



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-001219

First-tier Tribunal No:
HU/01070/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 28 March 2023**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**HASHIM HASSAN MOHAMMED
(NO ANONYMITY ORDER MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr I Noori, Solicitor from Issat Timm Solicitors

For the Respondent: Ms A Everett, Senior Presenting Officer

Heard at Field House on 27 March 2023

DECISION AND REASONS

Introduction

1. This is the re-making of the decision in the appeal brought by the appellant against the respondent's refusal of his human rights claim. The appeal had been dismissed by the First-tier Tribunal, but I set that

decision aside by a decision promulgated on 6 May 2022. That error of law decision is at Annex 1 to this re-making decision.

2. In summary, the appellant is a national of Somalia who has been residing in a refugee camp in Kenya at all material times. He was born in July 2002. On 3 June 2020, he made an application for entry clearance to join his father, Mr Hassan Mohammed Halani (“the sponsor”) in the United Kingdom, pursuant to paragraph 297 of the Immigration Rules (“the Rules”). That application was deemed to constitute a human rights claim. It is also of note that because the application was made prior to the appellant turning 18, a decision made on it once that event occurred was to be based on the appellant remaining a minor: paragraph 27 of the Rules.
3. The First-tier Tribunal accepted that the appellant’s mother had died in 2006 and that the sponsor had been providing regular financial support. However, the judge was not satisfied that the sponsor had sole responsibility for the appellant’s upbringing. On appeal to the Upper Tribunal, I held that the judge had erred in two respects: first, he was wrong about the number of occasions the sponsor had visited the appellant in Kenya; second, he failed to have regard to paragraph 297(i) (d) of the Rules, which dealt with the position of a child where one parent had died and the other settled in the United Kingdom. The judge’s decision was set aside with a preserved finding as to the mother’s death. The appeal was retained in the Upper Tribunal for a resumed hearing.
4. The live issues to be considered at the re-making stage were identified as being the ability of the sponsor to adequately maintain and accommodate the appellant, pursuant to paragraph 297(v) of the Rules. Directions were issued within the error of law decision for further evidence to be provided on these issues, neither of which had been explored in the First-tier Tribunal.
5. The appellant duly provided further evidence and the respondent then submitted a position statement, dated 24 May 2022. That position statement conceded the accommodation issue, but asserted that there remained concerns over the question of adequate maintenance.
6. The resumed hearing was originally listed on 21 February 2023. It was apparent that the further evidence supplied by the appellant was not up-to-date and an adjournment was appropriate in order for a clearer picture of the sponsor’s financial circumstances to be provided.
7. The following matters were confirmed:
 - (a) the concession on accommodation was maintained by the respondent;
 - (b) the respondent agreed that the appropriate test for the adequacy of maintenance under paragraph 297(v) of the Rules was not Appendix FM and Appendix FM-SE, but rather the Income Support comparator, as set out in KA and Others (adequacy of maintenance) Pakistan [2006] UKAIT 00065;

- (c) the appropriate Income Support comparator figure for the Sponsor's family unit, including the appellant if he were to be in the United Kingdom, was £404.25 a week;
 - (d) the respondent accepted that if the appellant could satisfy the maintenance requirement under paragraph 297(v) of the Rules, his appeal should succeed on Article 8 grounds (there is no dispute that the appellant has family life with the sponsor and that the respondent's decision constitutes an interference with that family life).
8. A directions notice, dated 21 February 2023 (at Annex 2, below) was issued, setting out the matters stated in the preceding paragraph and providing a timeframe for the submission of further evidence.
9. In the event, a further bundle of evidence, indexed and paginated 1-76, was filed and served on 18 March 2023, a day after the deadline set out in the directions. An application for an extension of time was made. At the hearing on 27 March 2023, and without objection from Ms Everett, I extended time and admitted the further evidence.

The relevant legal framework

10. The relevant provision of the Rules is, as has been stated already, paragraph 297(v).
11. As to the case-law, I have considered KA, Begum (maintenance-savings) Bangladesh [2011] UKUT 00246 (IAC), and Mahad (Ethiopia) [2009] UKSC 16; [2010] 1 WLR 48 as encapsulating the basic propositions with which I am concerned. In summary:
- (a) the maintenance requirement imposes an objective standard;
 - (b) the sponsor's income should be considered net of accommodation and council tax commitments and net of tax and NI liabilities;
 - (c) savings can be taken into account;
 - (d) third part support is permissible, provided it is reliable.
12. As regards the satisfaction of the relevant Rules as constituting a determinative factor in the proportionality exercise, I have considered TZ (Pakistan) [2018] EWCA Civ 1109; [2018] Imm AR 1301.

