



IAC-FH-AR-V1

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

Appeal Number: IA/34729/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 November 2015**

**Decision & Reasons Promulgated
On 22 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MATHILDE BASINKIANI KASONGO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Staunton, Home Office Presenting Officer

For the Respondent: Miss L Appiah, Counsel, instructed by Phil Silvers solicitors

DECISION AND REASONS

1. The Claimant to this appeal is a national of the Democratic Republic of Congo [DRC]. She was born on 20 April 1938 and is therefore now 77 years of age. She arrived in the United Kingdom on 25 February 2012 on a visit visa with six months' leave valid until 26 July 2012. On 23 June 2012 she made an application to vary her leave to remain but this application was refused just over a year later on 28 June 2013.
2. There were then technical issues in respect of the defective notice of decision with the consequence that the appeal was remitted by First-tier

Tribunal Judge Fletcher-Hill back to the Home Office in order to be remade. On 22 August 2014, the decision was made refusing to vary the Claimant's leave to remain in the United Kingdom and to remove her by way of Section 47 directions. The Claimant appealed against these decisions on 2 September 2014 and her appeal came before Judge of the First-tier Tribunal Head-Rapson for hearing on 23 March 2015.

3. In a decision promulgated on 27 May 2015 the Judge allowed the appeal having heard evidence from the Claimant and her two sons who were Sponsors in the case. The Secretary of State sought permission to appeal against this decision on 10 June 2015 on two grounds. The first was that the Judge did not engage with the substantive requirements of the adult dependent relative Rules in Appendix FM and it was submitted that insufficient weight was given to the need for immigration control by lack of regard for the public policy reasons for replacing the old Rule 317 with the new adult dependent relative Rules in Appendix FM. The second ground asserted that the judge erred materially in law in accepting the credibility of a document produced at the hearing with reference to the case of Tanveer Ahmed [2002] Imm AR 318.
4. Permission to appeal was granted by First-tier Tribunal Judge Colyer on 12 August 2015 on the basis that it was arguable that the Judge had failed to engage fully with the substantive requirements of the adult dependent relative Rules under Appendix FM and the public policy reasons for those Rules and that it was arguable that the Judge erred in law in applying the wrong standard of proof with regard to her reference to Tanveer Ahmed [2002] Imm AR 318 as this was not an asylum case.
5. The Judge granting permission to appeal took three other points of his own volition but these were neither raised nor relied upon at the hearing before me and I do not propose to address them, except as to say that I do not consider that they would be sufficient to undermine the determination of First-tier Tribunal Judge Head-Rapson.

Hearing

6. At the hearing before me Mr Staunton made submissions on behalf of the Secretary of State and relied upon the grounds of appeal as drafted. Miss Appiah responded and she submitted firstly, that in respect of the elderly dependent Rules that the judge did not have them in mind, that she was not obliged to where her decision was fully reasoned and even if she should have looked at the elderly dependent Rules paragraph 56 of her decision is clearly reasoned in terms of her proportionality assessment. In respect of the Tanveer Ahmed point, Miss Appiah submitted that in fact the judge did not essentially accept the document in question and that is clear from the terms of that paragraph itself, paragraph 36 of the decision, where she says "*I am satisfied the Appellant's uncorroborated evidence has to be approached with caution*".

Decision

7. I find that there is no material error of law in the decision of First-tier Tribunal Judge Head-Rapson. My reasons are as follows. In respect of the first ground, it is clear having regard to the Respondent's refusal of 22 August 2014, that the application was not treated as an application under the elderly dependent Rules *viz* EC-DR or R-ILRDR. There is no reference to them in that decision. Moreover Mr Staunton confirmed having had regard to the record of proceedings made by the Presenting Officer at the First-tier Tribunal, that no arguments were raised or entertained by the Judge in respect of the elderly dependent Rules.
8. On that basis I consider that ground 1 of the Secretary of State's grounds has no relevance given that this is not an entry clearance appeal and given that the appeal was brought entirely on the basis of paragraph 276ADE of the Rules and Article 8 outside the Rules on the basis of exceptional circumstances and there is no material error of law in the judge's approach to the refusal and to the appeal before her.
9. In respect of the second of the grounds of appeal, and the assertion that the Judge erred in accepting the credibility of a document without reference to Tanveer Ahmed, the Judge did not make a material error of law because, as Miss Appiah has helpfully pointed out, the Judge did not in any event accept the Claimant's uncorroborated evidence. That evidence is essentially one document that is a declaration by a family friend from the DRC [at pages 20-21 of the Claimant's bundle]. It is in French with an English translation and it confirms that the Claimant's property, number 14 Avenue Masala, no longer belongs to her as none of her family members live there any more and is essentially being occupied by third parties. The reference to Tanveer Ahmed and the documents that the Judge was being asked to consider essentially related solely to the issue of the ability of the Claimant to return to a home in the DRC. Given that this was only one aspect of the case and given that the Judge accepted the other evidence in relation to the Claimant's age, state of health, need for care and the ability of her Sponsor sons to care for her, I do not consider that the reference to Tanveer Ahmed made any material difference to the outcome of the appeal or to the safety of the judge's decision.

Notice of Decision

10. For these reasons I dismiss the appeal by the Secretary of State and uphold the decision of First-tier Tribunal Judge Head-Rapson.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Chapman