



IAC-FH-NL-V1

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

Appeal Number: OA/07380/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 October 2015**

**Decision & Reasons Promulgated
On 28 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

ENTRY CLEARANCE OFFICER - NAIROBI

Appellant

and

**MRS ASHA MOHAMED ABDULLAHI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr A Pretzell, Counsel, instructed by Makka Solicitors Ltd

DECISION AND REASONS

Introduction

1. This is an appeal by the Entry Clearance Officer against the decision of First-tier Tribunal Judge Maka in which he allowed the appeal of Mrs Abdullahi. Her appeal was in turn against the decision of the Entry Clearance Officer, dated 26 March 2014, refusing her application for entry clearance as an adult dependent relative under Appendix FM to the Immigration Rules. Judge Maka considered the appeal first of all under Appendix FM of the Rules and then on the basis of Article 8 outside of the

Rules. In respect of Appendix FM Judge Maka found that a TB certificate from an approved tester had in fact been provided to the Entry Clearance Officer. The judge then found that the Appellant was indeed the mother of the sponsor in the United Kingdom, that being her daughter, Ms Hussein. In respect of compliance with Appendix FM the judge found that Mrs Abdullahi required long-term personal care in order to perform everyday tasks. This was based upon medical evidence and the evidence of the sponsor. Judge Maka found that Mrs Abdullahi required a full-time carer to look after her in Somalia. It was also found that the required level of care would not have been available even with the practical and financial help of the sponsor in the United Kingdom. It was said that there were no other close family members to provide help to Mrs Abdullahi and that she could not rely on clan members for such help. On this basis the appeal was allowed under Appendix FM.

2. In considering Article 8 outside of the Rules Judge Maka found that there was family life as between Mrs Abdullahi and her sponsor. It was found that the Entry Clearance Officer's decision to refuse entry clearance was an interference with that family life and in light of all the circumstances the refusal amounted to a disproportionate interference with the family life. Accordingly, the appeal was also allowed on the basis of Article 8 outside of the Rules.
3. The Entry Clearance Officer sought permission to appeal on the basis that Judge Maka had failed to direct himself properly to Appendix FM-SE to the Rules, in particular the evidential requirements relating to an application under Appendix FM based upon the adult dependent relative route. The grounds of appeal also challenged Judge Maka's conclusions on Article 8 outside of the Rules. Permission to appeal on both grounds was granted by Designated First-tier Tribunal Judge Murray by a decision dated 30 July 2015.
4. At the hearing before me Mr Pretzell very fairly accepted that Judge Maka had indeed materially erred in law by failing to have any regard to Appendix FM-SE of the Rules. That issue was a live one before the judge given his conclusions that Appendix FM applied to Mrs Abdullahi. On that basis Mr Pretzell accepted that the decision of Judge Maka should be set aside and he suggested that the appeal be remitted to the First-tier Tribunal.
5. Mr Tufan was happy to accept that remittal would be an appropriate disposal of the appeal in this particular case given that there are a number of issues which have not been adequately addressed by Judge Maka.

Decision on error of law

6. I informed the parties at the hearing before me that there was indeed a material error of law in this case.

7. The specific element of Appendix FM-SE in question is paragraph 35, in which an inability to receive required levels of care in one's home country should be supported by evidence from a health authority, a local authority, or a doctor or other health care professional. This evidential provision simply has not been dealt with at all, whether in form or substance. It is a material error because on the face of it Mrs Abdullahi's evidence did not comply with Appendix FM-SE, and certainly no reference was made to the requirements of those provisions in the decision of Judge Maka.
8. In addition, I conclude that Judge Maka's assessment of the Article 8 case was fundamentally flawed insofar as he failed to have any regard to the public interest to which significant weight ought to be attached when assessing appeals under Article 8 outside of the Rules. He also failed to have any regard to the fact that Mrs Abdullahi had failed to meet all of the evidential requirements under Appendix FM-SE.
9. The decision of Judge Maka is therefore set aside.

Disposal

10. I have considered the factors set out in paragraph 7 of the Practice Statement regarding remittal. In this case I have decided to remit the appeal to the First-tier Tribunal. Both representatives agreed to this route, and it is appropriate given the lack of findings on core issues in the appeal.

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.

I remit the case to the First-tier Tribunal.

Substantive Directions

- 1. The appeal will be heard afresh with no preserved findings from the decision of Judge Maka;**
- 2. On re-hearing the appeal the issues to be addressed will include Appendix FM as they relate to adult dependent relatives, the requirements of Appendix FM-SE, and Article 8 outside of the Rules.**

Procedural Directions

- 1. A Somali interpreter will be required in respect of oral evidence to be given by the UK-based Sponsor;**
- 2. The matter is not to be listed before First-tier Tribunal Judge Maka;**

- 3. No hearing date for the remitted hearing will be fixed at this stage due to the difficulties in listing faced by hearing centres. A new date will be a matter for the Hatton Cross hearing centre to deal with in due course.**

No anonymity direction is made.

Signed

Date: 24 October 2015

Deputy Upper Tribunal Judge Norton-Taylor