



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/23080/2016

THE IMMIGRATION ACTS

Heard at Field House
On 8 June 2018

Decision & Reasons Promulgated
On 11 June 2018

Before

UPPER TRIBUNAL JUDGE BLUM

Between

ENTRY CLEARANCE OFFICER - PRETORIA

Appellant

and

JAWAHIR MOHAMUD AHMED
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the respondent: Ms S Saifolahi, Counsel, instructed by CNA Solicitors

DECISION AND REASONS

1. This is an appeal by the Entry Clearance Officer (appellant) against the decision of Judge of the First-tier Tribunal Adio (the judge), promulgated on 9 October 2017, allowing the respondent's appeal against a decision made by the appellant on 1 September 2016 refusing her entry clearance application as an adult dependent relative under Appendix FM of the immigration rules.

Background

2. The respondent is a national of Somalia, date of birth 1 January 1964. She applied to enter the UK on the basis that she required long term personal care to perform

everyday tasks and that she was unable, even with the practical and financial help of her daughter, Sadiya Abdi Farah (sponsor), to obtain the required level of care in Kenya, the country in which she resides, because it is either not available or not affordable, as required by Section EC-DR of Appendix FM. The appellant was not satisfied that the requirements of Section EC-DR.2.5 were met. Nor was the appellant satisfied that the financial requirements contained in E-ECDR.3.1 were met. This provides,

The applicant must provide evidence that they can be adequately maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds.

The First-tier Tribunal's decision

3. Having considered the documentary evidence and the sponsor's written and oral evidence the judge found that the requirements of Section EC-DR.2.5 were met. I need say no more about this aspect of the First-tier Tribunal's decision because there has been no challenge to it by the appellant.
1. The judge was additionally satisfied that the financial requirements were met. At [13] the judge considered the sponsor's employment, her average salary drawn from her work as a care provider, and her receipt of public funds. The judge considered the sponsor's wage slips and found that her average weekly pay covering a 12-week period was £314 net. The judge additionally noted that the sponsor received public funds amounting to £216.71 a week. The sponsor's weekly accommodation costs were £63.53. deducting her accommodation costs from her average weekly pay, the judge calculated that the sponsor would have about £250 left, which was more than adequate to support the respondent who would be entitled to the equivalent of £73.10 a week if she received Income Support (In KA and Others (Adequacy of maintenance) Pakistan [2006] UKIAT 00065 the Tribunal noted that the requirement of adequacy was objective and that there were good reasons for taking the view that, in order to be adequately maintained, one would have to have resources at least equivalent to those which would be available to the equivalent person on income support).
2. Having satisfied himself that the requirements of the immigration rules were met, the judge allowed the respondent's appeal.

The challenge to the First-tier Tribunal's decision

3. The 1st ground of appeal contends that the judge materially misdirected himself in law. The requirements of E-ECDR.3.1 were noted. The author of the grounds submitted that the sponsor did have recourse to public funds by way of working tax credits (which were identified in paragraph 13 of the judge's decision as one of the public funds received by her). The grounds maintained that, although the sponsor could afford to cover the respondent's costs, this would be by using the working tax credits, which were public funds, and was therefore contrary to E-ECDR.3.1. A second ground argued that the Tribunal had not considered the

possibility of the sponsor providing remittances for the respondent and that this would not be contrary to the immigration rules.

4. Judge of the First-tier Tribunal L Murry granted permission on the basis that the judge failed to make adequate findings on paragraph E-ECDR.3.1.

The hearing and Discussion

5. At the outset of the hearing Mr Clarke abandoned the 2nd ground of appeal. He was right to do so. Indeed, it is difficult to make out what the second ground actually meant. As the grounds did not challenge the judge's assessment of ECDR.2.4 or ECDR.2.5, the question whether the sponsor could provide remittances is irrelevant.
6. I then drew Mr Clarke's attention to paragraph 6A and 6C of the immigration rules as they were at the date of the decision (although there has been no material change). Mr Clarke was already aware of paragraph 6A and, in light of those paragraphs, was content to make no further submissions. I indicated that I did not need to hear from Ms Saifolahi.
7. Paragraphs 6A and 6C (paragraph 6B not being relevant) read,

6A. For the purpose of these Rules, a person (P) is not to be regarded as having (or potentially having) recourse to public funds merely because P is (or will be) reliant in whole or in part on public funds provided to P's sponsor unless, as a result of P's presence in the United Kingdom, the sponsor is (or would be) entitled to increased or additional public funds (save where such entitlement to increased or additional public funds is by virtue of P and the sponsor's joint entitlement to benefits under the regulations referred to in paragraph 6B).

...

6C. A person (P) making an application from outside the United Kingdom will be regarded as having recourse to public funds where P relies upon the future entitlement to any public funds that would be payable to P or to P's sponsor as a result of P's presence in the United Kingdom, (including those benefits to which P or the sponsor would be entitled as a result of P's presence in the United Kingdom under the regulations referred to in to paragraph 6B).

8. The effect of paragraph 6A and 6C was considered and affirmed by the Tribunal in Ahmed (benefits: proof of receipt; evidence) [2013] UKUT 00084 (IAC).
9. It is entirely clear from paragraphs 6A and 6C that, unless the presence of an applicant would lead to an increase or the provision of additional public funds being payable to the sponsor, the applicant is not to be regarded as having recourse to public funds merely because the sponsor received public funds and the applicant indirectly relies on those funds. There was no suggestion that the respondent's presence in the UK would lead to either an increase or additional public funds being payable to the sponsor. In these circumstances, the appellant's

challenge is unfounded. It is unfortunate that neither the author of the grounds nor the First-tier Tribunal judge granting permission appear to have been aware of paragraph 6A.

10. Ms Saifolahi did however bring to my attention, by way of a Rule 24 Response, a miscalculation by the judge. The judge wrongly calculated that the sponsor's weekly salary from her employment was £314, whereas this was actually the sponsor's average salary over 2 weeks. In a very helpful schedule of income and expenses Ms Saifolahi set out the total weekly income accruing to the sponsor based on her corrected weekly wage, her Working Tax Credit, her Child Tax Credit, and her Child Benefit. This amounted to £386.71. In her Rule 24 Response and her schedule Ms Saifolahi showed that the sponsor's income, minus her rent, her council tax and other outgoings led to a balance of £74.04, which is greater than the weekly income support level for a single person over the age of 25 of £73.10. In these circumstances, although the judge made a factual error in his calculations, this did not materially affect the outcome of his decision. The error is not therefore material.

11. I consequently find there is no material error in the First-tier Tribunal's decision.

Notice of Decision

The Entry Clearance Officer's appeal is dismissed. The judge's decision, allowing the appeal of Ms Ahmad, stands.



8 June 2018

Signed

Date

Upper Tribunal Judge Blum