IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005271
First-tier Tribunal No: HU/60852/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 January 2025

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE GIBBS

Between

AWATIF MOHAMED HAMED SATTI
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, SHEFFIELD

Respondent

Representation:
For the Appellant: Mr A Jafar, Counsel, instructed by UK Lawyers & Advocates
For the Respondent: Ms A Everett, Senior Presenting Officer

Heard at Field House on 27 January 2025

DECISION AND REASONS

Introduction

1. The appellant appeals a decision of the First-tier Tribunal. By his decision sent to the parties on 10 September 2024 First-tier Tribunal Judge Richard Wood ("the Judge") dismissed the appellant's human rights (article 8 ECHR) appeal. The appellant resides outside of the United Kingdom and seeks entry clearance under the adult dependent relative route established by Appendix FM to the Immigration Rules.

2. The hearing before the panel was conducted remotely. The appellant's sponsor, Dr Muna Abdel Aziz, attended the hearing.

3. We confirm at the outset our gratitude to Mr Jafar and Ms Everett for their helpful and constructive submissions.

Relevant Facts

4. The appellant is a national of Sudan and presently aged eighty-two. She is sponsored by her daughter who is a British citizen. The appellant has seven children, four of whom are British citizens. She regularly visited the United Kingdom, without incident and in compliance with her visa conditions, between 2000 and 2022.

5. On 4 May 2023, the date of her entry clearance application, the appellant resided in Egypt. She had been compelled to leave Sudan ten days earlier consequent to the civil war that commenced in April 2023 between two major rival factions of the military government of Sudan, the Sudanese Armed Forces and the paramilitary Rapid Support Forces (RSF), the latter supported by allies and collectively known as the Janjaweed coalition. We observe that as of November 2024, it is estimated that at least sixty thousand people had been killed in Khartoum State and over seven and a half million people were displaced. By the summer of 2024 it was estimated that over two million people had fled Sudan as refugees.

6. At the time of leaving Sudan, the appellant was residing with a daughter. She left her home in Khartoum and accompanied her daughter's family to Egypt. Approximately six months later the appellant's daughter and her family relocated to the United States of America, leaving the appellant in Egypt, with her tourist visa close to expiry. Thereafter, the appellant regularly moved from property to property with several of her children travelling to Egypt from the

United Kingdom or the United States of America on thirty-day visas to provide care and support.

7. By the time of the appeal hearing before the First-tier Tribunal the appellant was residing with a daughter in Oman who possessed a work visa.

8. The appellant suffers several medical conditions consistent with her age, including diabetes, and requires the use of a wheelchair. She cannot be left unattended.

Respondent's decision

9. The appellant applied for entry clearance on 4 May 2023. The application was refused by a decision of the respondent dated 28 July 2023. The application was refused under paragraph A39 of the Rules because the appellant was applying from a country listed in Appendix T of the Rules and had failed to present a valid medical certificate confirming she had undergone screening for active pulmonary tuberculosis and that she was free from the disease.

10. Additionally, the respondent considered the application under section EC-DR of Appendix FM and concluded that the appellant did not qualify for entry clearance as an adult dependent relative. The respondent was satisfied that the appellant met the suitability and eligibility financial requirements of Appendix FM. However, the application was refused on eligibility relationship grounds under paragraph EC-DR1.1(d) of Appendix FM (E-ECDR.2.4 and E-ECDR.2.5):

> "You have stated that you are diabetic and insulin dependent for over forty years. You have also stated that this has recently affected your kidneys and heart. You state that you have difficulty walking for long distances and use a wheelchair. You have provided nothing which indicates that you require long term personal care to perform everyday tasks. You have not provided any evidence to show that this cannot continue in the future.
>
> You have not demonstrated that the applicant requires long term personal care including reference to paragraph 34 of Appendix FM-SE. In light of all of the above I am not satisfied that as a result of age, illness or disability you require long-term personal care to perform everyday tasks. Your application is therefore refused under paragraph EC-DR.1.1(d) of Appendix FM of the Immigration Rules. (E-ECDR-2.4).

