



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

Appeal Number: OA/05425/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 27 March 2015**

**Determination Promulgated  
On 28 April 2015**

**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**ENTRY CLEARANCE OFFICER, PRETORIA**

Appellant

**and**

**SAMYUKEL MATAMBANDAZO**

Respondent

**Representation:**

For the Appellant: Mr M Matthews, Senior Presenting Officer

For the Respondent: Ms Jackfama the Respondent's mother (the sponsor)

**DECISION ON ERROR OF LAW**

1. The Entry Clearance Officer has been granted permission to appeal the decision of First-tier Tribunal Judge Majid. I shall refer to the respondent in these proceedings as the claimant. For reasons given in his decision following the appeal heard on 8 October 2014, the judge allowed the claimant's appeal under the Immigration Rules and on human rights grounds against the decision dated 15 January 2013 refusing him entry clearance to the United Kingdom as an adult dependent relative under the relevant Immigration Rules including EC-DR.1.1 of Appendix FM.
2. The case before the Entry Clearance Officer was that the claimant suffers from mental health illness and requires the care of his mother in the

United Kingdom. The ECO contended that the claimant's mother had not provided a written undertaking to be responsible for his maintenance and accommodation (EC-DR.1.1(c) with reference to S-E.2.4). Furthermore the evidence indicated the claimant was able to carry out everyday tasks funded by his mother. The letter from Parirenyatwa Hospital describing the claimant's medical condition did not state an inability to manage himself. There had been a failure to provide any details of the care arrangements that had been made in the UK and it was unclear whether the claimant's mother would be in a position to meet the costs of such care as is required. She had not submitted bank statements in support of the application to show she would be able to meet the costs of the respondent's maintenance and care in the UK.

3. The sponsor appeared before the First-tier Tribunal. She relied on a skeleton argument arguing that the application had been made under paragraph 319V(i)(f) based on her status as a refugee as well as the application of Article 8. In addition she relied on a statement explaining the consequences the respondent's diagnosis in December 2011 with depression and a psychotic disorder. This observes that she had referred him for medical help but there was little if anything that doctors could do apart from advice that psychiatric help should be sought. She refers to the church looking after her son who had been prescribed some medication which was not available in pharmacies. When obtained her son reacted badly to that medication. He could no longer live without supervision. She was his sole surviving parent. Although the church was providing him with accommodation they could not continue to do so for "a long time". Reference is made to the poor quality for the health delivery system in Zimbabwe. The maintenance and accommodation issues are addressed with reference to the proof she had submitted with the application regarding her accommodation, her regular employment, thus her regular income taken with a student grant.
4. The challenge is three fold. The first asserts that the judge failed to address the aspects of the Rules the decision had identified as not met. The second argues the Article 8 analysis was inadequate and the third arising out for that criticism is a failure to apply s.19 of the Immigration Act 2014 (i.e. part 5A of the Nationality, Immigration and Asylum Act 2002).
5. The sponsor reiterated her concerns about her son's welfare and her responsibility for him. She explained that she has now qualified as a nurse and would be able to care for the respondent. She also confirmed that the bishop is still caring for her son in Zimbabwe.
6. Mr Matthews had nothing of substance to add to the grounds of challenge except to identify there had been a failure in addition by the claimant to provide the documents required in Appendix FM-SE at paragraphs 33 to 37.
7. I am satisfied that the judge erred as challenged. The determination does not identify the rule that he considered benefited the claimant. It is not clear whether the judge considered the case was made out under

paragraph 391V(i)(f) based on the sponsor's claim to refugee status. The ability of the respondent to succeed under these provisions required him inter alia to demonstrate that he was "... living alone outside the United Kingdom in the most exceptional compassionate circumstances ...". The skeleton argument which appears to have been prepared by the sponsor's previous representatives refers to an earlier application having been unsuccessful because the claimant lived with his aunt. The medical condition arose subsequently and this has led to her refusal to live with him.

8. The judge refers in his decision to exceptional compassionate circumstances but it is not clear whether this was in the context of the Immigration Rules or on the Article 8 analysis. The overall picture painted by the determination is one of a blurring of aspects of the rules that may or may not be relevant and Article 8 issues without any sensible organised structure.
9. Accordingly I set aside the decision and as I indicated at the hearing it will be remade before me on a later date.
10. It is in the interests of the sponsor to obtain legal advice and to ensure representation on that occasion. The issues to be addressed in the remaking of the decision include
  - (i) Identification of the relevant Immigration Rules.
  - (ii) To identify precisely the documentation that was submitted with the application in the light of the sponsor's assertions that she had sent an undertaking and bank statements with the application.
11. I explained to the sponsor that a remaking of the decision would be confined to a consideration of matters appertaining at the time of the decision to refuse, that is to say January 2013. A change in circumstance as to the claimant or indeed the sponsor might possibly be excluded from any reconsideration. It is for the sponsor to take advice whether to continue to pursue this appeal or make a fresh application.
  - (a) In the light of the absence of a bundle from the Entry Clearance Officer I direct that this be obtained by the Secretary of State within 28 days and served on the sponsor and the respondent's advisors if they are instructed.
  - (b) The sponsor is directed to promptly notify the Secretary of State if she does engage representatives.

#### NOTICE OF DECISION

The appeal is allowed to the extent the decision is set aside and the matter is remitted to differently constituted First-tier Tribunal.

Signed

Date 27 April 2015

A handwritten signature in blue ink, appearing to read "Dawson", with a horizontal line extending to the right.

Upper Tribunal Judge Dawson