



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/19299/2012

THE IMMIGRATION ACTS

Heard at: Columbus House, Newport
On: 2 May 2014

Determination Promulgated
On 16th June 2014

Before

MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

HASSAN DAHIR ABDULE

Appellant

and

ENTRY CLEARANCE OFFICER - NAIROBI

Respondent

Representation

For the Appellant: Mr G Hodgetts, Counsel instructed by South West Law
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Archer in which he dismissed the appeal of the Appellant, a citizen of Somalia, against the Respondent's decision to refuse to grant entry clearance as a partner. The Respondent's refusal was made by reference

to paragraph EC-P.1.1 of Appendix FM of the Immigration Rules (HC 395) (as amended) on 6 September 2012. The Appellant's application for permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Chohan on 10 October 2013. By a rule 24 response dated 31 October 2013 the Respondent confirmed that the Appellant's appeal was opposed.

2. At the hearing before us Mr Hodgetts appeared for the Appellant and the Sponsor, the Sponsor's daughter and other relatives all of whom identified themselves to us, were present in Court. An indexed consolidated bundle was submitted on behalf of the Appellant.

Submissions

3. For the Appellant Mr Hodgetts said that the First-tier Tribunal had not grappled with the correct legal framework. The Respondent was referred to as the Secretary of State rather than the Entry Clearance Officer. The Judge refers to the application under appeal not being one for entry clearance and to the relevant date as being the date of the appeal hearing. The in-country spouse rule is quoted and applied rather than the relevant entry clearance rule.
4. So far as the substance of the appeal was concerned the only issue for the First-tier Tribunal to decide was whether there would be additional recourse to public funds on the Appellant's admission to the United Kingdom yet the Judge failed to refer to or apply the test in KA and Others (Adequacy of maintenance) Pakistan [2006] UKAIT 00065. Figures had been submitted supported by evidence showing that at the time of the Respondent's decision the Sponsor had a total income of £278.35 made up of £200.90 in pension credit and £77.45 Attendance Allowance. This exceeds the notional income support level for a married couple which would amount to £276.10 being £217.90 pension credit and £58.20 severe disability addition. The Judge did not deal with these figures: rather he says that because the Sponsor's daughter had said in a previous appeal that the Sponsor would not claim public funds and the fact that she went on to claim caused him to conclude that the Appellant may do the same. This finding is inconsistent with the positive credibility finding made in respect of the Sponsor's daughter and her evidence that she had never intended to apply for benefits for the Sponsor and only did so six months after the Sponsor's arrival when advised that the Sponsor was not getting the benefits that she was entitled to.

5. For the Respondent Mr Richards relied on the rule 24 response and added that the Judge was entitled to look at the past conduct of the Sponsor and her daughter.

Error of Law

6. In our judgement it is clear that the First-tier Tribunal erred in law in three particular ways. Firstly, although it is apparent that the Judge was at all time aware that this was an entry clearance application and the reference to the Secretary of State as the Respondent and to this not being an application for entry clearance (paragraph 9) appear to be 'cut and paste' errors rather than ones of substance, the reference to the E-ELTRP (leave to remain) rather than the E-ECP (entry clearance) sections of the Rules together with reference to the relevant date as being the date of hearing amount to a substantial misdirection. Secondly the failure to consider by reference to the submitted evidence whether, it being accepted that the Sponsor is in receipt of attendance allowance and therefore exempt from the requirements of paragraph E-ECP.3.1, the Appellant and Sponsor were able at the time of decision to maintain and accommodate themselves adequately without further recourse to public funds. Thirdly it was in our judgement irrational for the Judge to hold adversely against the Appellant's integrity the Sponsor's daughter's statement to a previous Tribunal that she had no intention that the Sponsor would claim public funds, particularly given that he regarded the Sponsor as credible in her evidence before him. These errors of law are material to the decision to dismiss the appeal and accordingly we set aside the decision of the First-tier Tribunal.

Remaking the decision

7. In remaking the decision our starting point is that the only matter in issue is maintenance. The Appellant is a 78 year old citizen of Somalia who applied for entry clearance to join his wife (now aged 84) in the United Kingdom. The application was refused firstly because the Entry Clearance Officer was satisfied that a false statement had been made by the Appellant, secondly because the Entry Clearance Officer did not accept that the couple were related as claimed or if they were that their relationship was genuine and subsisting and thirdly because the Entry Clearance Officer was not satisfied that the Appellant could be adequately maintained and accommodated without recourse to public funds. When the matter came before the First-tier Tribunal the Appellant had submitted DNA evidence to substantiate his relationship to the Sponsor and their daughter, written and oral evidence to substantiate the subsistence of the relationship and an explanation for the statement that the Respondent considered to be false. The Presenting Officer at the

First-tier Tribunal agreed that the only live issues were maintenance and accommodation and at the hearing before us Mr Richards did not demur from this. So far as accommodation is concerned evidence was submitted to the First-tier Tribunal and the Judge found that the proposed accommodation was adequate. This is not challenged before us.

8. So far as maintenance is concerned the Notice of Refusal accepts that the sponsor is exempt from meeting the requirements of paragraph E-ECP.3.1 as she is in receipt of attendance allowance. The only issue therefore is whether the Appellant can be maintained and accommodated without additional recourse to public funds. In this respect the unchallenged evidence is that the Sponsor's income exceeds the notional income support level for a married couple. The figures are detailed above. The Sponsor is receiving what she is legally entitled to receive; there is no suggestion to the contrary. Following the dicta in KA and others it is our judgement that the Appellant can be maintained and accommodated without additional recourse to public funds. This appeal is therefore allowed.

CONCLUSION

9. The making of the previous decision involved the making of an error on a point of law. We set aside that decision.
10. The Appellant meets the requirements of the Immigration Rules. We remake the decision and allow this appeal.

Signed:

Date:

**J F W Phillips
Deputy Judge of the Upper Tribunal**