> You have submitted evidence of [the sponsor's employment]. You have evidenced the financial support through several money transfer slips. You have not provided any evidence to show that this cannot continue in the future.
>
> You can be supported where you currently live as you have stated that you are currently in Egypt with your daughter and have not provided any evidence to show that this cannot continue in the future. You have stated why you cannot live in Sudan due to the war and living conditions but have confirmed that you are now no longer in Sudan and living in Egypt with family.
>
> Consequently, I am not satisfied that you have demonstrated that the level of care you require cannot be obtained in the country where you are living as there is no person in that country who can reasonably provide it or it is not affordable in that country. I therefore refuse your application under paragraph EC-DR.1.1(d) of Appendix FM of the Immigration Rules (E-ECFR.2.5)."

11. The respondent concluded that exceptional circumstances did not arise requiring a grant of entry clearance on human rights (article 8) grounds.

First-tier Tribunal Decision

12. The appeal came before the Judge as a virtual hearing on 9 August 2024. The appellant was represented by Mr Jafar, and the sponsor gave evidence. Ms Everett properly accepted that no issue was taken by the respondent with the credibility of either the appellant or her sponsor before the First-tier Tribunal.

13. It was agreed by the parties that the sole issues before the Judge were: (i) paragraph E-ECDR.2.4, (ii) paragraph E-ECDR.2.5, and (iii) whether excluding the appellant from the United Kingdom was proportionate having regard to her family life rights and article 8.

14. The Judge found that the appellant satisfied the requirements of paragraph E-ECDR.2.4:

> "44. ... In my judgment, it is likely that she does require long term personal care, largely by reason of brittle diabetes and her other age-related conditions. I accept the medical evidence ... and the background given by the sponsor in terms of her mother's conditions and ability to cope on a day-to-day basis. I found the

> sponsor to be a reliable witness on this issue. She appears to be well-respected and is in a position to offer professional opinions on at least some of the issues I have to decide.
>
> 45. I find that these conditions are having an impact on her ability to carry out day to day activities, particularly those relating to her personal care and administering her treatment for diabetes. I find that she is also likely to have significant issues with moving around. This will impact upon her ability to prepare a meal, wash (getting in and out of a bath) and dress, and get out to the shops to purchase essential groceries. She is likely to have problems with standing and sitting independently. Given her age and general level of fitness, I find it is less likely than not that she would not be capable of self-propelling in a wheelchair for significant distances. Accordingly, she will need help with some day-to-day activities for at least a proportion of the time. I am therefore satisfied that the appellant satisfies the criteria of E-ECDR.2.4."

15. The Judge accepted at [46]-[47] of his decision that the appellant requires twenty-four-hour care provided by someone with experience of treating a person with type 1 diabetes, because without adequate supervision there is "significant risk" of a life-threatening diabetic episode. The appellant was found to require a high level of care.

16. However, as to paragraph E-ECDR.2.5, the Judge concluded that as the appellant was residing with a daughter in Oman, who possessed a work visa, and no evidence was provided as to the appellant being likely to have difficulties in extending her own visa in Oman. Consequently, the Judge concluded that there was insufficient evidence that the current arrangement could not continue for a reasonable period of time. In addition, the appellant's children could pay for their mother's care to be provided by third parties such as a domestic help or a personal carer. No evidence was provided establishing that this possibility had been explored by the daughter in Oman.

17. The Judge said, at [49]:

> "49. I accept that appropriate treatment and care would not have been available and accessible in Sudan once the problems commenced. However, as I have stated, the appellant is not in Sudan, and is not likely to return, and not until the situation there improves significantly."

18. The appellant was found not to satisfy the requirements of paragraph E-ECDR.2.5.

19. The Judge found that he was "just about satisfied" that family life existed between the appellant and her sponsor but concluded that the appellant's exclusion from the United Kingdom was not a disproportionate interference with protected article 8 rights, at [51]-[59].

