



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/06966/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6 March 2014

Determination Promulgated  
On 18 December 2014

Before

**THE HON MR JUSTICE KENNETH PARKER  
UPPER TRIBUNAL JUDGE MOULDEN**

Between

**MS NURTO NUR HASSAN**

Appellant

And

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Brisset of counsel instructed by Aden & Co Solicitors

For the Respondent: Mr L Tarlow a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

**A. Introduction**

1. This is an appeal by Mrs Nurto Nur Hassan against the determination dated 26 September 2013 of the First-Tier Tribunal (Judge Britton) dismissing her appeal against the decision dated 12 February 2013 of the Entry Clearance Officer (“ECO”) at the British High Commission, Nairobi, refusing Mrs Hassan’s application for admission to the United Kingdom, by virtue of the laws of the European Union, as

the family member of a European Economic Area national who is exercising, or wishes to exercise, rights of free movement in the United Kingdom.

2. On 29 October 2013 the First-Tier Tribunal (Judge E M Simpson) granted permission to appeal on the ground that there was an arguable error of law. Following a hearing Judge Wilson ruled that there was an error of law in the determination of the First-Tier Tribunal, and directed that there should be a re-hearing (in The Upper Tribunal) of Mrs Hassan's appeal against the decision of the ECO. Judge Wilson did not identify the error of law, but both parties before us were agreed on the nature of the error that he had found, and were content that we should proceed to re-hear the appeal.

### **B. The law applicable to this appeal**

3. By Regulation 7 (1)(c) of the Immigration (European Economic Area) Regulations 2006 ("the Regulations"), a "family member" of another person includes "dependent direct relatives in his ascending line or that of his spouse or his civil partner". (emphasis added)
4. With effect from 2 June 2011, Regulation 12 (1) provides, so far as is material:

"an entry clearance officer must issue an EEA family permit to a person who applies for one if the person is a family member of an EEA national and -

  - (a) the EEA national -
    - (i) is residing in the UK in accordance with these Regulations; or
    - (ii) ...
  - (b) the family member will be accompanying the EEA national to the United Kingdom or joining him here."
5. Before 2 June 2011, after the words just cited, Regulation 12(1)(b) continued:

"and -

  - (i) is lawfully resident in an EEA state; or
  - (i) would meet the requirements in the immigration rules (other than those relating to entry clearance) for leave to enter the United Kingdom as the family member of the EEA national or, in the case of direct descendents or dependent direct relatives in the ascending line of his spouse or his civil partner, as the family member of his spouse or his civil partner, were the EEA national or the spouse or civil partner of a person present and settled in the United Kingdom."
6. Regulation 12 (1)(b) was amended to its present form by the Immigration (European Economic Area) (Amendment) Regulations 2011. The Explanatory Note referred to

the case of Metock (case C-127/08) where the Court of Justice of the European Union held that the rights of accompanying or joining family members apply, irrespective of whether the family member is already residing lawfully in another Member State with the Union citizen (or was so residing prior to moving to the host Member State). The Explanatory Note stated that Regulation 12 (1)(b) was being amended in order to give effect to the judgment in Metock.

7. In order to determine whether the relatives in the ascending line of the spouse of a Community national are “dependent” on the latter, the host Member State must assess whether, having regard to their financial and social conditions, they are not in a position to support themselves. The need for national support must exist in the State of origin of those relatives or the State where they came at the time when they apply to join the Community national. There is no need to determine the reasons for recourse to that support or to raise the question whether the person concerned is able to support himself by taking up paid employment. These foregoing propositions derive from paragraphs 22 and 23 of Centre Publique d' Aide Sociale de Courcelles v Lebon [1987] ECR 2811 and paragraphs 36 and 37 of Jia v Migrationsverket (Case C-1/105), as explained and applied in SM (India) and Entry Clearance Officer (Mumbai) [2009] EWCA Civ 1426.

### **C. The Error of Law**

8. Unfortunately, the First-Tier Tribunal was not aware of, and did not have their attention drawn to, the relevant amendment of Regulation 12(1)(b). In September 2013 the First-Tier Tribunal directed itself to Regulation 12(1)(b)(ii) of the Regulations as it stood before 2 June 2011, and applied “the requirements in the immigration rules” to determine Mrs Hassan’s appeal. In doing so, the First-Tier Tribunal fell into error, and the error of law materially affected the outcome of the appeal.

