



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/16180/2012

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23 October 2013  
Reserved judgment

Determination Promulgated  
On 1<sup>st</sup> November 2013

Before

THE PRESIDENT, THE HON MR JUSTICE MCCLOSKEY  
and  
UPPER TRIBUNAL JUDGE LATTER

Between

HALIMA JIMALA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms N Brissett (of counsel) instructed by Aden & Company  
Solicitors

For the Respondent: Mr Tufan (Home Office Presenting Officer)

## DETERMINATION AND REASONS

- [1] There are four protagonists in the framework of this appeal:
- (a) Halima Jimale, a Somalian national, aged 68 years, who applied unsuccessfully for clearance to enter the United Kingdom as a dependent parent (hereinafter "*the Appellant*").
  - (b) Mrs Fadumo Mohamed, also a Somalian national, daughter of the Appellant, aged 43 years (hereinafter "*the sponsor*").
  - (c) Mr Abdulkadir Elmi, also a Somalian national, aged 46 years and resident with indefinite leave to remain in the United Kingdom (hereinafter "*the financial supporter*").
  - (d) The Entry Clearance Officer ("*ECO*"), who refused the Appellant's application.
- [2] Following refusal of her entry clearance application, the Appellant appealed to the First-Tier Tribunal. The appeal was allowed, in a determination promulgated on 12<sup>th</sup> July 2013. The Judge, directing himself correctly in law, said the following:

*"With regards to maintenance ..... the requirement to show that a person or persons can be maintained adequately without recourse to public funds has been a requirement of the Immigration Rules. An applicant needs to show that resources available will meet or exceed the relevant Income Support [rate] ...."*

This was followed by a specific finding:

*"Taking into account the income .... for the sponsor and the third party support which I find to be credible .... I am satisfied that the combination of funds between the sponsor and the third party would provide the Appellant with her weekly needs. Furthermore, the amount of the sponsor alone is sufficient to cover part of what the Appellant requires with the exception of a little bit of money to top it up which can be provided by Mr Elmi [the financial supporter]."*

The Judge then made two further findings. The first was that the Appellant would be residing rent free in the Council house occupied by her daughter (the sponsor) and her children. The second was that there would be no adverse impact on Council tax benefit, as no Council tax was being paid. Pursuant to these findings, the appeal was allowed.

- [3] Permission to appeal having been granted to the ECO, a hearing in the Upper Tribunal ensued, on 20<sup>th</sup> September 2013. In his subsequently promulgated Determination [Appendix 1 hereto], Upper Tribunal Judge Latta concluded that the

Judge had erred in law. He identified three inter-related shortcomings in the first instance decision:

*"[12] When setting out his reasons with regard to maintenance in [27] – [29], the Judge made no clear findings about the sponsor's income at the date of decision or subsequently .....*

*[13] I am also not satisfied that the Judge dealt adequately with the issue of the third party support from Mr Elmi .....*

*[14] I am not satisfied in the circumstances of this case that [the Judge's description of Mr Elmi's evidence as forthright] is sufficient to show that the issue of third party support has been properly considered or that the requirements of the Rules have been met."*

Accordingly, the decision of the First-Tier Tribunal was set aside. It was retained in the Upper Tribunal, with appropriate directions, and we proceeded to conduct the consequential further hearing on 23<sup>rd</sup> October 2013.

- [4] With some gentle judicial prompting, the issues between the parties narrowed significantly as the hearing progressed. This culminated in the presentation of an amended schedule of relevant income and expenditure immediately after the hearing [Appendix 2 hereto]. This demonstrated weekly income totalling £410.54 and weekly expenditure totalling £408.67. In the income schedule, there were four components. Two of these were Child Tax Credit and Child Benefit. The third was Income Support of £101.35 per week. The fourth was the proposed "third party support" (from the financial supporter) of £100 per week. These figures were agreed, subject of course to satisfactory proof of the latter. The net position was, subject to the issue just mentioned, an excess of income over expenditure by £1.87 per week. It was common case that this represented the Appellant's case at its zenith. If this, in turn, were accepted by this Tribunal, the requirements of financial self-sufficiency, including the willingness and financial capability of the financial supporter to make the necessary payments of £100 per week indefinitely, would be satisfied.
- [5] We are mindful that the period on which this Tribunal's attentions must be focused is that immediately preceding and encompassing July 2012, when the impugned decision of the ECO was made. Both parties were agreed that the determination of this appeal would hinge critically on this Tribunal's assessment of the strength and credibility of the evidence of two of the protagonists, namely the sponsor and the financial supporter. Having considered all the evidence, we make the following specific findings:
- (a) There is a clear bond of mutual loyalty and support, rooted in family relationships and Somalian culture, uniting the Appellant, the sponsor and the financial supporter.