20. In respect of the Judge's consideration as to the existence of family life for the purpose of article 8, we take this opportunity to note that the application was considered by the respondent under Appendix FM and the relevant familial requirement of E-ECDR.2.1 was accepted. Upon refusal, the appellant was informed that she had a right of appeal on human rights grounds. No such right could accrue in the absence of an article 8(1) family life: *SD (British citizen children – entry clearance) Sri Lanka* [2020] UKUT 43 (IAC), at [72]-[74]. It was therefore implicit in the respondent's decision, which methodically addresses the requirements of E-ECDR, that article 8(1) family life was engaged.

Grounds of Appeal

21. Central to the appellant's grounds of appeal is the contention that the appellant should properly have been considered as living in Sudan, and not Oman, for the assessment under paragraph E-ECDR.2.5. Additionally, it is contended that the Judge erred in respect of his assessment of exceptional circumstances.

22. First-tier Tribunal Judge Adio granted permission to appeal, with no restriction, by a decision sent to the parties on 15 November 2024.

23. The respondent filed and served a rule 24 response, dated 27 November 2024.

24. As confirmed at the hearing, the panel identified a further ground of appeal as being "Robinson obvious", namely the failure of the Judge to consider the refusal founded upon paragraph A39 of the Rules: *R v Secretary of State for the Home Department, ex parte Robinson* [1998] QB 929. We consider that the appellant should not be adversely impacted by the failure of her legal representatives, both in preparing the skeleton argument filed with the First-tier Tribunal and in oral submissions before the Judge, to address the initial reason for refusal

provided by the respondent when refusing the underlying entry clearance application in July 2023.

25. At the direction of the panel, and prior to the hearing, an Upper Tribunal Legal Officer provided to the parties the unreported decision of Upper Tribunal Judges Bruce and O'Callaghan in *TA, KK and FA v Entry Clearance Officer, Islamabad* (UI-2023-002092) dated 21 November 2023.

Immigration Rules

26. To qualify for entry clearance as an adult dependent relative, the Rules state, *inter alia*:

> "E-ECDR.2.4 The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.
>
> E-ECDR.2.5. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because -
>
> (a) it is not available and there is no person in that country who can reasonably provide it;
>
> (b) it is unaffordable."

27. Paragraph EC-DR1.1.(d):

> "the applicant must meet all of the requirements of Section E-ECDR: Eligibility for entry clearance as an adult dependent relative."

28. GEN.3.2:

> "(1) Subject to sub-paragraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of

the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.

(2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application."

29. Paragraph A39 of the Rules:

"A39. Any person making an application for entry clearance to come to the UK for more than six months ... must present, at the time of application, a valid medical certificate issued by a medical practitioner approved by the Secretary of State for these purposes, as listed on the Gov.uk website; confirming that they have undergone screening for active pulmonary tuberculosis and that this tuberculosis is not present in the applicant."

30. Paragraph C39:

"C39. Where a person has lawfully been present in a country not mentioned in Appendix T for more than six months and they are applying for entry clearance as in A39 in a country in Appendix T but have not been in that country or any other country mentioned in Appendix T for more than six months immediately before making their application, they will not be required to produce a medical certificate showing they are free from active pulmonary TB. ..."

31. Paragraphs A39 and C39 were deleted from the Rules by Statement of Changes to the Immigration Rules (HC1780) which was published on 07 September 2023. The deletion was a post-decision act.

32. At the time of the respondent's decision, Appendix T established:

"Any person applying to enter the UK as described in paragraph A39, Part 1 General Provisions of the Immigration Rules, must present at the time of application a valid medical certificate issued by a

> medical practitioner approved by the Secretary of State for these purposes, as listed on the Gov.uk website, confirming that they have undergone screening for active pulmonary tuberculosis and that such tuberculosis is not present in the applicant:
>
> - Sudan"

33. Egypt was not placed on the Appendix T list.

34. Appendix T was deleted from the Rules by Statement of Changes (HC1780). The deletion was a post-decision act.

Discussion

35. Mr Jafar submitted before the Judge that the respondent had erroneously applied her guidance by considering the appellant to be living in Egypt for the purposes of paragraph E-E-ECDR.2.5, where she only enjoyed six months residence as a tourist, and not Sudan which is her country of nationality. At the hearing, the respondent submitted that consideration of "living" for the purpose of paragraph E-ECDR.2.5 should be directed to Oman where the appellant was now residing, and not Egypt which was the position adopted in the decision.

