**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: OA/03435/2014

# THE IMMIGRATION ACTS

**Heard at: Columbus House, Newport,**
**On: 23 June 2015**

**Decision and Reasons promulgated**
**On: 7 July 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MRS AKD**
**(anonymity direction made)**

Respondent

**Representation**

For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: Mrs M S Ababo, Sponsor in person

## DECISION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge A E Walker in which she allowed the appeal of AKD, a citizen of Ethiopia, against the Entry Clearance Officer's decision to refuse leave to enter and settle in the United Kingdom as the adult dependent relative of the Sponsor. I shall refer to AKD as the Applicant, although she was the Appellant in the proceedings below.

2. The Applicant is the mother of the Sponsor who holds refugee status in the United Kingdom. On 15 January 2014 the Applicant applied for entry clearance to enable her to join the Sponsor in the United Kingdom. The application was refused on 5 February 2014 by reference to paragraph EC-DR.1.1 of Appendix FM of the Immigration Rules (HC395). The Applicant exercised her right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Walker on 21 November 2014 and dismissed under the Immigration Rules but was allowed on human rights grounds. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Levin on 4 March 2015 on the basis that the Judge arguably failed to take into account the public interest considerations by reference to section 117B of the Nationality Immigration and Asylum Act 2002 and failed to have regard or sufficient regard to the general public interest considerations.

3. At the hearing before me Mr Richards appeared to represent the Secretary of State and the Sponsor appeared on behalf of the Applicant. As the Sponsor did not have legal representation I explained to her the nature of the hearing and the procedure to be followed.

**Background**

4. The history of this appeal is detailed above. The facts, not challenged, are that the Applicant was born in Ethiopia on 20 March 1958. She was widowed in 2008 when her husband died in prison. At the date of the application she was living with the Sponsor's husband and her grandson but they had been granted permission to join the Sponsor in the United Kingdom and would shortly be leaving and the Applicant would then be alone. The Sponsor had always lived with the Applicant and her family in Ethiopia until she left the country fearing persecution arriving in the United Kingdom on 15 May 2013. The Applicant suffers from various medical conditions including asthma, high blood pressure and, she claims, debilitating depression. The Sponsor's husband and son joined the Sponsor in the United Kingdom by way of family reunion on 3 April 2014 and since then the Applicant has lived alone. The Applicant is financially dependent on the Sponsor who sends a sum equivalent to £137.40 every month despite being reliant on public benefits including job seekers allowance and housing benefit.

5. In dismissing the appeal by reference to the Immigration Rules the Judge found that the evidence from the Applicant's doctor did not corroborate the Applicant's account of being disabled or to suffer from depression (paragraph 33) and that the Sponsor's concern for her mother had caused her to exaggerate the Applicant's needs (paragraph 34). The Judge also noted that the Sponsor

was reliant on public funds (paragraph 36). These factors caused the Judge to conclude that the Applicant could not meet the requirements of the Immigration Rules.

6. The Judge went on to allow the appeal by reference to Article 8 ECHR finding that the Applicant had strong emotional ties to and an emotional dependence upon the Sponsor and her family and that the family life that the Applicant enjoyed with the Sponsor could not be enjoyed other than in the United Kingdom.

**Submissions**

7. On behalf of the Secretary of State Mr Richards said that little elaboration was needed on the grounds of appeal. The Judge refers to her statutory duty to take into account section 19 of the Immigration Act 2014 (introducing sections 117A and 117B of the 2002 Act) early on in her decision and sets out its terms. The Judge then goes on to find that the Applicant does not qualify under the Rules but goes on to find in relation to Article 8 that the Applicant's exclusion was not proportionate to the aim of effective immigration control. She fails to carry out the duty she had earlier referred to. Section 117B includes reference to the ability to speak English and to be self sufficient. There are however no findings in this regard. Earlier in the decision when considering the Immigration Rules the Judge finds that the Sponsor is reliant on public funds and supported the Applicant from this country. Whilst the Judge makes a finding concerning legitimate aim she makes no finding in relation to public interest. In these circumstances the Judge has failed to adequately reason her findings. This is a material error of law.

