



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

Appeal Number:
OA/12473/2014

THE IMMIGRATION ACTS

**Heard at Field House
Promulgated
On 17 July 2015**

**Decision & Reasons
On 27 July 2015**

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
KAMARA
DEPUTY JUDGE OF THE UPPER TRIBUNAL NORTON-TAYLOR**

Between

**MRS LATHEEFA BEE BEE MUHARIS MOHAMED RIYAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE ENTRY CLEARANCE OFFICER (CHENNAI)

Respondent

Representation:

For the Appellant: Mr Mohamed Rizwan Mohamed Lebbe Muharis (the sponsor)
For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision, promulgated on 19 March 2015, of First-tier Tribunal Judge C H O'Rourke (hereinafter referred to as the FTTJ).

Background

2. On 18 July 2014, the appellant applied for leave to enter the United Kingdom as the adult dependent relative of her son, Mr Mohamed Rizwan Mohamed Lebbe Muharis, who is settled in the United Kingdom. She was interviewed in respect of that application on 26 August 2014 and in her replies indicated, inter alia, that she had no medical conditions, was healthy and did not need any assistance to carry out day-to-day tasks. The application was refused because the Entry Clearance Officer (ECO) noted that the appellant had not submitted any evidence, as required by Appendix FM-SE, to suggest that she required long-term personal care or that she was unable to perform everyday tasks. Furthermore, the ECO referred to the appellant's answers during her interview and noted the appellant's statement that she would have nowhere to live once her aunt had sold her house. The ECO commented that this had been the case for a year and there was no sign of the sale being completed in the near future. The ECO also noted that the appellant had 8 siblings all living within a 10-mile radius of her current home and that the sponsor was willing and able to provide funds for her living costs in Sri Lanka.
3. The appellant requested a paper hearing of her appeal. The grounds of appeal argued that the appellant met the requirements of paragraph 317 of the Rules and queried why the ECO was considering other provisions.
4. The appeal was allocated to the FTTJ for a paper consideration. The FTTJ found that the appellant could not meet the requirements of Appendix FM, principally owing to her admissions during her interview with the Entry Clearance Officer that she had no medical issues and did not require assistance to carry out day-to-day tasks and he therefore dismissed the appeal on that basis.

Error of law

6. The grounds of application for permission to appeal argue that the respondent failed to comply with the First-tier Tribunal directions made on 10 November 2014 to send copies of the evidence relied upon to the other party within 28 days of receipt of the notice of appeal. Specifically, it was said that the respondent had failed to supply the appellant with a copy of the interview record. The grounds argued that this failure seriously incapacitated the appellant in conducting her case.
7. Permission to appeal was granted on the above basis. The FTTJ granting permission remarked that it was arguably unfair for the FTTJ to dismiss an appeal on reliance on an interview record that may not have been available to the appellant.
8. The Secretary of State's response argued that the FTTJ directed himself appropriately and that it was immaterial whether the appellant had the interview record as it was clear that the specified evidence was not submitted with the application.
9. At the hearing before us, we heard evidence and submissions from Mr Mohamed Lebbe Muharis, the appellant's son. He told us that he was the appellant's only son and that she did not live with any of her siblings. He confirmed that the appellant was widowed 10 years earlier, that the appellant was aged 57 and that in their family they did not live long in that his maternal grandmother died at a young age. He said that the appellant was brought up by her aunt from the age of 15; that the house the appellant and her aunt lived in

at the time of the application was sold in January 2015 and that aunt was now living with her own children. The sponsor considered it was his responsibility to care for the appellant now and told us that she could not live with her siblings.

10. The sponsor told us about the difficulties the appellant faced as a Muslim woman staying alone, finding a chaperone or receiving money sent by the sponsor. With regard to the interview record, the sponsor confirmed that the appellant had still not seen it despite her representative in Sri Lanka having asked for it after the decision. However, he told us that the appellant was truthful in the interview in that she “*did not have any massive disabilities.*” He told us that she had “*blood pressure*” but he was unsure whether the appellant suffered from high or low blood pressure. The sponsor was also aware that the appellant had problems with sitting, with one of her hands and ears, but no major illnesses. In addition, the sponsor’s wife was now 8 weeks pregnant. The sponsor confirmed that the appellant had no need of personal care at the time of the interview.
11. Ms Fijiwala argued that it was unclear that the interview transcript had not been served and that there was no mention in the grounds of appeal of a missing interview record. She submitted that the Rules could not be met as no Specified Evidence had been submitted with the application. The appellant had told the truth in her interview in that she did not require personal care and that the house had not been sold at that time. Ms Fijiwala asked us to note that there was no appeal or cross appeal in relation to Article 8 grounds, which were not addressed by the FTTJ.
12. We accept that the respondent’s bundle was posted to the appellant in Sri Lanka at the address she provided in her notice of appeal. This is apparent from the first page of the respondent’s bundle, which was before the FTTJ. Nonetheless, we have no reason to reject the appellant’s claim that she did not receive the bundle and the interview record in particular. However any unwitting error by the FTTJ in deciding the appeal in these circumstances does not amount to a material error of law.
13. We find that the extracts of the interview record relied upon by the ECO or FTTJ, are not disputed by the appellant. The sponsor’s oral evidence was that the appellant was not seriously unwell, that she was not in need of personal care and that she could manage her own day-to-day tasks. Indeed, none of the specified evidence required with the application had been included. We find that had the interview record been received by the appellant, it is unlikely that she would have had anything material to say about its contents. Therefore, the FTTJ’s decision would have been identical.
14. The FTTJ did not consider the appellant’s circumstances outside the Rules. We note that this matter did not form part of the grounds of application. Given what was said in SS (Congo) & others [2015] EWCA Civ 387, regarding a need for compelling circumstances to be shown for a claim for leave to enter to be established outside the Immigration Rules, we are satisfied that had the FTTJ considered the Article 8 claim outside the Rules, the outcome would have been the same.
15. In these circumstances we are satisfied that there are no errors of law in the FTTJ’s determination such that the decision ought to be set aside to be remade.

Conclusions

- (1) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
- (2) We do not set aside the decision.
- (3) We can see no reason to make an anonymity direction.

Signed:

Date: 19 July 2015

Deputy Upper Tribunal Judge Kamara