Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/25118/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 May 2019	**On 28 May 2019**

Before

THE HON. MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE KEBEDE

Between

MA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Dr A E Mohamed
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of the respondent who, on 10 October 2016, refused the appellant's application for entry clearance to the United Kingdom. The appeal has a considerable procedural history. For present purposes it is unnecessary to refer to that in any detail. It is, however, relevant to note that following a hearing that took place at Field House on 11 December 2018, this division of the Tribunal decided that there was an error of law in the decision of First-tier Tribunal Judge Graham who, on 1 March 2017, had dismissed the appellant's appeal against the decision of the Respondent Entry Clearance Officer. The

reasons for finding that there was such an error are set out in the decision of the Tribunal, written by Upper Tribunal Judge Kebede dated 25 January 2019. From that decision, it can be seen why the Upper Tribunal took the view that the errors were such that the decision of the First-tier Tribunal fell to be set aside. It is for that reason that we today have heard evidence and submissions with a view to re-making the decision ourselves.

2. The facts of the matter can be relatively shortly laid out. The appellant is a lady who suffers from paranoid schizophrenia; so much is evident from the materials before us. She applied for entry clearance in order to be with her sister who lives in the United Kingdom, and her brother-in-law, both of whom are doctors. Her sister, however, does not practise medicine in the United Kingdom. She remains at home with one of the children of her marriage, who is now aged 11. The other children are pursuing academic or professional careers.

3. The essence of the matter is whether or not the appellant can satisfy the requirements of the relevant provisions of the Immigration Rules, in this case Section E-ECDR (entry clearance as an adult dependent relative). As a result of Mr Whitwell's stance on behalf of the Secretary of State, the matter comes down to whether paragraph E-ECDR 2.5 is satisfied in the appellant's case. This requires the appellant to demonstrate that she is unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where she is 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.

4. Although this is a human rights appeal, we put the matter in that way because it is common ground that if the appellant satisfies the requirements of that provision of the Immigration Rules, then her human rights appeal must succeed. It must succeed because there would in that eventuality be no legitimate reason for the respondent not to admit the appellant to the United Kingdom and, given that Article 8 of the ECHR is engaged as regards the relationship between the appellant and her sister in the United Kingdom, it would be a disproportionate interference with that right not to admit her. By contrast, however, if the provisions of the Immigration Rules are not met, then it would in the circumstances of this case be difficult, to say the least, to see how the appellant could succeed. The reason for this is that the relevant provisions of the Immigration Rules are framed very much with Article 8 in mind. They are, if we can put it this way, suffused with Article 8 considerations. For that reason, there would have to be some exceptional factual matrix to demand that the appellant succeeds on Article 8, where she has been unable to meet the requirements of those Rules.

5. With that in mind, we turn to the evidence in this case. There is a considerable amount of it; and it is with no discourtesy to Mr Whitwell or to Dr Mohamed, if we go over it somewhat rapidly in all the circumstances. The essence of the matter is that the appellant has for several years now been living with a lady called Salwa Kamel Taha, who has been looking

after her because despite the best efforts of the sponsor's sister, no other relative in Egypt was able and willing to do so. In matters of this kind, it is always necessary for the Tribunal to look with some care at the situation that has led to other family members refusing to look after the individual in question. This is because it is relatively easy to construct a case which is self-serving in nature. By this we mean that it is relatively easy to set up a position where others who might otherwise be expected to do so claim that they have their own responsibilities, which mean they cannot and will not in practice look after the appellant. Nevertheless, having made due allowance for that consideration, it is in our view plainly the case that this appellant cannot be cared for satisfactorily by the relatives that she has in Egypt. This is in essence because she suffers from paranoid schizophrenia. As we see from the materials to be found at page 430 of the appellant's bundle, the World Health Organisation regards it as "very important" that there is engagement of family members in providing support to someone with this illness.

6. The evidence in this case indicates that the appellant requires the assistance of close family members in order to maintain something even approximating a satisfactory lifestyle. The evidence that we have shows that the lady with whom she is currently living finds it difficult to get the appellant to take her medication and that the appellant exhibits symptoms of a quite alarming nature, such as getting into a situation where she almost electrocuted herself, as well as doing such things as pouring water onto a working TV set. The appellant lives in a block of flats, some five floors above street level with no lift. She is considerably overweight; indeed, according to the latest doctor's report she is obese. She is unable consistently to maintain a proper system of self-hygiene.