- (b) Pursuant to (a), the financial supporter has provided not insignificant financial support to the sponsor on previous occasions.
- (c) The sponsor and the financial supporter have been known to and in contact with each other during a period of some years.
- (d) The sponsor and the financial supporter arranged meetings for the specific purpose of ascertaining the extent of the financial commitment which he could make to facilitate the proposal that the Appellant would come to the United Kingdom and live with her daughter's family.
- (e) At the material time the financial supporter's net annual income was around £22,400, translating to £1,867 net per month. These figures were not disputed.
- (f) At the material time, the evidence of the financial supporter's income presented to the ECO demonstrated an average income of £1,940 net per month.
- (g) The financial supporter has at all material times worked for a security firm and his employment is secure, frequently entailing overtime hours.
- (h) The financial supporter has been in possession of a credit card for approximately 1 ½ years.
- (i) The financial supporter stopped sending money to his parents around July 2012, when their circumstances changed significantly.
- (j) The financial supporter lives modestly. He neither smokes nor drinks. He is the permitted occupant of accommodation rented by his friend and he has modest weekly expenditure, contributing approximately £120 per month for this facility since 2012.

[6] Building on these discrete findings, we further find that at all material times the financial supporter has been both willing and able to contribute £100 per week to facilitate the Appellant residing with the sponsor and her children in their household in the United Kingdom. We find also that this willingness and commitment have at all material times been of indefinite duration. Having subjected the evidence of the sponsor and the financial supporter to careful scrutiny, taking into account all of the earlier evidence assembled from time to time, including that recorded in the Determination of the First-Tier Tribunal, we make these findings accordingly.

[7] The salient requirement in paragraph 319V of the Immigration Rules is that the Appellant -

- “(iii) ..... is financially wholly or mainly dependent on the relative who has limited leave to enter or remain as a refugee or beneficiary of humanitarian protection in the United Kingdom; and
- (iv) *can, and will, be accommodated adequately, together with any dependents, without recourse to public funds, in accommodation which the sponsor owns or occupies exclusively; and*
- (v) *can, and will, be maintained adequately together with any dependents, without recourse to public funds .....*”

[Our emphasis]

Based on the findings which we have made, we conclude that these requirements are satisfied.

## DECISION

- [8] Accordingly, based on findings and for reasons which differ somewhat from those of the First-Tier Tribunal, we reach the same conclusion. The decision of the First-tier Tribunal has been set aside earlier. We remake the decision by allowing the Appellant’s appeal against the refusal of entry clearance as a dependent parent.

Signed:

*Seamus McCloskey*

Mr Justice McCloskey,

President of the Upper Tribunal  
(Immigration and Asylum Chamber)

Dated: 29 October 2013

## APPENDIX 1

1. This is an appeal by the Entry Clearance Officer, Nairobi, against a decision of the First-tier Tribunal issued on 12 July 2013 allowing an appeal by Halima Jimale against the respondent's decision dated 6 July 2012 refusing her entry clearance as a dependent parent. In this decision I will refer to the parties as they were before the First-tier Tribunal, Mrs Jimale as the appellant and the Entry Clearance Officer as the respondent.

### Background

2. The appellant is a citizen of Somalia born on 1 July 1945. She applied for entry clearance on 18 June 2012 to join her daughter, the sponsor, as her dependent mother. The respondent was not satisfied on the evidence before him that the appellant was related to the sponsor as claimed or that her circumstances were as stated. Further, in the light of the fact that the sponsor was unemployed and dependent upon public funds, he was also not satisfied that she could be maintained and accommodated adequately without recourse to public funds. A third party had offered to provide support of £100 a week but it was the respondent's view that there was no indication that he was genuinely in a position to provide such support for the rest of the appellant's life.
3. At the hearing before the First-tier Tribunal the judge accepted in the light of DNA evidence that the appellant and sponsor were related as claimed and that the appellant was over 65 years old. He found that there was satisfactory evidence of adequate accommodation. He then went on to consider the issue of maintenance. On this issue he set out his findings as follows:

