



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/06475/2018

THE IMMIGRATION ACTS

Heard at Field House
On 12 June 2019

Decision & Reasons Promulgated
On 23 September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

KHADIJA MOHAMUD ALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER,
PRETORIA

Respondent

Representation:

For the Appellant: Mr D Sellwood of Counsel instructed by Wilson Solicitors.
For the Respondent: Ms S Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Beg promulgated on 22 January 2019 in which the Appellant's appeal was dismissed on human rights grounds.
2. The Appellant is a citizen of Somalia born on 12 December 1951. On 27 November 2017 she made an application for entry clearance as an 'adult dependent relative'.

The application was 'sponsored' by her son Mr Hassan [H] (d.o.b given as 1 January 1990), a British citizen ('the sponsor'). The sponsor is one of three siblings - the Appellant's adult children - present in the UK, all of whom gave evidence before the First-tier Tribunal.

3. In the application it was indicated that the Appellant was living illegally in Ethiopia; she had been at her current address for a year: (see questions 16 and 23 on the visa application form).
4. The application for entry clearance was refused on 31 January 2018. The reasons for refusal are quoted at paragraph 1 of the Decision of the First-tier Tribunal.
5. The Appellant appealed to the IAC.
6. Subsequent to the lodging of the appeal the Respondent's decision was subjected to review by an entry clearance manager ('ECM'). The ECM upheld the decision for reasons that are quoted at paragraph 3 of the Decision of the First-tier Tribunal.
7. The matter proceeded to hearing. The appeal was dismissed for reasons set out in the Decision of First-tier Tribunal Judge Beg promulgated on 22 January 2019.
8. The Appellant applied for permission to appeal to the Upper Tribunal, which was granted by First-tier Tribunal Judge Buchanan on 16 April 2019. (Judge Buchanan also 'extended time' in circumstances where the application mission to appeal was made late.)
9. Although the Appellant's appeal is a human rights appeal, relying before the First-tier Tribunal on human rights grounds, it is pertinent to note that the application was brought and considered in the first instance with reference to the Immigration Rules in relation to adult dependent relatives in Appendix FM of the Rules. In this context it is apparent that the Respondent was not satisfied that the Appellant met the requirements of the Rules – *"I am not satisfied that it as a result of age, illness or disability you require long-term personal care to perform everyday tasks. I am also not satisfied that you are unable, even with the practical and financial help of your sponsor, to obtain the required level of care in Ethiopia, because it is not available and there is no person who can reasonably provide it or it is not affordable"*. This was echoed in the ECM review which in part stated *"... the appellant has either been unable to or has chosen not to submit supporting documents to address the issue raised by the ECO that there does not appear to be a lack of*

availability of live-in carers in Ethiopia to ensure the appellant receives appropriate personal care”.

10. Before the First-tier Tribunal, although it is clear that the Judge was cognisant of the scope of the appeal and the available grounds (e.g. see paragraph 16), a significant amount of the evidence – and in turn the Judge’s analysis – related to the medical circumstances and care needs of the Appellant. I note – non-exhaustively – the following:

(i) The sponsor related that the Appellant was being “*looked after by a neighbour called Hamida*” (paragraph 4), but that Hamida was to move to America; the sponsor’s view was that the only options were to bring the Appellant to the UK or “*to find someone in Ethiopia to take care of her*” (paragraph 4). It was claimed that no suitable person had been found.

(ii) When the Appellant attended hospital she did so in the company of Hamida or some other person to whom payments would be made by the sponsor and his siblings (paragraph 5). Financial support was sent to the Appellant from the UK by the sponsor and his siblings, who also paid the rent on her property – she occupied a room in a house, with Hamida occupying another room (paragraph 6).

