



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

Appeal Number: IA/00957/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 February 2016  
And 23 June 2016**

**Determination  
Promulgated  
On 26 July 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**FOZIYA MOH'D TI SAMHOURI  
(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Kotas and Mr N Bramble (Senior Home Office Presenting

Officers) (February and June 2016 respectively)

For the Respondent: Mr M Sallah (Slough Immigration Aid Unit) (February 2016)

No appearance (June 2016)

**DECISION AND REASONS**

1. This is the appeal of Foziya Moh'D T I Sambouri, a citizen of Jordan born 11 December 1942, against the decision of 26 September 2014 to refuse her application for leave to remain.
2. The basis for her application was explained in a statement by her daughter, Houda Nabil Haddara, born 3 March 1974 in Tripoli, Libya, and a British citizen permanently resident in the United Kingdom with her husband and three children, as well as her mother; her husband Amer Issa Abdul Raouf Kawa had been wholly responsible for her mother's financial needs since she had arrived here: his work as a mechanical engineer provided him with ample means to provide for her. She looked after her mother, cooking for her, washing her clothes, taking her to the GP, giving her medication and monitoring her health. She had been becoming increasingly forgetful and dizzy since living here, and was having tests; it was heartbreaking for Mrs Haddara to witness her mother's vulnerability, and comforting to hope that she would be able to spend her last years in the bosom of her family as her dependency upon them increased.
3. Mrs Sambouri had arrived on 8 February 2014 as a visitor with leave until 29 July 2014. She had previously been resident in Libya, where she had lived since 1972 and where she worked, married and had children. Whilst she was a national of Jordan, she had lost all ties with the country, which was now merely somewhere she occasionally took holidays. She had two daughters, Mrs Haddara (the Sponsor) and Rahab. Rahab and her family had relocated to Tunisia because of the unrest in Libya where they lacked permanent residence and so were unable to sponsor or care for Mrs Sambouri, who had stayed behind. She had relied on the support of a kindly neighbour to help look after herself. However in May 2014, following her arrival here as a visitor, the neighbour emailed to say that things had become too difficult for her to continue to stay in the locality so she would no longer be able to check up on her.
4. Mrs Haddara and her family could not relocate to Jordan or Libya, as the former was foreign to them and they would be unable to seek employment or make a life for themselves there, whereas the latter was a war zone, to which the FCO advised against travelling. Their established home in the United Kingdom and her husband's employment here were vital to secure the welfare of their British citizen children who were in school and nurse here.
5. The application was supported by material including a report by Mrs Sambouri's GP who set out that she suffered from diabetes which was poorly controlled, and was having blood tests for mild thrombocytopenia; she suffered from lower back pain due to disc degeneration and spinal stenosis, and had poor vision associated with her diabetes. It would be difficult for her to manage on her own given

her complete dependency on her daughter for her care, transport and medication needs.

6. The application was refused because the Appellant had long lived in Libya, including for a period of many years since her husband's death, and thus could be expected to integrate there, or in Jordan. The fact that healthcare might not be as good in those countries as in the United Kingdom was not itself a decisive consideration and given that medical treatment would be available abroad this did not render the case exceptional, there being no breach of Articles 3 or 8 of the Human Rights Convention given the high threshold involved in a health case.
7. The First-tier Tribunal noted that it was agreed by the parties that the case could succeed only outside the Rules. It accepted that family life was established given the clear elements of dependency exceeding the norm between the Appellant and her daughter and son-in-law, and that it was of an intensity to engage Article 8 interests following removal to Jordan, the only country realistically in play given she was a citizen there and that her residence in Libya had expired.
8. The Tribunal went on to make a detailed assessment of proportionality, finding that she could not meet the requirements of the dependent relative route under Appendix FM given she had applied from within the United Kingdom, though it was accepted that the evidence that her circumstances had changed following her arrival was credible, so there was no attempt to subvert the Rules here. Noting the statutory criteria under section 117B of the Nationality Immigration and Asylum Act 2002: although she did not speak English, she would live wholly in the family unit, and she was financially independent - these factors were noted as not actively counting against her rather than being affirmatively in her favour. Her status did not fall to be considered as precarious as she was not a qualifying partner as statutorily defined.
9. She had no surviving relatives in Jordan and had had no meaningful ties there for many years; her only visits had been to see her late brother, a Canadian citizen, who used to holiday there. Her age and poor health meant that the medical treatment would be costly abroad and at a level which the family here could not afford to meet by remittances. It was not foreseeable that she could cope alone there and the First-tier Tribunal concluded (having noted that its role was a hard-edged legal evaluation rather than an exercise in sympathy) that it "failed to see how the UK could conscientiously and consistently with its Article 8 obligations send this elderly and frail lady to such an uncertain fate".
10. The Secretary of State appealed on the grounds that the First-tier Tribunal had not measured the application against the Immigration Rules before embarking on an assessment outside them with sufficient care, particularly having regard to the need to assess the case using the Appendix FM route as a benchmark, and in particular had thus failed to