The evidence

13. I have considered the appellant's two bundles prepared for the resumed hearing in the Upper Tribunal: the first of these is indexed and paginated 1-81; the second is, as has been mentioned earlier, indexed and paginated 1-76.
14. The sponsor attended the resumed hearing and gave oral evidence with the assistance of a Somali interpreter. He adopted his recent witness statement and provided further information about his self-employment as a taxi driver operating on the Uber platform. He told me that he had

attempted to get his latest full tax return from his accountant, but this is not been possible because the accountant (who was a sole practitioner) was abroad and could not be contacted.

15. One of the sponsor's adult children, Vanda Mohammed, also attended the hearing. Mr Noori had apparently not previously considered calling her, but she indicated that she might have relevant information. Without objection from Ms Everett, I invited Mr Noori to call her. She explained that she and two other adult sisters all worked and put money into what might fairly be described as the family pot. Ms Mohammed works for the Financial Conduct Authority, another sister works for the BBC, and the third for University College London. Ms Mohammed told me that she takes home approximately £2900 a month and has savings of £20,000. The sister who works for the BBC has savings of £15,000. She confirmed that financial support for the appellant would in effect be guaranteed for however long it was required. She also explained that it was the adult children who provided money to their mother (the sponsor's wife) for the payment of rent.

The parties' submissions

16. Mr Noori relied on his skeleton argument, in which she set out figures said to demonstrate that the sponsor was able to provide adequate maintenance when judged against the target figure of £404.25 a week.
17. Ms Everett's submissions were, with respect, of more assistance than those from Mr Noori. She did not dispute the various figures set out in Mr Noori's skeleton argument and those provided by Ms Mohammed. She accepted that third party support was likely to be reliable. The absence of the sponsor's full tax return was noted, as was the fact that the figure set out in the Income and Expenditure document prepared by the accountants did not appear to be net of tax or NI liabilities.
18. Having already read the documentary evidence and then having heard this Mohammed's oral evidence, I announced to the parties that I would be allowing the appellant's appeal, with written reasons to follow. I set out my findings of fact and conclusions, below.

Findings of fact

19. For the avoidance of any doubt, I find that the appellant is the sponsor's son, that his mother passed away in 2006, and that the sponsor has been sending regular financial support to his son over a significant period of time. I also find that the sponsor has visited the appellant in Kenya on several occasions. I find that the sponsor is able to provide adequate accommodation for the appellant.
20. Turning to the central issue of maintenance, there is no real dispute on the evidence now before me. Having regard to that evidence in its entirety, I find it to be reliable in all respects. Specifically, I find the evidence from the sponsor and Ms Mohammed to be credible and the

figures provided by the sponsor's accountants to be an accurate reflection of his income and expenditure.

21. I find as a fact that the sponsor works as a taxi driver, operating on the Uber platform. I find that his weekly income (profit) for the period April 2022 to February 2023 to be £20,184 (£469 a week), as set out in the accountant's Income and Expenditure document in the second bundle. The income figure is consistent with the healthy balance set out in the bank statements in the bundles. That income would not be net of any tax liabilities or NI contributions and, on my understanding, those liabilities have not yet been calculated.
22. The current personal allowance on taxable income is £12,570. Thus, the sponsor would be liable to pay tax at 20% on the remaining £7614, which would appear to amount to approximately £1500. I cannot say what the NI contributions would be.
23. I am satisfied that he has been in receipt of Working and Child Tax Credits in the sum of £245.19 a week.
24. The evidence shows that the sponsor's accommodation costs amounts to £215.03 a week and that Council Tax payments are £29.23 a week, giving a total of £244.26 a week.
25. Therefore, the sponsor's total weekly income net of rent and Council Tax is £469.93 (£714.19 minus £244.26). That figure exceeds the Income Support comparator figure. It is not, however, net of tax liabilities or NI contributions.
26. On balance, I find that the tax liabilities and NI contributions are likely to be small. In the first instance, it is more likely than not that the sponsor's own income would, even net of such liabilities and contributions, still be sufficient to meet the Income comparator figure of £404.25.
27. However, if his income fell short (if it did, it would on any view only be by a small amount) I am entirely satisfied that there is reliable and long-term third party support in place to make up any shortfall. I base this on the following.
28. I am entirely satisfied that Ms Mohammed works for the FCA and that her monthly net pay is £2958.88 (approximately £740 a week). I also find that she has £20,000 in savings. I am satisfied that she holds a genuine and committed intention to provide additional financial support for the appellant should he come to the United Kingdom. Her contributions to the sponsor's rent in no way preclude her from providing material financial support the appellant from her own income. Further, I am satisfied that she would be prepared to use at least some of her considerable savings to assist her brother.
29. I find that Ms Mohammed's younger sister, Fadumo, is employed by the BBC. Although I have not been provided with a figure for her income,

I am satisfied that she has savings in excess of £15,000 and, like Ms Mohammed, would be prepared to materially assist.

