Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/19792/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 26 November 2014	**On 1 December 2014**

Before

THE HONOURABLE MRS JUSTICE ELISABETH LAING DBE
UPPER TRIBUNAL JUDGE A M KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS IVY CLARE WALTERS

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer
For the Respondent: Mr D O'Callaghan, Counsel, instructed by Duncan Lewis

DETERMINATION AND REASONS
Ex tempore

1. We refer to the parties as they were before the First-tier Tribunal. Thus, this is an appeal from a determination of the First-tier Tribunal promulgated on 10 September 2014. Permission to appeal was granted by First-tier Tribunal Judge Digney on 22 October 2014. He recounted when giving permission to appeal that the appellant, a citizen of Jamaica, had applied for leave to enter this country as an adult dependent

relative. That application was refused and an appeal against that decision was allowed.

2. The grounds of appeal argued that the judge did not deal properly with paragraph E-ECDR.2.5(b) of the Immigration Rules and that the judge wrongly concluded that it did apply. It was arguable, so said Judge Digney, for the reasons given in the application, that that paragraph did not apply and that the judge erred in law in concluding that it did. And so Judge Digney granted permission to appeal.

3. The Secretary of State's grounds of appeal recited that First-tier Tribunal Judge Simpson had materially erred in law in allowing the appeal. The grounds referred to paragraph 12 of the determination in which the judge had made findings to the effect that the relevant paragraph of the Rules was met on the basis that treatment costs were between J$250,000 and J$300,000 and that the appellant could pay for an operation in the United Kingdom because her sponsor had over £10,000 in savings.

4. The grounds go on to say that the First-tier Tribunal Judge did not convert those figures to sterling and that the sums in question converted to less than £2,000. As a result it was contended that it was entirely obvious on any assessment of the facts that the requirements of the relevant paragraph were not met in this case, and that the learned judge had erred in law in finding that they had been.

5. We take the facts from the determination of the First-tier Tribunal. The appellant is a citizen of Jamaica born on 19 October 1929. She applied for entry clearance to join her daughter, Joyce Tennyson, in the United Kingdom, as her dependent relative. She appealed the decision of the Entry Clearance Officer, Kingston, made on 13 September 2013, to refuse her leave to enter under paragraph EC-DR.1.1 of Appendix FM to the Immigration Rules.

6. The First-tier Tribunal Judge noted that neither the overseas appellant nor the respondent was represented at the hearing and that both parties had consented to the case being dealt with on the papers. She was satisfied that she was entitled to proceed on that basis.

7. The First-tier Tribunal Judge referred in paragraph 3 of the determination to the reasons for the Entry Clearance Officer's decision, as set out in a notice of immigration decision. In sum, those reasons were, firstly, that the appellant suffered from osteoarthritis, but no medical evidence regarding her condition had been submitted. Secondly, the appellant stated in Appendix 1 of the application form that she was able to perform daily tasks such as washing and dressing albeit to a limited extent, and thirdly, the appellant stated that she was a widow and that her husband had died in 2013 but she had not submitted any evidence of her living arrangements or family circumstances.

8. The First-tier Tribunal Judge's determination went on say that the respondent had asserted in the refusal of entry clearance that the appellant had stated at Appendix 1 that she lived with her daughter, Natalie Gibson, born in 1978, and her son, Wilbert Gibson born in 1975. However, it was clear from Appendix 1 that she had always

maintained that she had only one child, that is Joyce Tennyson, the sponsor. Moreover, given that the appellant was born in 1929 and her daughter in 1947, it was highly unlikely in any event that she would have given birth to two children in her late forties. The Entry Clearance Officer's assertion about this was clearly erroneous. It was most likely that the Entry Clearance Officer had confused another completely separate application with the application in question.

9. The First-tier Tribunal Judge went on to say that it was most unfortunate that this error had not been spotted during the Entry Clearance Manager's review. We interpose that Mr Nath who was representing the Entry Clearance Officer this afternoon accepted that this was a mistake in the decision.

10. The First-tier Tribunal then said that she had heard no oral evidence. She listed the materials which she had considered. They included a statement from Joyce Tennyson, her birth certificate, various financial documents, the appellant's birth certificate, a letter from the Nuttall Medical Centre, and a letter from the Railways Pension Scheme.

11. The First-tier Tribunal went on to direct itself correctly about (1) the standard of proof (2) the point of time at which the First-tier Tribunal had to consider the relevant facts, that is, at the date of the decision and (3) the facts which it was permitted to take into account, that is, the facts that were in existence at the time of the decision. The First-tier Tribunal then set out, at paragraphs 7 and 8 of its determination, the relevant requirements of the Immigration Rules. We do not need to repeat those here.