take account of her treatment being at public expense which was relevant because of the policy to protect public funds enshrined in the dependent relative route at E-ECDR.3.2, and failed to take account of her having entered the country as a visitor.

11. At the hearing regarding error of law before me, Mr Kotas developed those grounds of appeal on the Secretary of State's behalf, stressing the incompatibility of the decision with *SS Congo*, in particular the requirement that critical policies enshrined in the Rules, such as the prohibition on accessing publicly funded medical treatment where one was a dependent relative. Mr Sallah conceded that this consideration had not been given adequate attention, and that this was a material error of law, and argued that a re-hearing in the First-tier Tribunal would be appropriate.

### **Findings and reasons - Error of law hearing**

12. As it was put in *SS (Congo) & Ors* [2015] EWCA Civ 387, "it is accurate to say that the general position ... is that compelling circumstances would need to be identified to support a claim for grant of LTR outside the new Rules". At [48] the Court goes on:

"What does matter, however - whether one is dealing with a section of the Rules which constitutes a "complete code" (as in *MF (Nigeria)*) or with a section of the Rules which is not a "complete code" (as in *Nagre* and the present appeals) - is to identify, for the purposes of application of Article 8, the degree of weight to be attached to the expression of public policy in the substantive part of the Rules in the particular context in question (which will not always be the same: hence the guidance we seek to give in this judgment), as well as the other factors relevant to the Article 8 balancing exercise in the particular case (which, again, may well vary from context to context and from case to case)."

13. There are two Rules which potentially bear on applications of this nature: Rule 276ADE which, for an adult over the age of 25 who has not lived in this country for more than 20 years, focusses upon the prospect of integration abroad, and the dependent relative Rules under Appendix FM. I do think that the latter can be said to be irrelevant merely because an application it made from within the United Kingdom, because it carefully expresses the imperatives of public policy towards applications of this nature as endorsed by Parliament.
14. The admission of under the Adult Dependant Relative route under Appendix FM is provided for in these terms.

**"Section EC-DR: Entry clearance as an adult dependent relative"**

**EC-DR.1.1.** The requirements to be met for entry clearance as an adult dependent relative are that-

- (a) the applicant must be outside the UK;
- (b) the applicant must have made a valid application for entry clearance as an adult dependent relative;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability for entry clearance; and
- (d) the applicant must meet all of the requirements of Section E-ECDR:

Eligibility for entry clearance as an adult dependent relative.

**Section E-ECDR: Eligibility for entry clearance as an adult dependent relative**

**E-ECDR.1.1.** To meet the eligibility requirements for entry clearance as an adult dependent relative all of the requirements in paragraphs E-ECDR.2.1. to 3.2. must be met.

**Relationship requirements**

**E-ECDR.2.1.** The applicant must be the-

- (a) parent aged 18 years or over;

**E-ECDR.2.2.** If the applicant is the sponsor's parent or grandparent they must not be in a subsisting relationship with a partner unless that partner is also the sponsor's parent or grandparent and is applying for entry clearance at the same time as the applicant.

**E-ECDR.2.4.** 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.

**E-ECDR.2.5.** 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. ...

**Financial requirements**

**E-ECDR.3.1.** The applicant must provide evidence that they can be adequately maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds.

**E-ECDR.3.2.** If the applicant's sponsor is a British Citizen or settled in the UK, the applicant must provide an undertaking signed by the sponsor confirming that the applicant will have no recourse to public funds, and that the sponsor will be responsible for their maintenance, accommodation and care, for a period of 5 years from the date the applicant enters the UK if they are granted indefinite leave to enter.