30. As regards the third adult sister, Ms Mohammed was unable to tell me about her income and there was no suggestion that she had significant savings. However, I am satisfied that the third sister works at UCL. It is more likely than not that she is in a position to provide at least some financial support for the appellant, although my overall conclusion on third party support does not depend on her.
31. Bringing all of the above together, I am satisfied that, by a combination of sponsor's own income and reliable and long-term third party support from, at least, Ms Mohammed, but probably also Fadumo, the Income Support comparator figure of £404.25 a week is highly likely to be met or exceeded.

Conclusions

32. In light of the above, I conclude that the appellant has satisfied all material provisions of paragraph 297 of the Rules. As noted earlier, this is, in the particular circumstances of this case, determinative of the proportionality exercise under Article 8.
33. It follows that this appeal falls to be allowed.

Comment

34. It is appropriate for me to add two additional comments at the end of this decision. The first is that the preparation for the resumed hearing was not as it should have been. The remaining issue was very narrow and more attention should have been directed to providing *all* relevant evidence going to the question of maintenance. Unfortunately, even at the final hearing, I was not provided with a particularly clear picture by those representing the appellant.
35. The second point relates to Ms Everett. She is to be commended for her professional and fair approach to this case. She had to deal with a good deal of evidence which had not been put forward in the clearest fashion. She demonstrated flexibility and what I consider to be exemplary conduct in all the circumstances.

Anonymity

36. I make no anonymity direction in this case.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.

The decision in this appeal is re-made and the appeal is allowed.

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 28 March 2023

ANNEX 1: THE ERROR OF LAW DECISION

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

Appeal Number: UI-2021-001219

THE IMMIGRATION ACTS

**Heard at Field House
On 4 May 2022
Extempore**

Decision & Reasons Promulgated
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Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**HASHIM HASSAN MOHAMMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr I Noori, Solicitor from Issat Timm Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge R Hussain (“the judge”), promulgated on 4 August 2021. By that decision he dismissed the Appellant’s appeal against the Respondent’s refusal of his human rights claim. That claim had been made in the context of an entry clearance application for the Appellant to join his father in the United Kingdom pursuant to paragraph 297 of the Immigration Rules (“the Rules”). The claim asserted that his mother had passed away in 2006 and after that tragic event the Appellant lived with his grandmother and then a cousin in Kenya. The Appellant’s father, the Sponsor, had been sending money back on a regular basis and it was said he had exerted sole responsibility for the Appellant’s upbringing.

2. The Respondent was not satisfied that the Appellant's mother had in fact died and was therefore not satisfied that the Sponsor had sole responsibility. The Respondent also concluded that there were no serious or compelling circumstances in the case. Further, the Respondent was not satisfied that there would be adequate maintenance and/or accommodation if the Appellant were to come to the United Kingdom. In light of this the Rules were not satisfied. The Respondent considered Article 8 in more general terms and concluded that the refusal of a human rights claim would not have been disproportionate.
3. On appeal, the judge accepted that the Appellant's mother had in fact died in 2006 as claimed. He also accepted that the Sponsor had been providing financial support over the course of a significant period of time. However, the judge went on to find that the Sponsor had only visited the Appellant on two occasions and that there was very little, if any, documentary evidence to support the claim of sole responsibility. In light of this the judge concluded that such responsibility had not been demonstrated and that the Appellant could not satisfy the Rules.
4. In respect of Article 8 on a wider basis, the judge concluded that the claim was not sufficiently strong for the Appellant to succeed.
5. The grounds of appeal assert that the judge had made "perverse or irrational findings" in light of the finding that the Appellant's mother had died. It was said there was a lack of any reasons and that weight had been given to immaterial matters. More specifically, it was said that the judge had erred by finding that the Sponsor had only visited on two occasions when in fact the evidence was that he had done this on five occasions.
6. The application for permission to appeal also included what appeared to be an extension of time application on the basis that it had been provided late. The explanation, although not clearly articulated, appeared to have been that the First-tier Tribunal decision was promulgated later than had been stated. In any event, when permission was granted by First-tier Tribunal Judge Parkes he stated that "the application is in time." He went on to grant permission on the grounds of appeal as they had been drafted.