36. On this issue, the Judge concluded:

> "42. I favour the respondent's argument on this point. There appears to be little if any formal guidance on the issue. However, in my judgment I should adopt the ordinary meaning of the words of the rules and apply them in the purposive sense. The ADR rules are to ensure that those whose needs can only be reasonably and adequately met in the UK are granted status. In my view this case requires an examination of the circumstances in Oman. I appreciate the appellant is not a national of Oman and is by no means settled there. However, there is no reason to believe she will not be there for several months if not a number of years. It is therefore appropriate to apply E-ECDR.2.5 to the situation in Oman. To look at the circumstances in Sudan or Egypt would make little, if any, practical sense. The appellant is not currently in either of those two countries, and it seems she is unlikely to return there in the near future, if at all."

37. For most cases, the meaning of "in the country where they are living" will be uncontroversial as applications will be made in a home country, and for such reason the Supreme Court in *Britcits v Secretary of State*

for the Home Department [2017] EWCA Civ 368; [2017] 1 WLR 3345, as well as the Home Office in its own guidance, use “home country” as shorthand for “in the country where they are living”.

38. However, the appellant was not able to make an adult dependent relative application under Appendix FM from Sudan. Firstly, the British Embassy was temporarily closed. Secondly, she had fled the country consequent to civil war. It is upon these foundations that the present appeal arises.

39. So how are we to interpret “living in”. Our conclusion is consistent with the reasoning of the panel in *TA, KK and FA*. The natural and ordinary meaning of the requirement is the putting down, or intention to put down, roots in a place and the creation of practical and social foundations to enable a normal life to exist. This may require lengthy residence, it may involve a settled intention to remain there, and it may involve lawful permission to so reside, but more than that it is simply a reflection of what Lord Sumner considered in *Inland Revenue Commissioners v Lysaght* [1928] AC 234, at 243, to be the "regular order of a man's life", a judgment cited with approval by the House of Lords in *R v Barnet LBC, ex parte Shah* [1983] 2 AC 309, at 341. Identifying the reasons underpinning a choice of regular abode, Lord Scarman suggested in *Shah*, at 344C-D, that "education, business or profession, employment, health, family, or merely love of the place" might all be relevant. This rounded analysis is what is also required in this appeal.

40. At the time of the appellant’s entry clearance application, she had been present in Egypt for only ten days. We are satisfied that the making of the application that led to this appeal establishes that the appellant had not, and did not intend to, put down roots in Egypt. She was seeking to relocate to the United Kingdom within ten days of entering Egypt as a visitor, having fled Sudan with only a change of clothes and some medicine consequent to civil war. Our conclusion is supported by members of her family having to travel and stay with her for thirty-day periods to provide care. This strongly suggests that neither the appellant nor her family considered her residence in Egypt to be anything other than a short-term solution arising from fleeing Sudan and the desire to ultimately relocate to the United Kingdom to join several of her children. Her stay in Egypt was solely permitted by securing a tourist visa, a time limited category and not one suggestive of permanence. We are satisfied that the appellant never considered her stay in Egypt as anything other than transitory.

41. We are satisfied that the Judge erred in concluding that the "living in" requirement related to the appellant's residence in Oman, a country of which she is not a national, and in which she was not living at either the date of her entry clearance application or at the date of the respondent's decision. Consequently, the Judge materially erred in his consideration of the relationship requirement established by paragraph E-ECDR.2.5.

42. Additionally, the Judge erred by not considering the application of paragraph A39 of the Rules. We consider this element of the respondent's decision when remaking the decision below.

