



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

Appeal Number: OA/03065/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On : 29 August 2017**

**Decision Promulgated  
31 August 2017**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**HIBO HASSAN DAHIR**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: The sponsor, in person

For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Somalia whose date of birth is recorded as 1 January 1948. She has been given permission to appeal against the decision of

First-tier Tribunal Judge Oliver dismissing her appeal against the respondent's decision to refuse her application for entry clearance.

2. The appellant applied for entry clearance to settle in the UK as the adult dependant relative of her son, Abokor Bashe Ahmed, a British citizen. It was stated in the appellant's application that she was living in Somalia with her husband until August 2014 when he travelled to Mogadishu and did not return. His whereabouts were unknown and he was presumed to have died. There was no-one in Somalia to look after the appellant, who suffered from old-age and ill-health, and she was currently living alone in Ethiopia without any close family members. Consequently, the sponsor wanted her to join him in the UK where he would be able to care for her and support her.

3. The respondent refused the application on 5 January 2015. The application was refused under the suitability and eligibility provisions of Appendix FM of the immigration rules. As regards suitability, it was refused under paragraph EC-DR.1.1(c) with reference to S-EC.1.6 of Appendix FM and paragraph 320(8A) of the immigration rules on the basis that the appellant had failed to provide a TB certificate. As regards eligibility, the application was refused under paragraph EC-DR.1.1(d) with reference to E-ECDR.2.4 and E-ECDR.2.5 on the basis that the respondent was not satisfied, on the evidence produced by the appellant, that she required long-term personal care to perform everyday tasks or that she was unable to obtain the required level of care where she was currently living. The respondent noted that a letter submitted by the appellant from the Ministry of Health in Somaliland, which stated that she suffered from renal failure and back pain and that she needed treatment, did not indicate how long she had been suffering from those conditions or what effect they had on her daily life. The respondent also noted that the appellant had stated in her application form that she had been living in Ethiopia for the last week but considered it to be unclear how she had been able to travel there unassisted, where she was currently living and under which conditions. The respondent noted further that the sponsor was employed full-time and would therefore not be at home to care for the appellant and, as such, it was unclear how she would receive daily care in the UK. There was, in addition, no evidence from a health authority or health professional regarding the level of care she required or the costs involved. The respondent was, furthermore, not satisfied that the appellant would be adequately maintained, accommodated and cared for by the sponsor without recourse to public funds and therefore also refused the application under paragraph E-ECDR.3.1.

4. The appellant appealed against that decision, asserting in her grounds of appeal that she had submitted her original TB certificate with her application and confirming that evidence of the sponsor's ability to accommodate and maintain her had been produced.

5. The appeal was heard by First-tier Tribunal Judge Oliver on 1 November 2016. The sponsor, Mr Ahmed, gave evidence before the judge, providing details of the everyday tasks his mother was unable to perform. The sponsor said that his mother required medical support and he produced evidence of

money remittances he had sent to her, but which had been misused by the providers. His mother had returned home from Ethiopia.

6. Judge Oliver expressed sympathy for the sponsor but noted that there was a lack of evidence before him and, given the specific requirement for evidence as set out at Appendix FM-SE paragraphs 33 to 35, concluded that the appellant had failed to meet the burden of proof under the immigration rules and had failed to demonstrate anything exceptional about her circumstances.

7. Permission to appeal to the Upper Tribunal was sought by the sponsor on behalf of the appellant, on the grounds that he had evidence to prove his mother's medical condition and that he had provided her TB certificate. Further evidence was subsequently produced under cover of a letter from Aden & Co Solicitors dated 14 June 2017.

8. Permission was granted on 22 June 2017 on the basis of arguably inadequate reasoning by the judge.

9. At the hearing the sponsor, Mr Ahmed, appeared before me. The appellant was not legally represented due to lack of funds. Mr Singh relied on the Rule 24 response and asked me to find that the judge had properly dismissed the appeal. In response the sponsor explained that he had been to Somaliland and had taken his mother to hospital in Ethiopia in order to obtain evidence of her care needs and to demonstrate that she could not find medical care and treatment in Somaliland. He said that he had further documentary evidence and that the judge would allow the appeal if he were to hear it again. Further to my enquiry, Mr Ahmed confirmed that his trip to Somaliland and Ethiopia had taken place after the hearing before Judge Oliver and that the further evidence had been obtained after the hearing and had not been before the judge.

10. As I explained to Mr Ahmed, the relevant question before me was whether Judge Oliver had made errors of law in his decision on the basis of the evidence that was before him. Evidence subsequently produced could not give rise to an error of law in his decision-making but would instead best be employed to support a fresh entry clearance application.

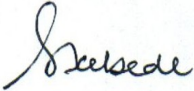
11. Although the judge's reasoning at [7] was brief, there was little more to be said. The appellant's application had been refused by the respondent on the basis of a lack of supporting evidence in regard to her medical condition and her care needs and, as the judge found, there was no such evidence before him. The judge properly noted that the immigration rules required specified evidence, as set out in Appendix FM-SE paragraphs 34 and 35, to demonstrate that the requirements of paragraphs E-ECDR.2.4 and 2.5 had been met, and such evidence had plainly not been produced. As such, he was perfectly entitled, and indeed was required, to conclude that the appellant had failed to show that she could meet the requirements of the immigration rules. Given the respondent's concerns set out in the refusal decision, and the limited evidence before him, the judge properly concluded that the appellant had failed to show any exceptional circumstances justifying a grant of leave outside the rules.

Whilst the judge did not address the conflicting evidence as to whether or not a TB certificate had been produced with the entry clearance application, that is immaterial in light of the lack of evidence in relation to the eligibility requirements of the rules.

12. Accordingly the judge was fully entitled to dismiss the appeal on the basis that he did and I find no errors of law in his decision. I uphold the decision.

**DECISION**

13. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed   
Upper Tribunal Judge Kebede  
2017

Dated: 30 August