8. The Sponsor said that in her opinion the Judge made the right decision. The Applicant will be under the Sponsor's responsibility. Her inability to speak English will not be a problem in these circumstances. The Applicant has no one in Ethiopia. The Sponsor is her only daughter. The Sponsor is trying to improve her English she is looking for work and she is trying to fit into society. Even now she takes responsibility for the Applicant and it costs her more money than it would if she were here – it would be easier for everyone if she were here. This is very serious, the Applicant has no one. She is not well. She is suffering. The Applicant had never been separated from her children before and has never lived alone. The Sponsor feels selfish when she knows that the Applicant is suffering.

9. I reserved my decision and said that if I found an error of law I would go on to remake the decision. The Sponsor submitted various documents including telephone cards showing her continuing contact with the Applicant and a letter

written in Amharic that the Sponsor said was from a neighbour who said that she could not help and support the Applicant any longer.

**Decision - Error of law**

10. The grounds of appeal to the Upper Tribunal are straightforward asserting that the Judge failed to take into account the public interest and adequately reason her proportionality findings.

11. The facts of this appeal have been detailed above. The Judge found that the Applicant did not meet the requirements of the Immigration Rules. This finding has not been challenged and indeed there can be no basis upon which it could have been challenged. Having found that the Applicant did not meet the requirements of the Immigration Rules the Judge goes on to consider the impact the refusal has on the Applicant's family life and being satisfied that prior to the Sponsor's departure for the UK the Applicant was part of the family unit finds that the refusal does interfere with the Applicant's family life. In making this finding the Judge properly self directs to ZB (Pakistan) v SSHD [2009] EWCA Civ 834 in assessing why family life between a parent and adult children could be considered for Article 8 purposes. This finding is entirely consistent with the reasoning of the Court of Appeal in the recent decision in Singh & Anor v SSHD [2015] EWCA Civ 630.

12. The Judge then goes on to make further findings including that the Applicant has strong emotional ties to and an emotional dependence upon the Sponsor and her family, that she has no one to whom she can turn for such support in Ethiopia and that the Sponsor's refugee status means that this family life can only be enjoyed in the United Kingdom. The Judge then goes on to make her proportionality assessment as follows

> "I conclude that the refusal is an interference with the appellant's family life and that this interference although in pursuit of the legitimate aim of effective immigration control is not proportionate to that aim so that the refusal of the Appellant's application is sufficiently serious as to amount to a breach of the fundamental right protected by Article 8."

13. In my judgement it is plain that this is not a properly considered or adequately reasoned proportionality balancing exercise. Having detailed the 'positive' matters in the proportionality balance the Judge merely recites the words 'effective immigration control' as an acknowledgement of the public interest. There is no self direction as to the provisions of section 117B of the Nationality Immigration and Asylum Act 2002 other than the reference at paragraph 12 to the requirement to take into account its provisions. The Judge is considering this appeal under Article 8 ECHR with this being the only live issue before her.

Section 117A of the 2002 requires the Judge in all cases to have regard to the provisions of section 117B when considering the public interest question and section 117B mandates that the maintenance of effective immigration control is in the public interest. The decision does not show that the Judge has considered the public interest question or had regard to the provisions of section 117B in doing so. This is a manifest and material error of law. If the Judge had regard to the provisions of section 117B the following findings would, on the evidence before her, have been made and taken into account when considering the public interest.

(i) The Applicant does not speak English (117B(2))

(ii) The Applicant is not financially independent being wholly reliant upon her family in the United Kingdom who are themselves reliant on public funds (117B (3)).

14. The decision does not show that the Judge has considered the public interest question in accordance with section 117B and that is a manifest error of law. The decision does not show that the Judge has adequately reasoned her findings. That also is an error of law. Both are material to the decision to allow the appeal. The appeal of the Secretary of State is therefore allowed and the decision of the First-tier Tribunal is set aside.

