members could realistically be expected to live permanently in Egypt, and he accepted that the claimant could not return to Yemen. He challenged the research, or rather the lack thereof, as to the cost of the spinal surgery needed, if it were to be carried out privately here.
32. For the claimant, Ms Reid relied on her skeleton argument, noting that at [10], she had set out the Entry Clearance Officer's acceptance that the suitability and financial requirements were met. It was not open to Mr Melvin to reopen the financial issue today. The Entry Clearance Officer did not dispute the finding of the First-tier Judge that paragraph E-ECDR.2.4 was met.
33. On the evidence, Ms Reid invited the Tribunal to find that the level of care which the claimant required could not reasonably be provided in Egypt. The current situation placed an enormous strain on the sponsor and his brother: save as a short term measure, it was unsustainable. The claimant was old and her depression had been made worse by separation from her family members. She required expensive medical treatment and care which was unaffordable, and in practice unavailable, to her in Egypt, and her situation remained precarious, both as to accommodation and visa.

34. This was one of the more compelling adult dependant relative factual matrices. The Upper Tribunal should find that the claimant satisfied paragraph E-ECDR.2.5 and allow the appeal.

Analysis

35. We have considered the facts as they have emerged today. The factual matrix is not the same as that which underlies the 2019 refusal, but Mr Melvin did not object to our making the decision as to compliance with sub-paragraph E-ECDR.2.5 on the basis of the evidence today.
36. The claimant has no live in carers. Her visa, and her accommodation, are precarious and may be more so, given the Covid pandemic and her unvaccinated status, although presumably having had Covid, she may have antibodies. The level of care which she requires is significant and requires live in care, or a care home, neither of which is available to her in Egypt at present. Her sons have stepped in since October 2021, but will not be able to continue to do so for much longer without losing their jobs, which would make financial support for the claimant impossible, given the difficulty they would have in supporting their own families.
37. We are satisfied, on this evidence, that even with the practical and financial help of the sponsor, the claimant cannot obtain the required level of care in the country where [she is] living, because (a) it is not available and there is no person in that country who can reasonably provide it; and/or (b) it is not affordable. Sub-paragraph E-ECDR.2.5 is met and the claimant's appeal against the Entry Clearance Officer's refusal of entry clearance as a dependant relative succeeds.

DECISION

38. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

We set aside the previous decision. We remake the decision by allowing the claimant's appeal.

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 18 January 2022