



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

Appeal Number: HU/02063/2019

**THE IMMIGRATION ACTS**

**Heard at Field House (Remotely via MS  
Teams)  
On: 21 December 2021**

**Decision & Reasons  
Promulgated  
On: 14 January 2022**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**KHADIJA ADEN MOHAMUD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr S Mc Taggart, counsel instructed by RP Crawford & Co  
Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is the remaking of an appeal against the decision of an Entry Clearance Officer dated 7 January 2019. The decision of First-tier Tribunal Judge S Gillespie, promulgated on 3 January 2020, was set aside in a decision taken on the papers by Upper Tribunal Judge Kekic on 6 November 2020.

Anonymity

2. No direction has been made previously, and there is no obvious reason for one now.

## Background

3. The appellant is aged 81 and is a national of Somalia, residing in Ethiopia. On 5 June 2018, she sought leave to enter the UK under Appendix FM to join her son, Yasin Abdullah Sharif, as his dependent relative. Mr Sharif arrived in the UK during September 2011 and became a permanent resident in February 2017. The appellant planned to travel with her grandson, Abdi, who was then aged 17. A covering letter submitted with the application argued that the appellant met the requirements of E-ECDR 1.1 and drew attention to the appellant's medical ailments as set out in a letter from Saint Michael Clinic. The said letter stated that the appellant needed "long term personal care and support as she can not support herself due to old age and lack of close family around her to take care of her." The covering letter explained that the sponsor sent between \$2-300 US dollars monthly for the appellant's living costs, plus additional funds to pay for medical care as well as for two women to assist the appellant with personal care and cleaning. It was asserted that the care the appellant required was not available or affordable in Ethiopia. The sponsor was described as no longer being in receipt of public funds because he was employed full-time and paid rent on a 3-bedroom home from his own resources. In the alternative, the covering letter stated, without more, that there were compelling and compassionate circumstances which justified entry clearance being granted outside the Rules.
4. According to the decision of 7 January 2019, the Entry Clearance Officer (ECO) refused the application because it was not accepted that there were not other family members in Ethiopia to care for the appellant. Reference was made to her granddaughter aged 20 who was living with her at the time of the previous application which was made in 2012. The medical evidence stating that the appellant was lonely, experienced headaches and osteoarthritis and needed help with everyday tasks was rejected as such letters were said to be easily obtained from the clinic in question. The ECO noted that the appellant used funds sent by the sponsor to employ two women to help her. The respondent did not accept that the appellant could meet the requirements of dependent relative Rules that is, as a result of age, illness or disability the appellant required long-term personal care to perform everyday tasks or that such care was not available or affordable. There were said to be no exceptional circumstances nor compassionate factors which merited a grant of entry clearance outside the Immigration Rules. That decision was maintained following the Entry Clearance Manager's review dated 9 August 2019.

## The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, it was not in dispute that the sponsor was no longer in employment as he was in receipt of Universal Credit, this being described as a real and abiding difficulty for the appellant in the proportionality assessment. Furthermore, the judge did not accept that the appellant enjoyed a family life with her then 17-year-

old grandson but accepted that family life had endured between the sponsor and the appellant.

### The grounds of appeal

6. In the grounds of appeal, it was argued, firstly, that the judge failed to consider the written evidence of the sponsor that his niece was no longer living with the appellant in Somalia. Secondly, the judge was wrong to state that section 117B (6) of the 2002 Act had no application in an entry clearance case and lastly, that the judge failed to make findings as to whether there was a genuine and subsisting parental relationship between the appellant and her grandson, what his best interests were and what weight was given to those best interests.
7. Permission to appeal was granted with reference to the first ground alone, the judge finding that there was no error in relation to the second ground. Nonetheless, permission was not restricted.
8. The decision of the First-tier Tribunal was set aside by Upper Tribunal Judge Kekic on 6 November 2020, apart from preserved findings regarding two matters. The first preserved matter being the finding that there was family life between the appellant and sponsor and secondly that the appellant was unable to meet the requirements of the Rules. In addition, the appellant was put on notice that documentary evidence of her granddaughter's residency in Sudan would be helpful to the case and that the discrepancy as to the number of carers the appellant has needed resolving. Directions were made for the future hearing of the appeal. Those directions were updated by an UT lawyer on 4 December 2020 who also granted the extension of time for compliance with directions sought by the appellant's solicitors. Both representatives have provided skeleton arguments and a small bundle of additional evidence was submitted on behalf of the appellant.
9. On 25 June 2021, the Principal Resident Judge signed a Transfer Order to enable another UT judge to hear this appeal.

