



**Upper Tribunal  
(Immigration and Asylum Chamber)  
OA/09156/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9<sup>th</sup> November 2017**

**Decision & Reasons  
Promulgated**

**On 28<sup>th</sup> November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

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

Appellant

**and**

**MRS KHADRA JAMA YUSUF  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr C Avery, Home Office Presenting Officer  
For the Respondent: Ms F Allen, Counsel instructed by CNA Solicitors

**DECISION AND REASONS**

1. Although this is an appeal by the Secretary of State I refer to the parties as they were in the First-tier Tribunal.
2. The Appellant, a national of Somalia, appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer of 18<sup>th</sup> September 2014 to refuse her application for entry clearance to the UK as a partner under Appendix FM of the Immigration Rules. First-tier Tribunal Judge Obhi allowed the appeal on human rights grounds. The Secretary of State now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Grant-Hutchison on 19<sup>th</sup> September 2017.

3. The Appellant's husband is a British national who has been in the UK since December 1997. He and the Appellant married on 18<sup>th</sup> July 2012 and she applied for entry clearance as a spouse on 27<sup>th</sup> August 2014. The reasons given by the Entry Clearance Officer for refusing the application were that the Appellant had failed to provide a TB certificate and therefore did not meet the suitability entry clearance requirements under paragraph EC-P1.1(c) of Appendix FM of the Immigration Rules (S-EC1.6). The second Ground for Refusal was that the Entry Clearance Officer was not satisfied that the relationship was genuine and subsisting or that the couple intend to live permanently together in the UK.
4. The First-tier Tribunal Judge heard oral evidence from the Sponsor and took into account that and the documentary evidence as well as the fact that the couple now have a child born on 10<sup>th</sup> January 2017. On the basis of the evidence the judge found that this is a genuine and subsisting marriage. There is no challenge to that conclusion.
5. The other issue before the judge therefore was the issue of the provision of the necessary TB certificate. The judge took into account the evidence and submissions in relation to this issue and concluded at paragraph 17:-

“There is no evidence that the Appellant has failed to provide information requested by the ECO and if she fails to provide the necessary certificate then she will be denied entry, but that is more to do with the practical arrangements than it is to do with the legal requirements for granting entry clearance”.

6. In the Grounds of Appeal the Secretary of State set out the provisions of S-EC1.6 of the Rules and submitted that there is a mandatory requirement for the Appellant to produce a TB certificate. The Secretary of State set out an extract from Appendix T of the Immigration Rules which states that migrants applying to enter the UK from a number of listed countries for more than six months or who are applying in a category which may lead to settlement who:-

“... must present at the time of application a valid medical certificate issued by a medical practitioner listed in Part 2 of this Appendix confirming that they have undergone screening for an active pulmonary tuberculosis and that such tuberculosis is not present in the applicant.”

Somalia is one of the countries listed.

7. It is contended by the Secretary of State that in light of this mandatory requirement the ECO appropriately refused the application under S-EC1.6 as the Appellant failed to produce a TB certificate at the time of the application. It is contended that the First-tier Tribunal Judge erred in relation to this issue and further failed to carry out a proper assessment under Article 8 and failed to have due regard to the public interest which includes the protection of public health.

8. In her Rule 24 response and at the hearing Ms Allen accepted that the decision does not make specific reference to the TB certificate. However she submitted that one had been produced with the Notice of Appeal and appears in the ECO's bundle. Reference is made to the ECO's refusal which indicates that the decision would be reviewed and advises Appellants to submit all the relevant documents with the Notice of Appeal. It is therefore contended that additional evidence can be submitted by an Appellant which can be considered by an ECM reviewing the decision and that the Tribunal is able to consider the circumstances appertaining at the time of the decision by virtue of Section 85(5) of the Nationality, Immigration and Asylum Act 2002 which applied in this case in relation to the application for entry clearance and the decision made by the Entry Clearance Officer. It is further contended that Section EC1.1(c) provides for a reasonable excuse for failing to comply. Appendix FM-SE S-EC1.6 provides as follows:-

"S-EC.1.1 The applicant will be refused entry clearance on grounds of suitability if any of paragraphs S-EC1.2 to 1.8 apply.

...

S-EC1.6 The applicant has failed without reasonable excuse to comply with a requirement to –

- (a) attend an interview;
- (b) provide information;
- (c) provide physical data; or
- (d) undergo a medical examination or provide a medical report."

9. It is contended in the Rule 24 notice and by Ms Allen at the hearing that the Appellant had provided a TB certificate with the Grounds of Appeal which was not taken into account by the Entry Clearance Manager (ECM) on review of the decision. It is contended that the Appellant had a reasonable excuse for failing to provide the TB certificate. At the hearing Ms Allen also referred to page 62 of the Entry Clearance Officer's bundle which is a checklist submitted with an application. She noted that at Section 15 of that checklist applicants are asked to provide "any other documentation. Such as: evidence of any correspondence/TB certificate". She submitted that it was not clear from this that a TB certificate was required. She submitted that the application was submitted on 7<sup>th</sup> August 2014. The refusal was issued on 18<sup>th</sup> September 2014, although it was not sent to the Appellant until 2<sup>nd</sup> May 2015 over six months later. It was received by the Appellant on 18<sup>th</sup> May 2015. She pointed out that on 26<sup>th</sup> May 2015 the Appellant undertook a TB test and submitted that to the ECO with the Notice of Appeal on 8<sup>th</sup> June 2015. She submitted that this was reasonable given that the Appellant was asked to provide any outstanding information with the Notice of Appeal and, had the ECM realised this, in her submission this would have been conceded by the ECM. She submitted that this was the whole purpose of the ECM's review. In any event she submitted the Appellant had given a reasonable excuse for the failure to provide the TB certificate with the application.

10. At the hearing Mr Avery accepted that the judge did not fully deal with this issue and submitted that he had nothing to add to the Grounds of Appeal.

### **Discussion**

11. In my view it is clear that from paragraph 14 of the First-tier Tribunal's decision, which reflects the submissions made by Ms Allen who also appeared in the First-tier Tribunal, and at paragraph 17 that the judge was aware of the issue of the TB certificate. The judge set out S-EC1.6 at paragraph 16. I accept that it is not entirely clear from paragraph 17 that the judge was referring to the TB certificate. However looking at the record of the submissions and the issues before the First-tier Tribunal it is sufficiently clear that this is what the judge meant.
12. In any event in my view this is not a material error because it is not in dispute that the Appellant did provide the TB certificate with the Grounds of Appeal and this appears not to have been considered by the Entry Clearance Manager. I accept Ms Allen's submission that it may not have been clear to the Appellant that a TB certificate was required to be submitted with the application. I accept that this would amount to a reasonable excuse under Section S-EC1.6.
13. Given the time line and the short period within which the Appellant obtained the TB certificate and submitted it to the ECO I accept that this amounts to a reasonable excuse.
14. In these circumstances I accept that, although not clearly articulated at paragraph 17, the judge was aware of this issue and reached a conclusion open to her on the evidence.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge did not contain a material error of law.

The decision of the First-tier Tribunal Judge stands.

No anonymity direction is made.

Signed

Date: 27<sup>th</sup> November 2017

Deputy Upper Tribunal Judge Grimes

### **TO THE RESPONDENT** **FEE AWARD**

I maintain the fee award made by the First-tier Tribunal Judge.

Signed

Date: 27<sup>th</sup> November 2017

Deputy Upper Tribunal Judge Grimes