Timeliness

7. I must first address the preliminary issue of timeliness.
8. Despite Judge Parkes stating that the application was made "in time", he failed to engage with the apparently accepted fact (as set out in the application itself) that there was a timeliness issue. I reject Mr Noori's contention that Judge Parkes' permission decision was decisive of the issue. If the application had been late it could not have been "in time": its admittance required an extension of time to be made. I am satisfied that Judge Parkes did not deal with the timeliness issue adequately, or indeed at all.

9. In order for me to deal with the issue, I reconstituted myself as a Judge of the First-tier Tribunal: see Mohammed (late application - First-tier Tribunal) Somalia [2013] UKUT 467 (IAC).
10. For a number of reasons, it is not entirely clear to me when the decision of the First-tier Tribunal was in fact sent out to the parties: two dates are potentially relevant; 4 August 2021 and 24 August 2021. On balance, I am satisfied that the decision was in fact sent out on the former of those two dates. I say this for the following reasons: first, that that is the date inserted on the front page of the First-tier Tribunal's decision; second, Ms Isherwood confirmed that the Respondent had received the decision on 6 August 2021 (which would be in keeping with promulgation having taken place two days previously); third, there was no firm evidence of the decision having only in fact been sent out on 24 August 2021; and fourth, the Appellant's application for permission to appeal itself appeared to accept that it was being made out of time.
11. I bear in mind emails seen on the Sponsor's mobile telephone at the hearing, which suggested that previous representatives had not obtained the decision until it was sent (or re-sent) by the First-tier Tribunal on 24 August 2021. However, this did not clearly demonstrate that the judge's decision had only in fact been sent out approximately three weeks after the date of promulgation set out on the first page of the decision.
12. Having regard to all the circumstances of the case, I concluded that it is appropriate to extend time.
13. The breach of the Rules was not particularly significant, being, on my calculation, 13 days. I am satisfied that there had been a change of representative between the promulgation and the making of the application, and I accept that the new representatives required time to gather information, take instructions, and prepare the grounds. I also take into account the apparent confusion as to when the previous representatives and/or the Sponsor actually had sight of the First-tier Tribunal's decision.

The merits of the appeal

14. Turning to the substance of the appeal, I am satisfied that the judge materially erred in law.
15. In terms of the grounds as drafted, I am satisfied that the judge made an error when finding that the Sponsor had only visited the Appellant on two occasions. The Sponsor's clear evidence was that visits had taken place on five separate occasions. In my view, in an assessment of sole responsibility accuracy as to contact, particularly visits which entail on any view a degree of real commitment by one individual to another, must be considered on a correct footing. The judge failed to do this by either overlooking the Sponsor's evidence, or failing to provide any reasons as to why one aspect of it was being rejected.

16. Whilst the grounds are not particularly clearly drafted, I am also satisfied that the judge failed to consider the effect of the Sponsor's regular financial support for the Appellant over a significant period of time. Financial support is not decisive of sole responsibility but is a material element and the Sponsor had been providing remittances over time.
17. In addition to what the grounds as drafted, Ms Isherwood, in her customary fair manner, raised what I consider to be a "Robinson obvious" point in the Appellant's favour, namely the failure by the judge to have considered paragraph 297(i)(d) of the Rules. This provided as follows:

"297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

 - (i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:

...

(d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead;"
18. Once the judge had found that the Appellant's mother had died, he should have gone on to consider this particular subparagraph of the Rule. If he had done so it would have been plain that the first element of the Rule had been satisfied because the only remaining parent, the Sponsor, was present and settled in the United Kingdom. Whether or not the judge was referred to this particular subparagraph I cannot tell, but in any event, it is a plain and obvious error.
19. In light of the above, I set the judge's decision aside.
20. I took the provisional view that I could go on and re-make the decision on the evidence before me. However, Ms Isherwood raised a point which the judge had not dealt with, but which the Respondent had taken up in her reasons for refusal letter against the Appellant, namely that of maintenance and accommodation in the United Kingdom. Presumably because the judge had not found in the Appellant's favour on the sole responsibility issue (or indeed the serious or compelling reasons issue), he believed he did not need to go on and consider maintenance and accommodation. However, in light of the errors of law already identified, the issue the maintenance and accommodation issues are now once again live.
21. Although there was some evidence before the judge in respect of maintenance and accommodation in this country, the picture was not complete and there has been a fairly substantial period of time between the last hearing and now. It was not appropriate to re-make the decision at this stage.