### The remaking hearing

10. I heard oral evidence from the sponsor, Mr Sharif as well as his son Abdi, with the assistance of a Somali-speaking interpreter. I have fully taken into account the evidence I heard as well as the submissions made by the representatives in reaching my decision. No credibility issues arose from the oral and written evidence. Ms Everett also confirmed in her submissions that she did not seek to raise a credibility challenge.
11. The points made by Ms Everett were as follows. The appellant cannot not bring herself within the ambit of the Rules and this is a considerable factor in terms of the Article 8 assessment. The appellant had some support, seemed to be looked after and the sponsor and his son communicated

with her regularly. As for the relationship between the appellant and Abdi, Ms Everett argued that he is now an adult and manages to stay in contact with the appellant. If the appellant can bring herself within the Rules, a new application should be made. The decision to refuse entry was proportionate.

12. Mr McTaggart relied on the skeleton argument submitted on an earlier occasion and submitted that the refusal of entry represented a disproportionate interference with the family life between the appellant, the sponsor and her grandson.
13. At the end of the hearing, I reserved my decision.

### Discussion

14. The potential credibility issues highlighted in the decision of Upper Tribunal Judge Kekic were all satisfactorily addressed. There is now unchallenged documentary evidence showing that the appellant's granddaughter, Muna, has been living in Sudan since 2017. Furthermore, the issue of who is assisting the appellant with her care needs has been clarified. On the last point, the sponsor explained that about every three weeks someone from the Somali community goes to wash the appellant, with the identity of that person varying. The sponsor pays for that care to be provided. As for contact, the appellant did not have a mobile telephone because she struggled to use it when one was given to her and it was eventually stolen. Therefore, when the sponsor or Abdi wish to speak to her, they telephone a woman who runs a nearby shop and ask if she can pass her telephone to the appellant. The other relevant issue is that at the time of the hearing before the First-tier Tribunal, the sponsor was not working. This is no longer the case in that he is working full-time for a security firm. In addition, his daughter Hamdi, was also in full-time employment.
15. The preserved findings were that the requirements of the Rules for dependent relatives were not met and that the appellant enjoyed a family life with the sponsor. There is no reason to depart from those findings. I also find that the appellant had and continues to have a family life with Abdi, notwithstanding that he is now aged 19. Abdi was cared for by the appellant in Somalia and lived with her after they fled to Ethiopia prior to him being reunited with the sponsor. The plan was that they would come to the UK together. Abdi speaks to the appellant regularly both independently and during his father's WhatsApp calls and videos. In the context of the fact that the family are refugees and that the sponsor's wife and child are missing, the relationship between Abdi and the appellant goes beyond normal emotional ties. Furthermore, family life cannot be enjoyed in either Somalia or Ethiopia.
16. I am satisfied that the decision of the ECO amounts to interference with the family life of the appellant, the sponsor and Abdi. The issue in this case is the proportionality of that interference. In assessing that matter, the starting point is that the appellant is unable to meet the Rules because

the medical evidence did not adequately explain why the appellant required long-term personal care to perform everyday tasks as well as the ability of the sponsor to pay for care. I have attached a significant amount of weight to this matter. Considering the factors set out in section 117B of the 2002 Act, it is also the case that the appellant does not speak English and that integration would be limited given her age and ailments. She is also likely to have need for some medical care given her age and health concerns. On the other side of the scales, she has a family to care for her, to provide for her emotional needs as well as to provide financial support and accommodation without recourse to public funds.

17. I have also taken into consideration the appellant's circumstances as relayed by the sponsor in his unchallenged witness statement and oral evidence. The appellant is living alone outside her country of origin without any relatives to provide practical support. The sponsor is now only able to arrange assistance for the appellant to wash around every three weeks, on an ad hoc basis and only in exchange for payment. I heard that if the appellant requires medical help, it can take a couple of days to arrange for someone to take her to doctor. Furthermore, the appellant is no longer able to cook for herself, and her diet is poor as she is eating ready made items. She continues to suffer osteo-arthritis in the right knee and multiple joint and back pain which makes it difficult for her to use the toilet (which is shared with around ten other households) unaided. She is unable to care for herself, including personal hygiene and needs long term personal care and support. Furthermore, the medical evidence notes that she is now suffering from chronic headaches, has difficulty walking and that she is lonely. Given the appellant's vulnerability, the public interest in her exclusion is reduced. The appellant's unenviable circumstances can only be ameliorated by a grant of entry clearance. She is an elderly person in need of the personal care only her close relatives can provide.
18. On balance, I am just satisfied that the refusal of entry clearance represents a disproportionate interference with the appellant's right to a family life as well as that of the sponsor and his son.

### **Notice of Decision**

The appeal is allowed on human rights grounds.

No anonymity direction is made.

Signed:

Date 31 January 2022

Upper Tribunal Judge Kamara

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed:

Date: 31 January 2022

Upper Tribunal Judge Kamara

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#### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email