“27. With regards to maintenance I find that the case of Yarce (adequate maintenance: benefits) [2010] UKUT 00425 makes it clear that the requirement to show that a person or persons can be maintained adequately without recourse to public funds has been a requirement of the immigration rules. An applicant needs to show that a person or persons can be maintained adequately without recourse to public funds as being a requirement of the immigration rules. An applicant needs to show that resources available will meet or exceed the relevant income support that was set by the UK government. The case of KA (Pakistan) [2006] UKAIT 0065 is relevant in this regard.

28. Taking into account the income coming in for the sponsor and the third party support which I find to be credible in view of the forthright evidence given by the appellant and Mr Elmi I am satisfied that the combination of funds between the sponsor and the third party would provide the appellant with her weekly needs. Furthermore the amount of the sponsor alone is sufficient to cover part of what the appellant requires with the exception of a little bit of money to top it up which can be provided by Mr Elmi.

29. I accept the submissions made by Ms Brissett on the issue of maintenance. There is no satisfactory evidence before me that the inclusion of the appellant into the sponsor's home would negate her council tax benefit as council tax was not being paid in the first place. Furthermore the appellant will not be paying any rent in the property. If that is the case it is likely that such amount will be very minimal and can be paid out of the money provided by the third party."

4. Accordingly, the judge found that the appellant met the requirements of paragraph 319(v) of HC 395 as amended.

### Grounds and Submissions

5. The respondent applied for permission to appeal on the basis that the judge failed to make a finding on the sponsor's income or housing expenses and that it was impossible to discern to what extent the sponsor's income would be sufficient to maintain the appellant or whether third party support would be necessary. It was further argued that the judge had erred in accepting that the offer of third party support was genuine in the light of the fact that as at the date of decision he only had £1.15 in his bank account and there was no evidence to show that he was in a position to offer support neither were any changes reasonably foreseeable. His evidence was that his bank balance was low because he was sending money to his parents but he no longer needed to do so because they had now found employment.

6. Permission to appeal was granted by the First-tier Tribunal for the following reasons:

"... 2. Within the application it is stated by the respondent that the First-tier Tribunal Judge made an arguable material error of law by finding that there will be adequate maintenance for the appellant's needs in the United Kingdom. It appears to be accepted that the sponsor is in receipt of income support – she has three children and her rent and council tax are paid through public funds.

3. The addition of the appellant into her household would mean that in order to provide 'adequate' maintenance the sponsor would have to demonstrate an ability to provide financial support for her mother out of her resources. I find that she has not done so. She has relied on the availability of third party support but there is insufficient evidence before the First-tier Tribunal Judge that the relative who promised third party support had sufficient financial resources of his own noting that as at the date of decision the credit balance in his bank account was only £1.15.

4. I am satisfied that the First-tier Tribunal Judge made an arguable material error of law in his assessment of the funds available or the appellant's maintenance and failed to apply the appropriate test in considering whether the funds available were adequate for the appellant's needs."

7. Mr Walker adopted the grounds. He submitted that the judge had failed to make any adequate findings about the sponsor's income or housing expenses and it was impossible to discern from the determination how she would maintain the appellant

without further recourse to public funds. Secondly, he argued that the judge had erred in his assessment of the evidence about third party support. He had failed to take proper account of the funds available as at the date of decision and any change of circumstances arising after the decision could not properly be regarded as reasonably foreseeable.

8. Ms Brissett submitted that the judge had reached a decision properly open to him when his conclusions were read in the light of his record of the evidence and the submissions. When calculating the income available to the sponsor, any public funding received was part of the overall assessment. She referred to the Tribunal determination in Ahmed (benefits; proof of receipt; evidence) [2013] UKUT 00084. She submitted that on the calculations she had put to the judge the position was that the sponsor would need to show an income for an adult, a pensioner and three children of £330.37 whereas she was only able to show £280.19 and there was therefore a £50 per week shortfall but this was met by the offer of third party support which the judge had accepted. When asked about the judge's comment in [22] that the appellant would only require £107.45 per week which is what someone on a state pension would receive and that third party support would not strictly be required as the amount of money the sponsor received was sufficient to accommodate the needs save in respect of an extra £7 commented, Ms Brissett accepted that she was not entirely sure where these figures came from.
9. In reply Mr Walker pointed out that the sponsor had started work in March 2013 after the respondent's decision. He argued that the judge had not properly carried out or explained his assessment of how the appellant was able to meet the financial requirements of the rules.