22. In all the circumstances, the appropriate course of action is for me to re-make the decision in due course. The judge's finding that the Appellant's mother had died in 2006 is to be preserved. Thus paragraph 297(i)(d) of the Rules applies.
23. The only remaining issues are that of maintenance and accommodation in the United Kingdom. I will issue directions to both parties, below, in order to progress this matter. It may be that the re-making decision can be undertaken without a further hearing, but this will depend on the evidence provided by the Appellant to the Respondent and her view thereon.

Notice of Decision

The making of the DECISION of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

The decision in this appeal will be re-made by the Upper Tribunal in due course.

No anonymity direction is made.

Directions to the parties

- 1) **No later than 14 days after** this error of law decision is sent out, the Appellant shall serve on the Respondent a concise bundle containing up to date evidence relating to the issues of maintenance and accommodation in the United Kingdom;
- 2) The evidence referred to above shall be accompanied by concise written submissions on the issues of maintenance and accommodation in the United Kingdom;
- 3) **No later than 28 days after** this error of law decision is sent out (that being no later than 14 days after direction 1 has been complied with by the Appellant), the Respondent shall file and serve in electronic form a position statement/supplementary reasons letter addressing the evidence relating to maintenance and accommodation in the United Kingdom. This must clearly state whether or not the evidence is accepted in respect of one or both of the issues. If the evidence is rejected in respect of one or both of the issues, the Respondent must state whether she seeks a resumed hearing, or whether the re-making decision can be made without a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008;
- 4) **No later than 35 days after** this error of law decision is sent out, the Appellant may file and serve in electronic form a concise reply;
- 5) With liberty to apply to vary these directions.

Signed H Norton-Taylor
Upper Tribunal Judge Norton-Taylor

Date: 6 May 2022

ANNEX 2: DIRECTIONS NOTICE OF 21 FEBRUARY 2023

**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2021-001219

First-tier Tribunal No:
HU/01070/2021

THE IMMIGRATION ACTS

Directions Issued:
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Before

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE WELSH**

Between

**HASHIM HASSAN MOHAMMED MOHAMMED
(NO ANONYMITY ORDER MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

DIRECTIONS

1. This appeal was listed for a resumed hearing following the error of law decision promulgated 6 May 2022, by which the decision of the First-tier Tribunal was set aside.
2. In the event, the resumed hearing was adjourned. This was because the Tribunal was concerned that it had not been provided with up-to-date evidence relating to the sponsor's financial circumstances in the United Kingdom. Given the centrality of that issue to the outcome of this appeal, the interests of justice and fairness required an adjournment.
3. The following matters have now been clarified. The only live issue remaining is that of the adequacy of maintenance, with reference to paragraph 297(v) of the Immigration Rules. The adequacy of accommodation has been conceded by the respondent in her Position Statement dated 24 May 2022. The death of the appellant's mother is a preserved finding from the decision of the First-tier Tribunal. At the

hearing on 21 February 2023, the respondent (correctly) accepted that Appendix FM-SE to the Immigration Rules did not apply to the assessment of maintenance under paragraph 297(v). The respondent acknowledges that if the adequate maintenance threshold can be met by the appellant, his appeal should succeed with reference to Article 8.

4. The figures set out in the respondent's Position Statement and the appellant's skeleton argument are inaccurate.
5. The current Income Support comparator for a family unit comprising two adults over 18 and for dependent children is £404:25 a week (£121:05 a week for the couple - the sponsor and his wife - and £70:80 x 4 a week for the children, including the appellant). Those figures may be uplifted in April 2023 and the parties should be aware of this.
6. It is now very important that the sponsor obtains up to date evidence relating to his financial situation in this country. Relevant evidence could include:
 - (a) Bank statements from June 2022 to date;
 - (b) Accounts for his business as a self-employed minicab driver;
 - (c) Receipts for that business;
 - (d) Evidence of any other household income;
 - (e) Evidence of current rent and Council Tax payments
7. The appellant's solicitors must obtain relevant evidence immediately. Consideration should be given to whether an updated witness statement is drafted for the sponsor. A Somali interpreter will be booked for the next hearing.
8. The next hearing will be on 27 March 2023.

Directions

- (1) No later than 4pm on 17 March 2023, the appellant must file and serve any new evidence relied on. Such evidence must be contained in a bundle, indexed and paginated;
- (2) Any further evidence relied on by the respondent must be filed and served no later than 4pm on 23 March 2023;
- (3) With liberty to apply to vary these directions.

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 21 February 2023