**Remaking the decision**

15. I said that if an error of law was found I would remake the decision based upon the evidence that was before the First-tier Tribunal and the additional evidence submitted by the Sponsor.

16. In remaking the decision I accept firstly that the Applicant and the Sponsor lived in the same household as a family unit until the Sponsor left for the United Kingdom and that the Applicant continued to live with the Sponsor's husband and child until they too left to join the Sponsor in the United Kingdom. I accept that this is a family unit with interconnecting family lives and that the Entry Clearance Officer's decision interferes with the maintenance and development of that family unit. I note the Judge's finding of strong emotional ties and an emotional dependence and in my judgement this is something more than the normal love and affection between parent and adult sibling justifying a finding of family life for the purposes of the Convention. In this respect I have considered the judgement of Sir Stanley Burnton in Singh and Anor (see above). I accept that the Respondent's decision will cause an interference in the Applicant's family life of sufficient gravity to engage the Convention.

17. The Applicant does not meet the requirements of the Immigration Rules in these circumstances the Respondent's decision is lawful and in pursuance of the legitimate aim of immigration control. The issue becomes one of proportionality.

18. On the positive side of the proportionality balance I take into account the positive findings of the First-tier Tribunal. The Applicant is a 57 year old widow who has lived alone in Ethiopia since her daughter's departure in 2013 and the departure of her son-in-law and grandchild in 2014. She suffers from chronic asthmatic bronchitis, high blood pressure treated with amlodopine, rheumatism and menopausal syndrome. The report from Dr Shemsu presented to the First-tier Tribunal concludes

> "For the above problems she was put on amlodopine, celestamine (short course), seretide inhaler, selbutamol syrup and analgesic. Patient adviced (sic) to avoid triggering conditions and to have regular follow up."

The First-tier Tribunal Judge did not accept that the Applicant was disabled or that she suffered from debilitating depression.

19. The Judge found that the Applicant had strong emotional ties with the Sponsor and her family and an emotional dependence upon them as her only family. She has no other family to whom she can turn in Ethiopia.

20. Against the above must be balanced the public interest in effective immigration control. In this respect the Immigration Rules provide for the admission of adult dependents and it is axiomatic that effective immigration control dictates that in normal circumstances a person who does not meet the requirements of the rules will not be admitted. The Applicant does not meet the requirements of the Immigration Rules. She does not meet those requirements because on the findings of the First-tier Tribunal Judge she does not require long-term personal care to perform everyday tasks and she does not meet the financial requirements of the Immigration Rules.

21. In my judgement the reasons why the Applicant does not meet the requirements of the Immigration Rules are important factors in the Article 8 proportionality balance. Whereas she is emotionally dependent upon the Sponsor and her family the Judge did not accept (paragraph 37) that no help could be obtained for her and indeed in the past the family have had the help of a paid maid. The fact that she does not meet the financial requirement of the Immigration Rules means that she is not financially independent so no credit can be given in this respect by virtue of section 117B.

22. Taking account of all of the above it is my judgement that the proportionality balance is overwhelmingly weighed against the Applicant. The Applicant is a 57 year old widow who suffers from the normal medical complications of late middle age. Having spent the first 55 years of her life with her family around her she now lives alone. Many people of the Applicant's age live alone and the Applicant has the benefit of financial support from the Sponsor to help to ameliorate some of the difficulties that she may otherwise face. I have no doubt that living alone for the first time in her life has been and continues to be difficult for her particularly because of her close emotional ties to her daughter and family but given her failure to meet the requirements of the Immigration Rules and the clear public interest in effective immigration control these are not sufficiently compelling reasons for entry clearance to be nevertheless granted. Her appeal against the Secretary of State's decision is dismissed.

**Summary**

23. The decision of the First-tier Tribunal involved the making of a material error of law. I allow the Secretary of State's appeal and set aside the decision of the First-tier Tribunal.

24. I remake the decision and I dismiss the Applicant's appeal against the Entry Clearance Officer's decision to refuse leave to enter.

**Signed:** **Date:**

**J F W Phillips**
**Deputy Judge of the Upper Tribunal**