(iii) A medical report from about November 2017 described the Appellant complaining of headache, neck pain, weakness, shortness of breath, forgetfulness and dizziness, and related that she had poly-urea and polydipsia, with a history of hypertension, diabetes, dementia and dyslipidaemia (paragraph 21). Reference is also made to ‘iscgomic’ heart disease (paragraph 22) [sic. – ischemic?]. In respect of functional limitation it was said that the Appellant forgets to take medication, was unable to cook, dress, or feed herself, and was unable to sit on a toilet and take a bath (paragraph 22). A further report from November 2018 referred to nightmares, intrusive thoughts, and flashbacks with a diagnosis of psychological distress and physiological reactivity (paragraph 23). The latter report also refers to severe headaches, difficulties moving, cooking, washing clothes, and remembering to take medication.

11. Further to this the Judge made findings in respect of the Appellant’s underlying medical conditions and symptoms (paragraphs 25-32), before concluding in these terms at paragraph 33:

“In considering the evidence as a whole on a balance of probabilities, whilst I find that the appellant has a number of medical conditions, I do not find that on a day-to-day basis the appellant requires long-term personal care as a result of illness or disability. Even if I accept that she does require long-term personal care as a result of illness or

disability, that care can be provided to her in Ethiopia by her children from the United Kingdom who already financially support. They can employ a daily carer for her which is effectively what they are doing now by paying the rent on Hamida's flat; she in return looks after the appellant."

12. For completeness I note that the Judge had regard to the evidence in relation to care homes in Ethiopia (paragraph 34).
13. Further to this analysis and the findings, the Judge went on to consider family life in the context of Article 8, and in due course proportionality (paragraphs 35-39). This was in the context of it being the Appellant's case that she had become separated from her children in the 1990s during the Somali civil war when she was abducted, subjected to physical and sexual assault, and essentially enslaved. It was said that it was not until 2016 that contact between the Appellant and her children was re-established – the children in the meantime having lived with their uncle in Somalia until 2006, then fleeing to Ethiopia, before entering the UK in 2009 under the family reunion scheme to join their uncle.
14. The Judge accepted that family life existed between the Appellant and her adult children (paragraph 36). This finding appears to be rooted in the financial support provided by the children to their mother, bearing in mind that there had been a significant period of separation, and notwithstanding such a circumstance there had been no visit to the Appellant by any of the sponsor and his siblings since contact had been re-established in 2016, despite the Appellant having relocated to Ethiopia in May or June 2017: (see paragraphs 36-38). In this context the Judge noted that contact between the Appellant and her children was exercised primarily through telephone calls (paragraph 37). The Judge found that such family life as had been established since 2016 could continue (paragraph 37).
15. Notwithstanding the favourable finding in respect of family life, the Judge ruled against the Appellant on the issue of proportionality:

*"I find that even if the appellant has a precarious immigration status in Ethiopia as a Somali national, nonetheless she has an established private life which can continue. She has a home which is paid for by her children from the United Kingdom. They also pay her medical expenses and her living costs. Although she uses an outside toilet, she has a kitchen and is able to move around by taxi if she needs to. I take into account the private and family life rights of the appellant's children in accordance with **Beoku-Betts [2008] UKHL 39**. In conclusion I find that any interference in the Article 8 rights of the appellant and her children will be proportionate. I do not find that the interference in the appellants Article 8 rights will result in unjustifiably harsh consequences."*

