



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

Appeal Number: IA/01054/2014
IA/01053/2014
& IA/01052/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24 June 2015**

**Determination & Reasons Promulgated
On 30 October 2015**

Before

**UPPER TRIBUNAL JUDGE COKER
DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

Between

**MS. OGHENEKEVWE DANIELLA ANAUGHE
MRS FOLAKE TAIWO ANAUGHE
MR NICHOLAS ANAUGHE**

Appellants

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B. Asigo, Solicitor of R.O.C.K solicitors

For the Respondent: Ms J. Isherwood, Senior Home Office Presenting Officer

DETERMINATION & REASONS

1. The second and third Appellants are nationals of Nigeria, born on 2 August 1973 and 1 October 1979 respectively. The first Appellant is their daughter and a citizen of the Irish republic, born on 11 July 2003. There is a further child, Jason, born on 29 October 2005 in London but he is not an Appellant in this appeal.

2. On 12 July 2013, the first Appellant applied for a registration certificate as confirmation of the right of residence in the United Kingdom as a self-sufficient person. On 3 November 2013, this application was refused with reference to regulation 6 of the Immigration (EEA) Regulations 2006, as amended, because she failed to provide sufficient evidence to show that her parents/primary carers would be able to support her without recourse to public funds. The second and third Appellants also applied for residence cards based on derivative rights as the primary carers of the first Appellant and these applications were also refused on 3 November 2013, with reference to regulation 15A(2) of the Regulations because there was not sufficient evidence to show that the first Appellant was self-sufficient.

3. The Appellants appealed and their appeals came before First Tier Tribunal Judge Gavin for hearing. On 18 March 2014, he dismissed the appeals with reference to the EEA Regulations, under the Immigration Rules and on human rights grounds. An application for permission to appeal was made and granted and following a hearing on 20 May 2014, Deputy Upper Tribunal Judge Rimington found a material error of law in failing to take into account material evidence in the form of a letter stamped as received by the Tribunal on 27 February 2014, prior to the determination, which attached a letter of appointment for a new job for Mrs Georgina Suleman, the second Appellant's mother. ~~A copy of that error of law decision is attached.~~

4. The resumed hearing before us on 24 June 2015 proceeded on the basis agreed by both parties that the second and third Appellants are primary carers of the first Appellant and that the employment income received by the second Appellant's mother, Georgina Suleman, was insufficient on its own to meet the self-sufficiency criterion. Ms Isherwood indicated that the Secretary of State maintained her position *viz* she did not accept that funds were available from Nigeria nor that medical insurance would continue if derivative residence cards were issued.

Oral evidence

5. The second Appellant, Mrs Folake Anaughe, gave oral evidence. She adopted her witness statement and said that nothing had changed and she still had medical insurance. The witness was cross-examined by Ms Isherwood when she denied working in the United Kingdom. When asked why it stated on her son, Jason's birth certificate that she was a post lady she said that the initial owner of the name was a post lady. She said that her husband's information on their son's birth certificate was not false but she admitted that she had given false information. She denied having a bank account. When asked why on the medical insurance document it stated that it would be paid by direct debit from her bank account she said that this was agreed but that she did not pay it as a direct debit. She was referred to page 18 of the bundle and said she had to open an account to get insurance in her name and the account was in her name. She said that the money came from her mother's account since November 2014. She said that they had cancelled the previous insurance because her son had not been included. She was referred to pages 28, 27 and 25 of the bundle and asked why she had 3 letters from family insurance services to which she responded that she had done this on line and they acted like a middleman between her

and the general insurance. She was asked about the medical insurance document at page 16 and said that this had been taken out in July 2013 but had been cancelled but she could not remember why she had cancelled it. In respect of the WPA insurance she said that this had been cancelled because she had to include her son in the new insurance. She stated that this had been taken out in February 2014. It was pointed out that general medical insurance had been taken out in August 2014 without her son and different insurance had been taken out in October 2014 which also did not include her son. She was unable to explain why both policies, which were for a year, had been cancelled. She said that they had a current policy for four members. She said that her mother paid for it - see page 34 of the bundle. She said that her mother paid over the phone so she was not sure if she could show from bank statements that she was paying regularly for medical insurance.

6. She was asked again if she had ever had a bank account in her name and she said that she had had an account in the false name. She was referred to page 185 of the bundle, which showed that the witness' mother was constantly transferring £20 from a Halifax account. The witness was asked whether the money was being transferred into an account in her name and she denied this. She said that her mother gave her and her husband an allowance every month but this was not by way of a transfer into an account. In respect of her stepfather's estate she said that she would need to ask her mother but the money was paid into her sister's account in Nigeria and that was paid into her mother's account and she had a card. She denied that anyone else used the money except her mother. She then accepted that her brother in law paid money into that account sometimes and that it was owned by her brother in law and FCMB. She said that "Jasper" was the name of her mother's late husband. She said, with reference to page 12 and the reference to Priye that this was not the account that they used in the United Kingdom but this FCMB account was her sister and her sister's husband's account and shows money paid by the estate into this account. When asked why her brother in law paid money into that account she said that sometimes he travelled to the United Kingdom and used it as well. She said that money went from the estate to the FCMB account and from there to the standard account and that her mother has a card to withdraw money from the standard account. When referred to page 208 she said that she could not answer any questions about why her brother in law was paying money into that account and in terms of the deposits into that account her sister phones her mother and says that money has been paid into the account. She said that her mother could answer as to the other people who deposit money into this account.

