Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06871/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 November 2019	**On 18 November 2019**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

ZAHRA HUSSEIN SALEH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Jaisri, instructed by Freemans Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Beg promulgated on 28 May 2019, dismissing on all grounds her appeal against the decision of the Secretary of State dated 17 January 2018 to refuse her application made on 22 December 2016 for entry clearance for settlement with her daughter in the UK.

2. First-tier Tribunal Judge Hollingworth granted permission to appeal on 2 September 2019.

3. In the first instance I have to decide whether or not there was an error of law in the making of the decision such as to require the decision to be set aside.

4. The relevant background can be summarised briefly as follows. The sponsoring daughter arrived in the UK as a refugee in 2018. In 2019 she was granted indefinite leave to remain. The appellant is a Somali national who allegedly fled Somalia to reside in Yemen and then Egypt where she currently lives with Yemini neighbours. It seems that the First-tier Tribunal Judge accepted that history. However, the judge concluded the appellant did not meet the requirements of the Immigration Rules. Whilst at paragraph 19 of the decision it was accepted that she did need assistance with long-term personal care to perform everyday tasks, the judge concluded on the evidence that those needs could continue to be met with financial assistance from the sponsor and the appellant's other children, and that it would be reasonable for the sponsor to arrange for the required level of care in Egypt, and that such care would be affordable.

5. In granting permission to appeal Judge Hollingworth found it arguable that the judge had attached insufficient weight to the medical evidence of Dr Rania Mohamed and arguably misunderstood the report when suggesting there was no evidence that the doctor had actually visited the appellant's residence. It was also considered arguable that the error was compounded at paragraph 16 of the decision by finding that the evidence about the mother's medical conditions was inconsistent. In the circumstances, Judge Hollingworth considered it was arguable that the context in which the First-tier Tribunal analysed the issues of need for and provision of required assistance had been adversely affected.

6. Under the Immigration Rules the appellant can only be granted entry clearance as an adult dependent relative under paragraph ECDR.2.4 and 2.5 of Appendix FM, which requires independent evidence, from, amongst others, a doctor, that the appellant requires long-term personal care to perform everyday tasks. That aspect was accepted by the judge, as is clear, and need not consider that further. However, it must also be demonstrated that the appellant is unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the current country of residence because either it is not available and there is no person in the country who can reasonably provide it, or it is not affordable. There is no suggestion in this case that necessary care was not affordable.

7. It is clear that the judge may have made some mistakes in the decision, in particular in stating there was no evidence that the doctor had visited the appellant in her residence. This is clearly wrong because that is clearly explained in the medical report, between pages 5 and 10 of the appellant's bundle. Another argument advanced is that the judge had

misread the report in relation to the conditions and an issue was raised about the judge's statement at paragraph 13 of the decision: "I do not find it credible that Mr Burhan and his family are looking after the appellant on a day-to-day basis without any financial support from the appellant's children who live abroad". Within the same paragraph, the judge accepts that the appellant and her siblings are sending funds to their mother for her care, and it is noted that in evidence the sponsor said that Mr Burhan helps the appellant by taking her to receive the money that she sent from abroad. It is not clear what the judge meant by the first sentence of paragraph 13. It may be the judge thought it not credible that Mr Burhan and his family were helping out of the goodness of their heart, without financial compensation. It is the appellant's case that he is indeed being paid to assist the appellant. However, this error, if it is an error, is not material to the outcome of the appeal. I am also satisfied that the other error referred to, whether the doctor had visited the appellant in her home again, is not material for these reasons. In reality, nothing turns on these statements and they are not central to the findings which determined the outcome of the case.

8. Whilst the first element of the requirements has been met and was satisfied, as far as the judge was concerned, the judge did not accept the second element of the specific evidential requirement under paragraph 35 of Appendix FM-SE. This requires independent evidence from, amongst others, a doctor 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. I accept that this has been addressed to some extent at page 9 of the report, where it is stated that in the doctor's opinion the appellant's condition would not be suitable for care in a care home because of difficulties in communication with her being deaf. However, she is obviously able to communicate with Mr Burhan's family members who are helping her. It is also suggested that in most care homes relatives regularly visit their elderly parents or next of kin and that she does not have any relatives in Egypt, and it would, therefore, be difficult to monitor the care. None of that suggests that appropriate care is not available, or indeed that there are no suitable care homes. It is implicit in the doctor's statement that there are such care homes able to provide care to the appellant. The doctor says it is very common in Egypt, elderly people in a care home rarely complain as they fear retaliation from the homecare nurse or staff. Frankly, none of these statements are sufficient to demonstrate that the specific requirements of the Rules are met.

9. It follows from all of the above that care homes are available. However, it is not essential that the appellant be housed in a care home. It has not been made clear why the sponsor and her siblings cannot continue to finance support for the appellant in her own home. As stated above, the affordability is not an issue. It is being provided by the sponsor and her siblings at the present time and care is being provided by Mr Burhan and his relatives. Even if that care by Mr Burhan and his relatives is not enough to obtain or provide the required level of care, the report is

woefully inadequate and does not demonstrate that the appellant 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 she is living.

10. The judge fully addressed this issue at paragraphs 18 onwards and found that the sponsor would, with assistance from her siblings, be able to pay for private homecare for the appellant in Egypt to meet her needs. The judge also noted he found the sponsor had very little idea of the cost of her mother's care in the United Kingdom and found it not credible that she had made any enquiries about what it would cost for her mother in the country. That was one of the other reasons the appeal was refused. It was for that reason that the judge concluded that the requirements of the Immigration Rules were not met.

11. Whilst I accept there were some errors on the part of the First-tier Tribunal Judge, they are not material to the outcome and I find that the evidence that is relied upon, namely the doctor's report and of course the sponsor's evidence, is insufficient to discharge the evidential burden and meet the specified evidence required under paragraph 35 of Appendix FM-SE. It follows that notwithstanding the errors complained of, I am satisfied that the outcome of the appeal would have been the same, in other words a dismissal. In the circumstances I find no error of law in this decision.

Decision

12. The making of the decision in the First-tier Tribunal did not involve the making of an error on a point of law such as to require the decision to be set aside.

I do not set the decision aside.

The decision of the First-tier Tribunal stands and the appeal is dismissed for the reasons stated.

No anonymity direction is made.

Signed

Upper Tribunal Judge Pickup

Dated 13 November 2019

To the Respondent
Fee Award

I have dismissed the appeal and therefore there can be no fee award.

Signed
Upper Tribunal Judge Pickup

Dated 13 November 2019