12. The key requirements which were potentially controversial were the requirements of E-ECDR.2.4 and E-ECDR.2.5. The first of those is that the applicant "... must as a result of age, illness or disability require long-term personal care to perform everyday tasks". The second is that the applicant "... 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 provide it; or (b) it is not affordable".

13. The First-tier Tribunal observed that it was not in dispute that the appellant was an 84 year-old widow. The Tribunal accepted as reliable the information in her application and in the grounds of appeal that she had only one child, that is the sponsor, who is a British citizen and resident in London. The First-tier Tribunal went on to make clear, for the avoidance of doubt, its finding that the appellant did not have any other children, whether named Natalie or Wilbert Gibson, or otherwise. In those circumstances the Tribunal was satisfied on the balance of probabilities that in practical terms the appellant had no close relatives in Jamaica to whom she could turn for practical, emotional or financial support in the long term.

14. The Tribunal noted that the appellant received three pensions and what her average yearly net income was. However, the Tribunal said, the fact that the appellant had her own financial resources was irrelevant for these purposes. It was not a

requirement of paragraphs E-ECDR.2.1 to 3.2 that she be wholly or mainly financially dependent on her sponsor.

15. What was required, the Tribunal said, was that she must as a result of age, illness, or disability require long-term personal care to perform everyday tasks. As to that, the Tribunal said, there was a report from Dr Ian Neil, a consultant orthopaedic and spinal surgeon, in which he said that the appellant was suffering from (a) lumbar spondylosis, spinal stenosis and senile osteoporosis and (2) severe osteoarthritis of the right hip and ankylosis causing right leg shortening and should consider a right total hip replacement. She also had mild osteoarthritis of the left hip.

16. The Tribunal's conclusion in the light of that medical evidence was as follows: "In my view these conditions, together with her advanced age, almost certainly result in a need for long-term personal care and practical and emotional support."

17. The Tribunal next considered whether such care was available in Jamaica. It noted that the appellant had no close relatives in Jamaica to whom she could turn for emotional or physical support and that although it might be possible to approach friends for short-term care, the appellant required a total hip replacement and ongoing reliable domestic help, neither of which was readily available in Jamaica. The Tribunal noted that in 2012 only three hospitals in Jamaica, the Cornwall Regional Hospital, the University Hospital of the West Indies, and Kingston Public Hospital provided such treatment, the waiting time for which was more than eighteen months, and the cost of the implants, that does not presumably include the cost of the operation or hospital care, was between J$250,000 and J$350,000.

18. The Tribunal was satisfied on the balance of probabilities that such an operation in the United Kingdom would not result in reliance on public funds as the appellant had over £10,000 of savings in her Santander account. The Tribunal said that the sponsor's ability to maintain and accommodate her mother in London without recourse to public funds was not challenged and in any, event, having seen the sponsor's bank statements and her own pension payments the Tribunal was satisfied on the balance of probabilities that the appellant could and would be maintained and accommodated adequately in the United Kingdom without recourse to public funds. Given that the sponsor was a British citizen the appellant should be granted indefinite leave to remain (we assume she meant indefinite leave to enter) provided of course that the sponsor was prepared to provide the requisite undertaking and guarantee.

19. In the event the appeal was allowed.

20. In those circumstances the first question for us is whether the Tribunal erred in law. Mr O'Callaghan submits that the Tribunal can be taken to have been aware of the conversion rate of Jamaican dollars to pounds sterling and the fact that that conversion is not expressly carried out in the determination does not indicate that the Tribunal erred in law.

21. Mr Nath for the Entry Clearance Officer submits that the Tribunal should have spelled out this reasoning clearly and its failure to do so shows that it did err in law.

22. In our judgment the focus on the operation alone is misplaced. What the Tribunal was doing was to assess in the round whether the requirements of the relevant paragraph of the Rules were met or not. The need for the operation was only one part of that assessment. The conclusions of the Tribunal were first, that the conditions which were noted in the medical report together with the appellant's advanced age, and what is recorded on the application form, almost certainly resulted in the need for long term personal care, including in relation to performing everyday tasks, as well as practical and emotional support; and second, that those would not be available in the long term in Jamaica. As regards the phrase "everyday tasks", it is apparent from paragraphs 11 and 12 together that the First-tier judge did conclude that the appellant required long terms personal care to perform those tasks. It seems to us on the facts that those were conclusions to which the Tribunal was entitled to come and they disclose no error of law.

23. Accordingly, we are not satisfied that the First-tier Tribunal made any error of law, and the decision of the First-tier Tribunal to allow the appeal therefore stands.

24. The Secretary of State's appeal to the Upper Tribunal is therefore dismissed.

Signed Date 28/11/2014

Upper Tribunal Judge Mrs Justice Elisabeth Laing DBE