7. Upon re-examination the Second Appellant said that her mother had two Halifax accounts and a cash card, which was available for the Second Appellant's own use. She said that £114.10 was paid monthly in respect of insurance and this was about £120 prior to November and had been paid in the same way. She said her mother was not entitled to any other money, excluding money from the estate.

8. The second Appellant's mother, Georgina Suleman, was then called to give evidence. She said that money from her late husband's estate was paid into the account in Nigeria and she drew it out from the United Kingdom. She said her daughter [the second Appellant] did not have a bank account. She said the medical insurance was paid from her own bank account. She also said: "I just give her my card at the end of the month to do all

the payments that need to be paid.” Upon cross-examination she said that she had been paying medical insurance for the family for about 3-4 years and the reference to £175 at page 194 was a medical insurance payment. She was asked why this was the only reference in all the bank statements to medical insurance being paid and she said that she knew they paid monthly and she had no idea why this was not reflected. She confirmed this was the bank account she used. She said she had recently changed a few things paid by direct debit. She said that she did not have access to the whole of the money given on behalf of her late husband. She said that the money went into her son in law’s business account. She said that she would receive 250,000/500,000 naira a month. She clarified that she would receive 250,000 naira from the estate and Deborah, her daughter in Nigeria, would make it up to 500,000 naira because Deborah’s daughter is in schooling in the United Kingdom. She paid that granddaughter’s dinner money to the school. On re-examination she said that she had been receiving money from the estate for 3-4 years, the money comes regularly and she will be paid it for life. No other witnesses were called.

9. We heard submissions from both representatives.

The relevant legal provisions

10. Regulation 6 of the Immigration (EEA) (Amendment) Regulations 2012 defines a “qualified person” as *inter alia* a self-sufficient person.

11. Regulation 15A of the Immigration (EEA) (Amendment) Regulations 2012 provides *inter alia*:

‘Derivative right of residence

15A. (1) A person (“P”) who is not an exempt person and who satisfies the criteria in paragraph (2), (3), (4), (4A) or (5) of this regulation is entitled to a derivative right to reside in the United Kingdom for as long as P satisfies the relevant criteria.

(2) P satisfies the criteria in this paragraph if-

(a) P is the primary carer of an EEA national (“the relevant EEA national”); and

(b) the relevant EEA national-

(i) is under the age of 18;

(ii) is residing in the United Kingdom as a self-sufficient person; and

(iii) would be unable to remain in the United Kingdom if P were required to leave.’

12. The jurisprudence of the CJEU and that of the domestic courts establishes that the requirement that there be comprehensive sickness insurance cover is not a mere formality but is an integral part of the concept of self-sufficiency under the Regulations *cf.* Lord Justice Sullivan in *Kamau (Kenya)* [2010] EWCA Civ 1302 at [15]; *Ziolkowski* Joined Cases C-424/10 and C-425/10 [2013] 3 CMLR 37 at [40]-[47].

Our findings of fact on the material issues

13. The Respondent conceded that, in principle, the first Appellant could claim self-sufficiency from her grandmother's income, even though she is not a primary carer. Both parties agreed that an income of £2267 plus £114 insurance per month was adequate to meet the criterion based on the statement of income and expenditure provided, but two factual issues were in dispute: (i) whether the grandmother's income was genuinely available for the support of the first Appellant and (ii) whether comprehensive sickness insurance was in place.

14. We do not find the evidence of either the second Appellant or her mother, Ms Suleman to be credible. The second Appellant repeatedly denied working. She repeatedly denied having a bank account, despite the fact that there was a large evidential gap as to payments made to the medical insurance companies by way of direct debit and no evidence that direct debits were being paid from Ms Suleman's bank account, bar on one occasion in December 2012. She was unable to explain why, if she did not have a bank account, her mother's bank statements showed numerous transfers of £10 or £20 or £50 from her Halifax account e.g. at pages 113, 114, 116, 185, 194 to Folake Anaughe. She claimed that this was not a transfer into a bank account but sometimes her mother gives her an allowance for each month. We find that the fact that Ms Suleman's bank statements state TFR or transfer to Folake Anaughe is a clear indication that these payments are transfers into an account held by the second Appellant and we do not accept that she is telling the truth about this matter.