7. The Tribunal is satisfied that, even if the extended family members in Egypt were able and willing to take the appellant in, there would be no likelihood of any improvement in the state of affairs that we have just described. It is plain from the evidence, including the evidence of the sponsor sister, whom we regard as credible and whose evidence was not subjected to any material critique, that the appellant regards the sponsor as someone whom she can trust. On the frequent occasions when the sponsor and her husband have gone to Egypt to visit the appellant, and when the appellant has stayed with them in the flat which they have there, the appellant's behaviour has materially improved. It is clear that, if the appellant were living with her sister and sponsor, the difficulties that we have described are highly likely to disappear. The family history of the appellant is such that she would not have anything like the same relationship with any of the more distant family members in Egypt who might in theory be in a position to look after her.

8. One matter that does concern the Tribunal is whether or not, if the appellant were admitted to the United Kingdom, there would be reasonable opportunities for social interaction. We say that because the appellant would, of course, be coming to a different country and, given her difficulties as we have described them, there may well be doubt as to

whether she would be able to take any part in social activities outwith the immediate family. We are, however, satisfied on the evidence that the appellant, despite her difficulties, has a knowledge of English. She would also be in an environment of a bi-lingual nature, including the children of the sponsor, and in all the circumstances we are satisfied that her opportunities for social engagement in the United Kingdom would be much more than fanciful. But, overall, looking at matters in the round, the significant point is that if the appellant's family history and her medical condition are such that, if appellant were living with the sponsor, as opposed to anybody who could reasonably be called upon in Egypt, the sponsor would be able to get the appellant to take her medication regularly and to engage in self-hygiene; and that the problems which led to the dangerous activities we have described are, at the very least, likely to be much less than they currently are.

9. We are satisfied that the evidence, which has been assembled with considerable care by Dr Mohamed, discloses a state of affairs which, albeit unusually given the high threshold that is required by the Rules and Article 8 in this area, nevertheless reaches that threshold. Returning to E-ECDR 2.5, we are satisfied that the appellant is unable to obtain the requisite level of care in the country in which she is living at the moment, namely Egypt.

10. In so finding, we record that there has been considerable analysis given by the Secretary of State to the question of whether the sponsor and her husband, who have the financial means to do so, could pay for the appellant to live in a residential care home or similar in Egypt. We are, however, satisfied from the evidence that such facilities are unavailable in all the circumstances of this case. They are unavailable because the evidence discloses that care homes in Egypt of the kind with which we are concerned do not provide any or certainly any adequate facilities for persons having the psychiatric problems of this appellant. That we find is a position that extends across the length and breadth of Egypt. It is not, therefore, just a question of being unable to find such a place in the locality in which the appellant is currently living.

11. The alternative would be hospitalisation of the appellant. As the evidence shows, the appellant was hospitalised in the past, when her condition deteriorated. It is manifest in our view that the Rules do not require this appellant to be an in-patient receiving psychiatric care in a hospital in Egypt, as opposed to living with close family relatives, such as the sponsor. That would not be a reasonable state of affairs. It is, accordingly, not a matter of finance on which this case turns.

12. For the reasons that we have given, the appellant would be unable to obtain the required level of care in Egypt. It is simply not available, for the reasons that we have given. Those reasons turn on the very particular circumstances of the appellant's case; in particular the nature of her psychiatric condition. They also turn upon her family history, which means that the sponsor is the only person available who can provide the

appellant with the requisite degree of support and give her the confidence she needs to avoid the difficulties we have described. The sponsor has a settled life in the United Kingdom with her husband and her children. The sponsor's family is well-established in this country. In all the circumstances, therefore, it is not reasonable to expect the sponsor to return to Egypt to provide the appellant with the care that she requires.

13. In conclusion, for the reasons that we have given, we find that, on the facts of this particular case, the appellant has shown on the balance that she meets the requirements of the Immigration Rules, in particular E-ECDR 2.5(a). For those reasons the appeal must succeed on human rights grounds because the Secretary of State can point to no legitimate reason for excluding the appellant from the United Kingdom and so to exclude her would constitute a disproportionate interference with her Article 8 rights and also the Article 8 rights of her sister, the sponsor.

14. The decision of the First-tier Tribunal contained an error on a point of law. We set aside that decision and we re-make the decision in the appeal by allowing it on human rights grounds.

Notice of Decision

The appeal is allowed on human rights grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Dated: 23 May 2019

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber