



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/03806/2018**

**Appeal Number:**

**HU/0**

**3808/2018**

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**Decision & Reasons**

**On 23 July 2019**

**Promulgated**

**On 06 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**D J M**

**S J M**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Ms Frantzis,

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are sister and brother were born in 2007 and 2002 respectively. They are citizens of Tanzania. They appealed against the decision of the Entry Clearance Officer dated 2 January 2018 to refuse them entry clearance to the United Kingdom to join their aunt, the sponsor Mrs T. The First-tier Tribunal in a decision promulgated on 1 April 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the decision of the First-tier Tribunal should be set aside. My reasons are as follows. First, I find that the judge has misunderstood or misinterpreted the oral evidence which was put before him. At [17], judge recorded that 'I asked the sponsor further questions to identify how her mother's functionality had been affected by her medical conditions. Response was clear about this: her mother was still able to self-care and still did the cooking for the family. She did not employ a maid.' The appellants have produced a record of the proceedings before the First-tier Tribunal taken by their representative. Mrs Pettersen, who appeared for the Secretary of State, did not dispute the accuracy of that record. In evidence, the sponsor had told the Tribunal that her mother was not capable physically of looking after the appellants because she had 'a lot of pain and is on medication.' In answer to questions put to her by the judge, sponsor had said, 'when [my mother] is normal, she can [care for her own needs] but she is old and tired.' The sponsor also clearly stated that her mother no longer cooked meals for the children because 'for a long time she [has been] very sick' and so could not do so. I consider that the judge's summary of this evidence is not accurate. If he has misunderstood the evidence of the sponsor, then it follows that he has proceeded on a false basis.
3. I find that the judge also erred in law at [15] when he states that, 'despite claiming to be regularly hospitalised due to high blood sugars, [the sponsor's] mother was not on insulin. I take judicial notice that those whose blood sugars are not well controlled put on insulin this was not the case here...diabetes was said to be her main problem. I was satisfied that the evidence did not show that the condition was such as to require hospitalisation.' The grounds of appeal make the valid point the judge is not a medical expert. He has purported to take judicial notice of medical matters which are beyond the proper scope of judicial notice and are properly addressed by expert evidence only. I find that he grounds of appeal establish that the judge did improperly reach conclusions regarding the severity of the sponsor's mother's medical condition where there was insufficient relevant evidence to enable him to do so.
4. Mrs Pettersen submitted that the judge had not fallen into legal error. Whilst I am grateful to her for her submissions, I find that the judge did err in law for the reasons I have given above. It will be necessary for the First-tier Tribunal to hear the appeal *de novo*.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge A K Hussain) for that Tribunal to remake the decision at or following a hearing.

Signed

Date 21 October 2019

Upper Tribunal Judge Lane