15. Ms Suleman also denied that the second Appellant had a bank account. Her evidence was confused and contradictory as to how the medical insurance payments were made. She claimed initially in examination-in-chief that she would give her daughter her cash card at the end of the month and she would make all the payments that needed to be made. However, in cross-examination, she said that she paid the medical insurance by direct debit from her bank account but when it was put to her that her bank statements showed only one payment in this manner made on 24 December 2012 she changed her evidence and stated that she knew they paid monthly and she had no idea why this was not reflected.

16. In respect of the issue of the actual payment of medical insurance, the evidence was incomplete and lacking in clarity. Ms Isherwood pointed out that the evidence shows that the Appellants have taken out medical insurance but none of the policies ran for one year and that from Ms Suleman's bank statements there was only one medical insurance payment in December 2012 and no other payments. We note that at pages 34-37 of Bundle 3 the medical insurance document from health-on-line dated 20 February 2015 states that the policy started on 21 November 2014 and payment will be made monthly by direct debit of £114.10 on the 25th of each month. The previous policy statement of 21 November 2014 is to the same effect [75 of Bundle 1 refers]. There is no evidence from Ms Suleman's bank statements that these payments are being or have been made. The policy document is in the name of the second Appellant. She was asked on a number of occasions by both representatives and by the Tribunal whether she had a bank account but she denied this. There is no evidence that the medical insurance premiums are being made or have been paid apart from the one payment referred to above. We find that the second Appellant has

taken out a number of medical insurance policies, all of which have been cancelled within a year, except for the most recent policy with health on line, the current status of which is unknown given that the most recent evidence is the membership statement dated 20 February 2015. We find that there is no evidence that any payments have been made to health on line, either by direct debit or otherwise despite receipt of a subsequent letter as there is no evidence as to how these payments have been made.

17. In respect of the issue of self-sufficiency we do not find that the income of Georgina Suleman, the first Appellant's grandmother, is either sufficient or genuinely available in its entirety for the support of the first Appellant. Our reasons for so finding are that in her evidence, Ms Suleman informed us that she was also supporting another granddaughter, from her daughter, Deborah, as this granddaughter was attending school in the United Kingdom and she was responsible for the payment of dinner money to the school. Her evidence was that she would receive 250,000 naira monthly from the estate of her late husband and this would be made up to 500,000 naira by Deborah. 250,000 equates to approximately £934 per month based on the exchange rate provided at page 3 of Bundle 3 however this is at odds with the amount of £1844 claimed in the statement of income and expenditure at that page, which would appear to include the amount from Deborah. A difficulty with the evidence is that this amount is not paid directly into Ms Suleman's bank account but instead she has been provided with a bank card for her daughter and her son in law's Standard Chartered Bank and is permitted to take the money from that account. Whilst we have been provided with copies of the Standard Chartered Bank account belonging to Deborah and Moses Waritimi it is not possible to tell from the account who has used the bank card and for what purpose(s). Also the transactions are in naira. Most of the expenditure takes the form of debit card payments made in the United Kingdom but it is not possible to ascertain from the bank statement all the sources of the deposits, except where those are clearly marked as coming from Mr Walakira's company, Simplex Engineering or from other named individuals. There are no deposits made by Bayelsa State government and therefore, the money from the estate of Ms Suleman's late husband must be paid into another of Deborah Waritimi's accounts and the amounts transferred to this account to be utilized by Ms Suleman are at the discretion of Mr and Mrs Waritimi. It is further not possible to ascertain those amounts based on the current documentary evidence and bank statements. A further oddity is that the letters from the Government of Bayelsa State of Nigeria dated 9 November 2014 and 4 March 2015 state that Major Isaac Adaka Boro's family receive a gratuity of 3,770,000 naira a month. Given that Ms Suleman is Major Boro's widow it is entirely unclear why she only receives a small percentage of this gratuity and we were not told how many other relatives the gratuity supports and in what sums.

18. We find that Ms Suleman's income from her employment is approximately £975.14 a month. Even giving the Appellants the benefit of the doubt and accepting that Ms Suleman has access to a further 250,000 naira a month from her late husband's estate, this amounts to an average monthly income of £1909.14 and falls short of the amount of £2267 plus £114 insurance per month it was agreed was adequate to met the criterion, absent any additional funds from Deborah which are unknown and not apparent from the bank statements. We do not accept that 500,000 naira monthly from the estate is available to Ms

Suleman and even if it is available, that it is utilized to support the first Appellant to enable her to be self-sufficient because an unknown part of this money is clearly used to support Deborah's daughter who is at school in the United Kingdom.

19. For the reasons set out above, we dismiss the appeal.

Conclusion

20. The decision of the First-tier Tribunal judge having been set aside, we remake the decision and dismiss the appeal.

Deputy Upper Tribunal Judge Chapman

7 October 2015