### **D. The issue in this re-hearing**

9. Mrs Dahabo Yusif Mohamed, living in Flat A, 21 Eton Avenue, Hounslow, is a national of Norway who came to the United Kingdom in 2011 to join her husband. Her spouse, Mr Mohamed Abdi Abukar, who lives with Mrs Mohamed, is also a national of Norway. He came to the United Kingdom in 2009 and exercises EU treaty rights through employment. Mrs Hassan is the mother of Mrs Mohamed. The only relevant issue in this appeal is whether Mrs Hassan is a “family member”, namely a dependent direct relative of Mrs Mohamed. Whether she is “dependent” involves consideration of Mrs Hassan’s current and future needs and actual and potential resources (income and/or capital), and of the contribution made by Mrs Mohamed and Mr Abukar to supporting the needs of Mrs Hassan in light of her resources.

### **E. The Relevant Facts**

10. At the re-hearing we considered witness statements from each of Mrs Mohamed and Mr Abukar. They also gave oral evidence (through an interpreter) and were cross-examined. We find the following relevant facts.

11. Mrs Hassan is now aged 68. She is a national of Somalia. She married another national of Somalia. Mrs Mohamed, now aged 38, is the only child. Mrs Hassan lived with her husband in Hargeisa, Somaliland. Her husband ran a small business as a retailer of food. Mrs Hassan did not contribute to the running of the business, and did not engage in paid work during her marriage. Mrs Hassan's husband died in September 2012. The retail business and household furniture were sold for \$1050. Mrs Hassan used the proceeds of sale to support her essential needs (rent and food) in Hargeisa, Somaliland, for two months. Her own resources were then depleted, and she had no source of income or capital other than funds provided by Mrs Mohamed and her husband. She left Hargeisa and went to live in Addis Ababa, Ethiopia, where she currently remains, living alone without close family members.
12. Mrs Hassan has several health problems, including high cholesterol, high blood pressure and a tumour on top of her kidney. The medical treatment for these conditions also presently requires some funding. Mrs Hassan does not perform any paid work and (in so far as this might be legally relevant) would not be able to do so because of her age and health problems.
13. As to the contribution made by Mrs Mohamed and her husband to support Mrs Hassan's needs, Mr Abukar works 24 hours each week at the minimum wage for Jaujar Estates Ltd, 447 Street West Road, Hounslow (apparently an enterprise of Mr Gurpal Sidhu), and in the tax year from 6 April 2011, to April 2012 he earned £7,722 (paying no income tax on these earnings). In addition, the couple received Working Tax Credit of £3,342 and Child Tax Credit of £16,046, a total credit of £19,389. They also receive from the London Borough of Hounslow annual housing benefit of £21,641 in respect of the property (5 bedrooms and 2 living rooms), which they rent from Jaujar Enterprises, 447 Street West Road, Hounslow, (apparently an associated enterprise of Mr Gurpal Sidhu). The total amount of public support to them and their 6 children is £41,032, comprising 84 per cent of the net annual family resources of £48,754.
14. From these resources Mrs Mohamed and her husband have been making regular and significant cash payments to Mrs Hassan. Given that Mr Abukar's earned tax free income of £7,722 is relatively modest, and requires very substantial additional public funding in order that family resources are adequate to meet deemed family needs, it is an inescapable inference that a significant amount of these resources is being applied to support Mrs Hassan in Ethiopia. It is questionable whether the State intended that the publicly provided resources in this case should be applied in that manner, but that is not a question which it is relevant for this Tribunal to consider. We may only have regard to the fact that, on the evidence before us, Mrs Mohamed and Mr Abukar do make regular cash payments to support the needs of Mrs Hassan.
15. We wish also to note the following. At the hearing on 6 March 2014 Ms Brisset undertook to prepare and to leave on that day for the Tribunal a schedule setting out the amount of each relevant payment and the date of payment, so that the particulars of the payments could be specifically included in this determination. No such schedule was produced on that day nor, despite further enquiries, subsequently.

That failure has contributed to the regrettable delay in promulgating this determination.

**F. Conclusions.**

16. The First-Tier Tribunal made a material error of law in its determination. On the facts that we have found (a) in respect of Mrs Hassan's essential needs (rent and food), in the light of her actual and potential income and capital, and (b) in respect of the cash payments that she is receiving from Mrs Mohamed and Mr Abukar, it is plain that Mrs Hassan is "dependent" on Mrs Mohamed and Mr Abukar. She is, therefore, a relevant family member within Regulation 7(1)(c) of the Regulations, and she benefits from Regulation 12(1)(b), as a person to whom the entry clearance officer must issue an EEA family permit.
17. For these reasons the appeal is allowed and the determination of the First-Tier Tribunal is set aside.

Signed

Date **11 December 2014**

Mr Justice **Kenneth Parker**

Upper Tribunal **Judge Moulden**