



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/11345/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 20 October 2017

**Decision & Reasons
Promulgated**

On 16 November 2017

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

ENTRY CLEARANCE OFFICER

and

ISATA JABBIE

(ANONYMITY ORDER NOT MADE)

Appellant

Respondent

Representation:

For the Appellant: Mr D Clarke

For the Respondent: Not represented

DECISION AND REASONS

1. Although the appellant in these proceedings is the Entry Clearance Officer, I continue to refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a citizen of Sierra Leone who was born in 1942. On 31 March 2016 the respondent made a decision to refuse entry clearance as an adult dependent relative. The respondent concluded that the appellant had not established that she met the requirements of the Rules in terms of paragraph EC-DR.1.1.(d) and E-ECDR.2.4-2.5. of Appendix FM.

3. The appellant appealed against that decision and her appeal came before a First-tier Tribunal Judge ("the FtJ") at a hearing on 6 July 2017, following which the FtJ allowed the appeal, although incorrectly expressing her decision as having allowed the appeal under the Immigration Rules.

The FtJ's decision

4. The purpose of the application for entry clearance was for the appellant to join her daughter (sponsor), Fatmata Kamara, a British citizen, who had arrived in the UK on 15 September 2007. The FtJ referred to the respondent's conclusion that the appellant had not established that the appellant required long-term personal care to perform everyday tasks as a result of age, illness or disability. Similarly, the respondent was not satisfied that it had been established that the required level of care could not be obtained in Sierra Leone because it was not available, and there was no person that could reasonably provide it, or because it was not affordable.
5. The FtJ heard evidence from Ms Kamara which included evidence that the appellant suffered from arthritis and had difficulty moving around, needed help to take a shower and even to get up and wash her face. The neighbours helped but they came when they wanted to, and were not family. The evidence from Ms Kamara was also that the appellant could not shop, suffered from high blood pressure and diabetes and when she sent money to her, she had to speak to someone to go to the shops for her to get the money. Her mother had no fridge or lighting, and although there was electricity it was not constant.
6. Ms Kamara gave evidence that the appellant could not cook, and that the cooking was done over a fire. Although the medical evidence did not explain all her medical conditions and the other circumstances, it was explained by Ms Kamara that it was difficult to get the doctor to understand what was wanted. That was why she could not get the documentary evidence she needed. The doctor had said that he could not provide another letter because one had already been provided.
7. At [16] the FtJ recorded Ms Kamara's evidence that she could not arrange care for her mother in Sierra Leone, and that only family could look after someone in Africa. She said that she wanted to care for her mother. She had not been able to go to Sierra Leone since 2013 because of the war and Ebola. She was only able to speak to her mother on the phone, she said.
8. At [18] the evidence was recorded that it was not possible to get a lady to live with her mother and look after and there was no-one in the family who could do so. She could not take someone to look after her whom she did not know, and her mother could not get the proper help that she needed. At [19] it was recorded that she could not pay the neighbours. She gave them money but not regularly. The neighbours took her mother to the doctor in a taxi. If she brought someone in to care for and live with her

mother, she would not know that person's background or character and what she might be capable of doing.

9. In submissions on behalf of the respondent before the FtJ it was contended that there was no real evidence of the appellant's need for long-term personal care, or that it could not be provided by someone other than the sponsor. The medical evidence did not say as much, even though the sponsor said that she had spoken to him. It was contended that there were facilities in Sierra Leone and Ms Kamara could arrange private care.
10. The FtJ found the evidence of Ms Kamara to be credible. She referred to her as a witness of probity and reliability, and she said that she accepted her evidence without reservation.
11. Referring to the medical evidence, she concluded that although the doctor had stated that the appellant's current clinical status is stable and she is constantly on anti-hypertensive and anti-diabetes medication, as well as active physiotherapy, it appeared from the appellant's results that neither treatment had proved successful, except to the extent of stabilising her conditions.
12. At [28] the FtJ concluded that the appellant did require long-term personal care to perform everyday tasks, accepting Ms Kamara's evidence that the appellant was unable to wash or dress herself, or to do shopping and cooking, and that she relies on her neighbours for assistance with these tasks. Noting that the evidence from the doctor did not include such confirmation, she said that had it done so his statement would have been based on the appellant's account, not on physical examination, and it would therefore have been likely to have been disregarded as self-serving.
13. At [13] the FtJ said that she accepted the sponsor's evidence that when the neighbours failed to appear the appellant is left without any assistance. She found that given the importance of regular meals for anyone with diabetes, it is not surprising that their absence caused the appellant a significant degree of distress, and that it may also have had a negative affect on her health generally.
14. At [32] she found that the medical evidence established that the appellant's conditions have affected her for some years and are unlikely to be cured. Accordingly, they are conditions that give rise to a need for long-term personal care.
15. The FtJ referred to the Country of Origin Information Report for Sierra Leone dated November 2010 in terms of the health service and the low geographic coverage of state-run health facilities.
16. She went on to conclude that Ms Kamara's account fits in well with the background evidence. She said that she accepted that she and the appellant have been unable to find anyone to assist the appellant, other than her neighbours, who provide some help on an ad hoc basis, at their convenience, and not in accordance with the appellant's needs. At [35] she accepted the sponsor's evidence that she has not been able to identify

anyone who could live with her mother and provide daily assistance. That was the reason she decided she had to bring her mother back to the UK.

17. At [36] it was accepted that the sponsor assessed the risk of harm to the appellant as serious, particularly given that her mother is now nearly 75, and in view of the difficulty of keeping an eye on a care-giver so far away on another continent. She had not been able to identify anyone trustworthy to provide her mother with personal care on a long-term basis.
18. She concluded at [37] that the appellant had demonstrated that she requires long-term personal care and that due to age and disability she is unable to perform everyday tasks without assistance. She further concluded that the appellant and Ms Kamara are unable to arrange suitable care for her in Sierra Leone because it is not available.

The grounds and submissions

19. The respondent's grounds contend that the evidence did not support the Ftj's conclusions that the requirements of the Rules were met. The sponsor's evidence was that she could not take someone she did not know and put her in with her mother, and that in Africa only family could look after someone. There was no evidence of the appellant's daughter seeking out a local personal carer. Thus, the sponsor's assertions alone could not be relied on.
20. It is also argued that the Ftj having failed to consider s. 117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), in particular in terms of the considerable burden on the NHS that would be imposed by the appellant coming to the UK. Furthermore, there are no findings on her ability to speak English. She may not be able to integrate successfully into British society.
21. The grounds also rely on the decision in *EV (Philippines) v Secretary of State for the Home Department* [2014] EWCA Civ 874.
22. In submissions, Mr Clarke relied on the grounds, also submitting that the medical evidence did not support the conclusions that the Ftj came to. Furthermore, it was submitted that the evidence did not meet the requirements of the Rules in terms of Appendix FM-SE, in particular at paras 34 and 35.
23. There was no identification by the Ftj of any attempt on the part of the appellant and her daughter to seek help and then to consider any reasons as to why such help may not be available. Indeed, the last paragraph of the medical evidence suggests that such care is available.
24. Before me Ms Kamara explained that the doctor had said that he would not send any more evidence. There are no nursing agencies. They tried in 2014 to obtain help but it was not successful.
25. She said that she wanted the appellant to stay with her. Her mother only has her to help her. She, Ms Kamara, is now expecting her third child.

She had not seen her mother for five years and is only able to speak to her on the phone. There are no other siblings. She reiterated the health conditions that her mother has in terms of high blood pressure and diabetes.

Conclusions

26. It is as well to set out the relevant requirements of the Rules for entry clearance as an adult dependent relative. The relevant requirements are as follows:

“E-ECDR.2.4. The applicant or, if the applicant and their partner are the sponsor’s parents or grandparents, the applicant’s partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.

E-ECDR.2.5. The applicant or, if the applicant and their partner are the sponsor’s parents or grandparents, the applicant’s partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because-

- (a) it is not available and there is no person in that country who can reasonably provide it; or
- (b) it is not affordable.”

27. There are also requirements in terms of specified evidence. The relevant paragraphs of Appendix FM-SE are as follows:

“34. Evidence that, as a result of age, illness or disability, the applicant requires long-term personal care should take the form of:

- (a) Independent medical evidence that the applicant’s physical or mental condition means that they cannot perform everyday tasks; and
- (b) This must be from a doctor or other health professional.

35. Independent evidence that the applicant is unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country where they are living should be from:

- (a) a central or local health authority;
- (b) a local authority; or
- (c) a doctor or other health professional.”

28. The medical evidence that was before the FtJ is contained in a letter from a Dr Sankoh, dated 24 April 2017 (page 11 of the appellant's bundle). It gives the appellant's age as 75 years. It states that she is a non-hypertensive and diabetic (Type II). It states that she has been under observation and monitoring since 2005. It refers to her having presented with headache, dizziness and generalised body weakness, lower back pain and joint pains swelling. A diagnosis of severe (malignant) hypertension and Type II diabetes is given. It then goes on to state that:

"Her current clinical status is now stable and she is constantly on anti-hypertensive and anti-diabetics as well as active physiotherapy.

Due to her current clinical status, she is therefore advice (sic) to seek proper home help and management which requires psycho social and emotion (sic) support. This will aid her gradual recovery and improve her general condition."

29. There is no doubt but that the medical evidence from Dr Sankoh does not establish that the appellant, as a result of age, illness or disability, requires long-term personal care to perform everyday tasks. It is necessary that the medical evidence should demonstrate that that requirement of the Rules at E-ECDR.2.4. is met, because of the terms of para 34 of Appendix FM-SE.
30. The FtJ relied on the evidence of Ms Kamara to supplement the medical evidence in terms of establishing the need for long-term personal care to perform everyday tasks. However, that was an impermissible approach to the evidence in the light of the need to provide specified evidence of the matters in issue.
31. Furthermore, specified evidence needed to be provided, with reference to para 35 of Appendix FM-SE, in terms of the availability of the required level of care said to have been needed. That evidence must be from a central or local health authority, a local authority, or a doctor or other health professional. Such evidence was not provided.
32. It is apparent that the need to provide evidence from certain specified sources ensures that there is concrete and reliable evidence of the lack of availability of the relevant care. Whilst the FtJ was entitled to find that the sponsor was a credible witness, what she was not entitled to do was to conclude that the appellant met the requirements of the Rules as an adult dependent relative in the absence of the required, and specified, evidence.
33. In those circumstances I am satisfied that the FtJ erred in law in her conclusion that the appellant met the requirements of the Rules. Accordingly, I set aside her decision.
34. Furthermore, given that the evidence does not establish that the appellant is able to meet the requirements of the Rules as an adult dependent relative, the only conclusion that can be reached is that the appeal with reference to the Rules must be dismissed.

35. The Rules are an aspect of Article 8. I have considered whether there are compelling circumstances which warrant a consideration of Article 8 outwith the confines of the relevant Rules.
36. I approach the wider Article 8 issue in terms of the five-step *Razgar* structure.
37. I am satisfied that there is family life between the appellant and the sponsor because although they are both adults, there is evidence of emotional ties over and above the usual ties between adult relatives. Those further elements of dependency include the appellant's ill-health and her obvious dependence on her daughter for emotional and financial support. Her daughter is plainly concerned to ensure that she receives health and support in Sierra Leone.
38. The decision of the respondent does represent a lack of respect for that family life, and will have consequences of such gravity as potentially to engage the operation of Article 8. The respondent's decision is in accordance with the law and pursues an obvious legitimate aim.
39. The issue is then one of proportionality. In that context it is relevant to take into account that the appellant is not able to meet the requirements of the Immigration Rules. That is a significant factor.
40. Furthermore, although I entirely accept that both the appellant and her daughter would prefer her to live in the UK where they would have direct and close personal contact and where the sponsor could directly ensure her care and wellbeing, it is, as suggested on behalf of the respondent, a significant proportionality factor that it is likely that the appellant would require substantial NHS care for a significant period of time. Not only is her age relevant in that respect but also, and more particularly, her several health conditions.
41. It is in the nature of the adult dependent relative Rule that persons seeking entry clearance with reference to that aspect of the Rules are likely to have health conditions. They are also in many cases likely to be elderly. If the answer to the proportionality question based on those factors alone would always be in favour of an adult dependent relative coming to live in the UK with the UK based relative, the Rules themselves would be redundant. However, the need for compliance with the Rules is a significant one.
42. The extent to which the appellant has failed to meet the requirements of the Rules is also relevant in that there is no evidence at all before me to support any contention that efforts have been made to find paid carers in Sierra Leone. Although the evidence before me from Ms Kamara was that in 2014 she had tried to provide a carer, that was not the evidence given before the Ftj, and nor is there any such information in either her or the appellant's witness statements.
43. The Ftj said that she accepted that the appellant and her daughter had been unable to identify anyone who could assist the appellant apart from

neighbours who provide help only on an *ad hoc* basis. However, there was no evidence as to what efforts had been made in that respect. The real import of the evidence was that the sponsor would not wish anyone else to care for her mother and that she is the one that needs to do that. However, that is not a satisfactory basis upon which to conclude that the proportionality question must be resolved in favour of an appellant, where apparently little effort has been made, in terms of the Rules, to seek the care that the appellant is said to need, in her own country.

44. Furthermore, the provisions of s.117B of the 2002 Act tell against the appellant in the assessment of proportionality, for the reasons advanced in submissions before me, as set out at [20] above.
45. In those circumstances, I am not satisfied that the respondent's decision amounts to a disproportionate interference or lack of respect for the appellant's family life with her daughter. The respondent has established that the decision is a proportionate response to the legitimate aim pursued.
46. Accordingly, the appeal is dismissed.

Upper Tribunal Judge Kopieczek

Dated 15/11/17