



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2022-006355

First-tier Tribunal No:
EA/03479/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 6th July 2023**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE L MURRAY**

Between

**AMINA ADED AHMED
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Kadic, instructed by Aden & Co Solicitors

For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

Heard at Field House on 2 May 2023

DECISION AND REASONS

Details of the Appellant and Nature of Appeal

1. The Appellant is a national of Somalia born on 1 January 1955. She appeals with permission against the decision of First-tier Tribunal Judge K Swinnerton who in a decision promulgated on 21 July 2022 dismissed her appeal against the Respondent's refusal of her application for entry clearance under Appendix EU (Family Permit) of the Immigration Rules.

- 2.** The Appellant made an application for an EU Settlement Scheme Family permit on 4 November 2021 which was refused by the Respondent on 14 March 2022. The Respondent concluded that the Appellant had not demonstrated, having regard to her financial and social conditions, or health, that she could not meet her essential living in needs without the financial or other material support of the relevant EEEA citizen, in this case, her daughter, a Swedish national. The Respondent concluded that the Appellant had provided limited recent money transfer send receipts dated 25 May 2021 to 30 October 2021 but no corresponding collection receipts or bank transactions evidencing the origin or receipt of funds. It was noted that the Appellant had not provided any further evidence of her own domestic circumstances in Kenya and without such evidence the Respondent concluded that she had not demonstrated that she could not meet essential needs without financial or other material support from her relevant EEA Citizen sponsor.
- 3.** The grounds seeking permission to appeal state that the First-tier Tribunal Judge erred in interpreting the Immigration Rules in failing to consider the Appellant's social and financial conditions when considering dependency. The grounds refer to evidence both oral and documentary in relation to her age, the death of her husband, her medical conditions and inability to work due to her age, status in Kenya and health.
- 4.** Permission to appeal was granted on 11 September 2022 by First-tier Tribunal Judge Cruthers who considered that it was arguable that the Judge did not give adequate reasons for finding against the Appellant on her claim to be dependent on her daughter.
- 5.** At the hearing Ms Willocks-Briscoe confirmed that there was no Rule 24 Response.
- 6.** Ms Kadic asked if she could hand up a copy of her notes from the hearing before First-tier Tribunal. She confirmed that the notes had not been provided to the Respondent and no application had been made to disclose the record of proceedings in accordance with paragraph 12 of the Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal (May 2022). Further, the grounds did not assert that the Appellant had not had a fair hearing and in any event no witness statement had been provided by the Appellant's former Counsel in accordance with the guidance of the Upper Tribunal in BW (witness statements by advocates) Afghanistan [2014] UKUT 00568 (IAC). In the circumstances we

refused to admit Counsel's notes of the hearing as the correct procedure had not been followed.

- 7.** At the hearing Ms Kadic submitted that the FtTJ did not consider all the Appellant's circumstances. She had been widowed in 2013 and there was no reference to that in the FtTJ's findings. There were no findings on the medical letters and on the cost of the test undertaken by the Appellant. The Appellant lived with other Somali immigrants, was unemployed and renting a room. It could be inferred that these were informal arrangements and that they allowed her to stay but there was no supporting documentary evidence of her living expenses given her situation. The sponsor was sending her money regularly from which she paid the Somali family. It could be inferred that she had no other relatives.
- 8.** Miss Willocks-Briscoe submitted that the FtTJ stated that all of the documentation had been considered. It did not matter that there was no express reference to the hospital letter. The FtTJ expressly stated in paragraph 21 of the decision that the evidence fell short of establishing dependency. There had been no evidence provided with regard to the Appellant's expenses, nothing from the family with whom the Appellant lived and no indication as to how the money was transferred. The sponsor's witness statement did not contain much information and the FtTJ's conclusions were reasonable on the evidence.
- 9.** In reply Ms Kadic said that at paragraph 7 of the decision the FtTJ summarised the evidence and these were informal arrangements and it was unreasonable to expect the Appellant to produce receipts.

Analysis

- 10.** The Appellant applied for entry clearance as the "family member of a relevant EEA Citizen" under Appendix EU (FP). In order to satisfy the requirements of Appendix EU (FM) the Appellant is required to demonstrate that she is a "dependent parent of a relevant EEA citizen". A "dependent parent" is defined in Annex 1- definitions, as:

(a) having regard to their financial and social conditions, or health, the applicant cannot meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen) or of their spouse or civil partner; and

(b) such support is being provided to the applicant by the relevant EEA citizen (or, as the case may be, by the qualifying British citizen) or by their spouse or civil partner; and
(c) there is no need to determine the reasons for that dependence or for the recourse to that support.