### Assessment of the Issues

10. The issue for me at this stage of the hearing is whether the judge erred in point of law such that the decision should be set aside. I am satisfied that he did for the following reasons. In [7] where the judge sets out the evidence before him he records that the sponsor confirmed that she received child tax credit of £8,220.36, got income support, and housing benefit to pay for her rent. In respect of the offer of third party support he recorded the sponsor as stating at [12] that her mother and the mother of Mr Elmi, who was offering third party support were cousins. She had not asked him how long he would do this for. At the time of decision his bank statement was low, a lot of money was being used but he would now keep his expenses down. She explained that she received benefits at the date of decision but had been able to send money to her mother.
11. The evidence of Mr Elmi is set out at [15] - [16]. He accepted that his bank statement was low at the date of decision because he was sending a lot of money to his parents in Somalia. However, they were now able to work themselves as they were in Djibouti and about eight months previously he had stopped sending money to them.



He would help the appellant for as long as needed. He wanted to do so because she was a relative and his religion said that he should support his relative.

12. When setting out his reasons with regards to maintenance in [27] – [29], the judge made no clear findings about the sponsor’s income at the date of decision or subsequently. He simply said that in view of the forthright evidence given by her and Mr Elmi that the combination of funds between them would provide the appellant with her weekly needs [28]. He commented that the amount the sponsor had was sufficient to cover part of what the appellant required with the exception of “a little bit of money to top it up” which could be provided by Mr Elmi [22]. However, this finding is unexplained. There is nothing in his summary of the evidence or his findings of fact to make it clear how he reached this conclusion. The only recorded evidence about the sponsor’s finances is at [7] and [22]. Ms Brissett accepted that what the judge said at [22] did not provide any adequate explanation to support his findings.
13. I am also not satisfied that the judge dealt adequately with the issue of the third party support from Mr Elmi. That had to be assessed as at the date of decision. The judge appears to have accepted that he then had obligations to his own parents which he was meeting and the inference from the evidence appears to be that he was now able to look after the appellant because subsequently his own parents obtained employment and he no longer has to support them.
14. Whilst evidence of third party support can properly be relied on to meet the maintenance requirements of the rules, a number of authorities have made it clear that this evidence needs to be analysed with care to ensure not only that an offer is genuine but also that there is sufficient evidence of intention and ability to meet what may be a long-term commitment (see for example AK and others (long term third party support) Bangladesh [2006] UKIAT 00069 and KJ (working holidaymaker – third party support) [2011] UKUT 00034). The judge described Mr Elmi’s evidence as forthright but without more I am not satisfied in the circumstances of this case that this is sufficient to show the issue of third party support has been properly considered or that the requirements of the rules have been met.
15. For these reasons I find that the judge erred in law in a way capable of affecting the outcome of the appeal and accordingly the decision should be set aside. I heard submissions from both Mr Walker and Ms Brissett. I am satisfied that this is a case which should remain in the Upper Tribunal.
16. Permission is granted to call further evidence from the sponsor and Mr Elmi on the issue of maintenance. It would be helpful to have a clear schedule of the sponsor’s income as at the date of decision and after she started work. Any such schedule and skeleton argument is to be filed seven days before the date of the resumed hearing on 23 October 2013.

**APPENDIX 2****AMENDED SCHEDULE OF RELEVANT INCOME AND EXPENDITURE****INCOME**

		Per week
Child Tax Credit (AB, 21)	8,617.65 per annum	165.72
Income Support (RB, 32)	101.35 per week	101.35
Child Benefit (AB, 30)	188.40 per month	43.47
Third Pty Support (AB, 40)	100.00 per week	100.00
		<u>Total: £410.54</u>

**EXPENDITURE (Housing Costs)**

Nil

**REQUIRED AMOUNTS**

Lone parent	71.00
3 children (64.99x3)	194.97
Pensioner	<u>142.70</u>
	Total: 408.67

**EXCESS INCOME**

Income	410.54
Less	
Required Amount	<u>408.67</u>
	1.87
	Total: 1.87