Remaking the decision

43. Upon the panel confirming that the decision of the First-tier Tribunal would be set aside, Mr Jafar and Ms Everett were content for the panel to proceed with the remaking hearing and for there to be submissions only. The respondent again took no adverse credibility position in respect of the appellant and the sponsor.

44. Ms Everett observed the facts arising in this matter, particularly that the appellant had fled civil war and made her entry clearance application only ten days after her arrival in Egypt. She observed the panel's conclusion as to law addressed above. She properly accepted that on the facts arising the suitability, relationship and financial requirements of section EC-DR were met. The sole issue outstanding under the Rules was the requirement under paragraph A39 for the appellant to have provided a valid tuberculosis medical certificate. The respondent's position was that the appellant applied for entry clearance in Egypt, and no valid medical certificate issued by an approved medical practitioner was provided with the application. Whilst Egypt was not listed as a country under Appendix T, as then in force, Sudan was.

45. An applicant making an application for entry clearance to come to the United Kingdom for more than six months, who lived in a country listed in Appendix T for more than six months immediately prior to their application, was required by Appendix T to present a valid medical certificate confirming that they had undergone screening for active pulmonary tuberculosis.

46. Though present in Egypt at the time of application, as a consequence of the appellant having resided in Sudan during the previous six months, she was required to produce a tuberculosis medical certificate from an approved medical practitioner. She did not do so.

47. We observe that paragraph C39 of the Rules established an exception at the time of the application. Upon a reasonable reading of this paragraph, we conclude that the appellant did not benefit from its clear and plain terms.

48. However, this is not the end of the matter. We observe GEN.3.2. For the reasons detailed at the conclusion of the resumed hearing, we are satisfied that on the particular facts arising in this matter, there are exceptional circumstances which would render refusal of entry clearance a breach of article 8 because such refusal would result in unjustifiably harsh consequences for the appellant, her sponsor and her other children residing in the United Kingdom, who would be affected by a decision to refuse the application.

49. The sponsor explained in her witness statement filed with the First-tier Tribunal, and her evidence was not contested by the respondent, that the entry clearance application was submitted on 4 May 2023, ten days after the appellant arrived in Egypt from Sudan. Whilst a chest X-ray and a medical report was submitted with the application, there was no Home Office approved clinic in Egypt at the time of application. The appellant was unable to attend an approved clinic in Sudan and secure the required medical certificate because of the civil war. The British Embassy in Khartoum was temporarily closed, and no approved clinic was operating in Sudan. A tuberculosis testing centre opened in Egypt in September 2023, several months after the application was made and some days after the appeal was filed with the First-tier Tribunal. The appellant accessed an approved clinic and was screened. The tests were subsequently undertaken in Jordan and a copy of the resulting tuberculosis medical certificate, dated 13 March 2024, confirms that there was no evidence of active pulmonary tuberculosis. Ms Everett considered the certificate and raised no objection.

50. Consequently, the sole reason under the Rules for refusing the entry clearance application was the failure to provide a tuberculosis medical certificate. We accept that such failure flowed from the appellant fleeing civil war and relocating to a country where no approved tuberculosis medical test could be accessed. Having undertaken the test, she has established that there is no evidence of active pulmonary

tuberculosis. Save for the difficulty in accessing an approved medical testing centre, she would have met all relevant Rules and secured entry to this country as an adult dependent relative. Consequent to now securing a tuberculosis medical certificate we are satisfied that exceptional circumstances exist in respect of this eighty-two-year-old appellant. Ms Everett adopted a pragmatic approach and accepted that this was one of those rare appeals where exceptional circumstances could properly be identified as arising. We are grateful to Ms Everett for adopting this approach which we consider to be the only reasonable one on the particular facts arising in this appeal.

51. Observing GEN.3.2. of the Rules, exceptional circumstances arise in this matter and consequently the appellant's human rights (article 8) appeal is allowed.

Notice of Decision

52. The decision of the First-tier Tribunal sent to the parties on 10 September 2024 is set aside for material error of law.

53. The decision is remade. The appellant's human rights (article 8) appeal is allowed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
28 January 2025