11. In her decision, the FtTJ set out the issues in dispute at paragraph 4 and the evidence before her at paragraph 15 of the decision. She noted that she had considered all the documentation provided as well as the oral evidence and submissions. The Respondent was not represented at the hearing and the FtTJ asked the sponsor a number of questions in relation to the documentation before her and in relation to the Appellant's circumstances in Kenya. The FtTJ found, on the basis that it was accepted or unchallenged, that the Appellant was a national of Somalia, aged 67 and that she lived in Kenya. She accepted on the basis of the DNA evidence provided by the Appellant that she and the sponsor were related as claimed. In relation to the question of dependency she considered the evidence of money transfers at paragraphs 17 to 19 and accepted at paragraph 21 that the sponsor had sent money to the Appellant from August 2020 to date and that financial support was provided.

12. The impugned finding is at paragraph 21 of the decision where the FtTJ stated:

“Notwithstanding the points made in the grounds of appeal, I was not though provided with any documentation that detailed how the monies sent to the Appellant have been used in order to meet her essential living needs such as rent, bills and expenses with whilst she was living either in Somalia or in Kenya. I find, therefore, that the evidence provided to me falls short of establishing financial dependency.”

13. It clearly does not follow from the FtTJ's acceptance that the sponsor provided financial support that the Appellant needed that support (in whole or in part) for her essential living needs. The Respondent had highlighted in the notice of refusal that the Appellant had not provided any further evidence of her own domestic circumstances in Kenya.

14. The evidence before the FtTJ in relation to the Appellant's financial and social conditions and health consisted of the witness statement of the sponsor in which she states at paragraph 5 that the Appellant is staying in Kenya on a visit visa and cannot open a bank account as a Kenyan national or resident. She states that in

the circumstances she is unable to provide her detailed family circumstances including her income and expenses in the form of a bank statement. She further states that due to her age she is unlikely to have a job and does not have any family member to support her financially. The documentary evidence in the Appellant's bundle consisted of the death certificate of the Appellant's husband and a medical report dated November 2011 showing that the Appellant suffered from osteoarthritis. In her decision, the FtTJ recorded the oral evidence of the sponsor in relation to her mother's circumstances that the Appellant paid rented a room in a house and paid rent of 60 dollars a month.

15. In KM v SSHD [2021] EWCA Civ 693 at [77] the Court of Appeal set out the well-established principles as to the approach of the higher courts when considering a decision of a specialist tribunal:

(1) First, the UT is an expert tribunal and an appellate court should not rush to find a misdirection an error of law merely because it might have reached a different conclusion on the facts or expressed themselves differently (per Lady Hale in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 at [30]).

(2) Second, the court should not be astute to characterise as an error of law what, in truth, is no more than a disagreement with the UT's assessment of the facts (per Lord Dyson in MA (Somalia) v SSHD [2010] UKSC 49 at [45]).

(3) Third, where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account (per Lord Dyson in MA (Somalia) at [45]).

(4) Fourth, experienced judges in this specialised tribunal are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically, unless it is clear from their language that they have failed to do so (per Popplewell J in AA (Nigeria) v SSHD [2020] EWCA Civ 1296 at [34]).

(5) Fifth, judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined and the appellate court should not assume too readily that the tribunal misdirected itself just because not every step in its reasoning is fully set out in it (per Lord Hope in R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19 [2013] 2 All ER 625.

16. We find that it is evident when the decision of the FtTJ is read as a whole, that the Judge took into account the evidence as presented of the Appellant's social and financial circumstances. Whilst no explicit reference was made to the medical evidence or death

certificate, the FtTJ stated that she had considered all of the documentation and there is no requirement to list every piece of evidence that was taken into account. The FtTJ did not misdirect herself in respect of the law or the evidence. The Appellant's age, place of residence and social circumstances as well as the evidence as to her payment of rent to a Somali family were set out in the decision. The FtTJ was not required to set out every step of her reasoning. The Appellant lived with a Somali family to whom it was said she paid rent but there was no evidence from them. The sponsor's witness statement did not detail any breakdown of the Appellant's expenditure and no supporting evidence was provided. In the circumstances the amount of money that the Appellant needed for her essential living needs was neither quantified, nor evidenced or documented. There was simply no clear picture of her financial circumstances, a matter of which the Appellant was on notice. We consider that it was open to the FtTJ to find that the evidence fell short of establishing dependency and adequate reasons were provided for that finding.

Notice of decision

- 17.** There was no material error of law. The decision of the First-tier Tribunal shall stand.

Signed

A handwritten signature in black ink, appearing to be 'L Murray', enclosed in a thin black rectangular box.

L Murray
Deputy Judge of the Upper Tribunal
2023

Dated 10 May