16. The grounds in support of the application for permission to appeal are pleaded under two headings: *“Ground 1: Failure to take into account material evidence/consideration of immaterial evidence”*, and *“Ground 2: Failure to provide reasons/adequate reasons”*. Ground 1 is focused on the factors considered in the context of the proportionality evaluation under Article 8; Ground 2 pleads that the Judge did not make clear *“exactly which medical conditions [the Appellant] was found to have, and why they did not constitute illness or disability that requires long-term personal care”*.
17. There are three elements to Ground 1. I consider them in turn.
18. At paragraph 6 of the Grounds it is pleaded that the Judge did not consider *“the full extent of all the circumstances”* of *“the involuntary nature of the family rupture”*, which is characterised in the pleading as *“extreme on any reading”*. Although the decision granting permission to appeal did not limit the scope of the grant, I note that Judge Buchanan was critical of this paragraph, noting that it did not specify what constituted ‘the full extent of all the circumstances’ or which circumstances were not taken into account, and observed *“No alleged error of law is identified”*. In my judgement it is adequately clear that the Judge was cognisant of the circumstances of the family separation: reference is made to the testimony of the Appellant’s children in this regard – see paragraphs 7 and 8); the Judge also noted the medical evidence referring to symptoms resulting from *“ill-treatment when she was abducted in Somalia”* (paragraph 23). I can find no basis for concluding that the Judge ‘lost sight’ of this circumstance in considering the extent to which the Respondent’s decision interfered with the family life that had more recently been re-established between the Appellant and her children.
19. This is particularly manifest at paragraph 38, where the Judge notes the submission contained in the Appellant’s Skeleton Argument at paragraph 16 in respect of *“the circumstances which led to the family rupture”*. The Judge – in a manner which in my judgement was open to him – notes that notwithstanding this historical circumstance the nature and quality of present family life was such that none of the children had made even a short visit to see their mother, and found this was essentially a matter of choice. In my judgement it was entirely appropriate for the Judge to have regard to the quality of present family life as a factor more significant than the reason underlying the historical disruption. Be that as it may, it is not sustainable to argue that the Judge did not have regard to the full extent of all the circumstances of the involuntary nature of the family rupture.
20. Judge Buchanan was also seemingly unpersuaded that paragraph 7 of the Grounds identified an error of law. In my own judgement, it seems to me clear that Judge Beg did take into account the Appellant’s *“precarious immigration status in Ethiopia”* (paragraph 39). Further in this context I note that there was no material before the

First-tier Tribunal that spoke as to the likelihood of the Appellant facing any sort of enforcement action in respect of her immigration status in Ethiopia.

21. Paragraph 8 of the Grounds pleads that the Judge took into account irrelevant factors. It is specifically pleaded that the Judge was in error at paragraph 27 of the Decision in stating *"There are many Somalis in Ethiopia. I find that given the levels of poverty, many would be agreeable to living in paid accommodation in return for providing care for the appellant"*. It is pleaded that this was *"highly relevant to the subsequent finding that the sponsors could employ a daily carer to look after"* the Appellant.
22. I am not persuaded by this ground. Ultimately, in so far as she relied upon it, it was incumbent upon the Appellant to demonstrate that her care needs could not be met in Ethiopia. Beyond the assertion that Hamida was to leave for America, there was no supporting evidence as to the non-availability of care in Ethiopia. The Appellant's case rested in this regard essentially upon assertions from the sponsor and his siblings to the extent that they had not been able to identify a suitable carer. Such assertions were appropriately considered through the prism of the fact that not one of them had travelled to Ethiopia. It was open to the Judge to conclude *"I do not find it credible that the sponsor and his siblings have made extensive enquiries about the possibility of finding a person of Somali origin to live with the appellant in her flat"* (paragraph 27). The Judge's observations as to the potential attractiveness of such a proposition to a displaced Somali was one of reasonable inference. Even if I were to accept – which I do not – that the Judge should not have made such an observation, it would not alter the essential fact that the evidence of non-availability of care was unsatisfactory.
23. In my judgement the second ground of challenge cannot avail the Appellant. Even if there were substance to it, it seems to me that it is essentially unchallengeable that the Appellant failed to demonstrate that any care needs could not be met in Ethiopia – see paragraph 33.
24. I acknowledge that there is an unsatisfactory tension between the Judge's listing of the care needs indicated in the medical reports, and the Judge's observation at paragraph 33 *"I do not find that on a day-to-day basis the appellant requires long-term personal care as a result of illness or disability"*. However, this is materially countered by the Judge's alternative finding that even if there are care needs they can be met by employing a replacement for Hamida. Even taking the medical reports at their highest, I do not accept that any different conclusion would have been reached on the issue of proportionality.

Notice of Decision

25. The decision of the First-tier Tribunal contained no error of law and accordingly stands.
26. The Appellant's appeal remains dismissed.
27. No anonymity direction is sought or made.

Signed:

Date: **18 September 2019**

Deputy Upper Tribunal Judge I A Lewis