



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

Appeal Number: OA/19113/2013

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Tribunal
On 27th October 2015**

**Decision & Reasons
Promulgated
On 24th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

SABRIYA MOHAMMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - AMMAN

Respondent

Representation:

For the Appellant: Mr N Lawrence, Counsel instructed by Alsters Kelley Solicitors

For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Iraq born on 1st July 1945. She applied for entry clearance to come to the UK as the dependent relative of the Sponsor, her son, Soran Ahmad Mohammad. That application was refused for the reasons given in a Notice of Decision dated 19th September 2013. The Appellant appealed, and her appeal was heard by First-tier Tribunal Judge Birk (the Judge) sitting at Birmingham on 15th September 2014. She decided to dismiss the appeal for the reasons given in a Decision dated

16th September 2014. The Appellant sought leave to appeal that decision, and on 2nd December 2014 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal because although she found that the requirements of paragraph E-ECDR.2.4 of Appendix FM of HC 395 were met, she was not satisfied that the Appellant met the requirements of paragraphs E-ECDR.2.5 or E-ECP.3.4. The Judge was not satisfied that the Appellant had shown that there was no-one in Iraq who could reasonably provide the Appellant with the various aspects of care which she needed. This was because the Appellant was financially able to look after herself including the provision of medical needs, and there was no evidence that the Sponsor had investigated the possibility of hiring some sort of home help for the Appellant. The Judge was also not satisfied that there would be adequate accommodation for the Appellant in the UK as the evidence did not show that the Sponsor's landlords would consent to the Appellant living with him on a permanent basis.
4. Mr Lawrence argued that the Judge had erred in law in coming to these conclusions. The Judge had decided the accommodation issue by reference to paragraph E-ECP.3.4 which related to applications made by a partner. She should have applied paragraph E-ECDR.3.1 which applied to adult dependent relatives. Further, the Judge did not give due weight to the evidence of Dr Qashany, an expert, that the required level of care was not available in Iraq. In addition, when considering maintenance and accommodation, the Judge erred by considering the income thresholds set out in paragraph FM-SE which did not apply to adult dependent relatives. The Judge should have decided these issues by reference to paragraph E-ECDR.3.1 where adequacy was the only consideration. As regards accommodation, the consent of the Sponsor's landlord was not a specific requirement of paragraph E-ECDR.3.1.
5. In response, Mr Smart referred to the Rule 24 response. He argued that there was no error of law in the decision of the Judge as the Judge had properly considered the evidence and made appropriate findings. It was not right to say that the provisions of Appendix FM-SE did not apply in this appeal. They applied to all applications made by family members. The Appellant had failed to supply the documents set out at paragraph A1 which by paragraph 1(a)(iii)(3) applied to applications by adult dependent relatives. By virtue of paragraph (h), the documents needed to be originals. Mr Smart agreed, however, that the test was one of adequacy but submitted that the Appellant had failed to show such.
6. I find no error of law in the decision of the Judge which I do not set aside. The Judge came to factual findings which were open to her on the evidence before her. The Judge was entitled to find that the provisions of paragraph E-ECDR.2.5. The burden of proof is upon the Appellant, and the

Judge found that there was a lack of evidence showing that there was nobody in Iraq who could provide the care which the Appellant required as a result of her ailments, nor that such care could not be afforded. In reaching that conclusion, the Judge dealt with the evidence of Dr Qashany and found it lacking. His evidence was that of an expert, but he did not explain his conclusion that the appropriate care would not be available to the Appellant by showing what evidence he relied upon for that conclusion. The failure to satisfy paragraph E-ECDR.2.5 alone means that the Appellant's appeal must fail in which event any error of law made by the Judge in respect of maintenance and accommodation is immaterial. However, I find no such error. It may be the case that the Judge erroneously applied the income threshold test derived from paragraph FM-SE, but having analysed the relevant financial circumstances at paragraph 16 of the Decision, it is significant that in the subsequent paragraph the Judge wrote that the Appellant had failed to show that there was adequate maintenance. Regardless of these arguments, it was still the case that the Appellant was obliged to show that adequate accommodation would be available to her in the UK, and in my view the Judge was entitled to find that where there was no evidence that the Appellant would be allowed by the landlord to live in the accommodation of the Sponsor in the long-term, then the Appellant had failed to show that adequate accommodation was available to her.

7. For these reasons, I find no error of law by the Judge.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order for anonymity and I find no reason to do so.

Signed

Date

Deputy Upper Tribunal Judge Renton