**Appendix FM-SE - Family members - specified evidence**

**Adult dependent relatives**

**34.** Evidence that, as a result of age, illness or disability, the applicant requires long-term personal care should take the form of:

- (a) Medical evidence that the applicant's physical or mental condition means that they cannot perform everyday tasks; and
- (b) This must be from a doctor or other health professional.

**35.** 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. ”

15. The policy imperatives there disclosed are firstly, the general bar to an in-country application by an adult parent. A credible reason for making an application whilst a visitor might present a compelling reason for departing from this requirement: as shown by *Chen* (IJR) [2015] UKUT 189 (IAC), a strong evidence-backed case may demonstrate good reason for departing for the general requirement of prior entry clearance, having regard to the principle identified in *Chikwamba* [2008] UKHL 40. Secondly there is a very high substantive threshold set, which requires that no care be available, even with practical and financial help from the family here. Thirdly there are specific evidential requirements including the opinion of a doctor or other health professional as to their ability to perform everyday tasks. I do not consider that the fact that an “in-country” application might constitute a compelling reason for considering that the public interest in enforcing the entry clearance route might be overcome necessarily abrogates the need for the other policy objectives of the Rule to be foregone.
16. Although the decision at first instance was in general thorough and well-reasoned, there were nevertheless two material errors of law here.
17. Firstly the public policy enshrined in the Rule set out above to protect public funds from bearing the costs of medical treatment (which patently goes beyond the question of whether an individual can be maintained and accommodated) was given no attention whatsoever. Thus the balancing exercise was conducted without regard to a relevant consideration.
18. Secondly it was wrong to state that the Respondent’s position was not precarious: whilst it is true that it was not statutorily deemed as such by section 117B, nevertheless the position struck by the Strasbourg Court is that in general non-settled residence (and certainly residence for a period as temporary as that found here) is considered precarious, see for example Sales LJ in *Agyarko* [2015] EWCA Civ 440 at [28]: “since her family life was established with knowledge that she had no right to be in the United Kingdom and was therefore precarious in the relevant sense, it is only if her case is exceptional for some reason that she will be able to establish a violation of Article 8: see *Nagre*, paras. [39]-[41]; *SS (Congo)*, para. [29]; and *Jeunesse v Netherlands*, paras. [108], [114] and [122].”

19. I accordingly found that the decision of the First-tier Tribunal contained a material error of law. As only limited fact-finding was anticipated as necessary to finally determine the appeal, I considered it appropriate for the matter to be retained by the Upper Tribunal, and made appropriate directions.

### **Findings and reasons - Continuation hearing**

20. Shortly before the hearing date for the resumed hearing, the Upper Tribunal received an invitation from the Respondent (Ms Samhuri) to determine the appeal in the light of a letter in which they indicated they no longer wished to pursue the matter. The Tribunal Procedure (Upper Tribunal) Rules 2008 state at Rule 17:

“(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—  
(a) by sending or delivering to the Upper Tribunal a written notice of withdrawal;  
(2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal.”

21. It is tolerably clear from their letter that those representing Ms Samhuri seek to withdraw their “case”, as the Rule puts it. As Mr Bramble for the Secretary of State agreed that this was an appropriate course of action, and there is no reason based on the interests of justice suggesting the contrary, I accordingly give the Upper Tribunal’s leave for this notice of withdrawal to take effect.
22. The consequence of this, Ms Samhuri being the Respondent to the appeal but an error of law having been identified at the previous hearing which resulted in the First-tier Tribunal’s decision being set aside, is that she upon this re-hearing put no substantive case against the refusal letter of the Secretary of State. I accordingly find that the appeal of the Secretary of State succeeds in the Upper Tribunal, and the appeal of Ms Samhuri against the original immigration decision is dismissed.

### **Decision**

The decision of the First-tier Tribunal is set aside.  
The appeal of the Secretary of State is allowed.

Signed:

Date: 21 July 2016

A handwritten signature in black ink, appearing to read 'M.A.S. Symes'. The signature is written in a cursive style with a large, sweeping flourish at the end.

Deputy Upper Tribunal Judge Symes