



IAC-FH-CK-V1

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

Appeal Number: OA/05829/2014
OA/05830/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 October 2015**

**Decision & Reasons Promulgated
On 11 November 2015**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

Appellant

and

**SYEDA SADIA HAIDER RIVZI
SYEDA MAHA FATIMA
(NO ANONYMITY DIRECTIONS MADE)**

Respondents

Representation:

For the Appellant: Mr S. Walker, Home Office Presenting Officer

For the Respondent: Mr P. Saini, counsel, instructed by Saj Law Chambers

DECISION AND REASONS

1. The 1st Respondent, who was born on 3 October 1984, is a national of Pakistan. She married in 2006 and on 18 August 2008, her daughter, the 2nd Respondent, was born. It is the 1st Respondent's case that her husband died of a heart attack on 23 February 2012.

2. On 12 December 2012 the Respondents applied for entry clearance as visitors but their applications were refused on 20 December 2012.
3. On 7 March 2014 the 1st Respondent applied for entry clearance for settlement as an adult dependent relative of her brother, Muhammad Qasim Raza, who is a British citizen working in the United Kingdom. The 2nd Respondent applied for entry clearance as the 1st Respondent's dependent. Their applications were refused on 21 March 2014. The Entry Clearance Officer stated that he was not satisfied that the 1st Respondent required long-term personal care to perform everyday tasks as a result of age, illness or disability. He was also not satisfied that she was unable, even with the practical and financial help of her sponsor, to obtain the required level of care in Pakistan as it was not available or affordable. He also stated that he was not satisfied that there were serious and compelling family or other considerations which made the 2nd Respondent's exclusion undesirable.
4. The Appellant appealed on 28 April 2014. She asserted that the First-tier Tribunal Judge had failed to consider whether the requirements of paragraphs 34 - 37 of Appendix FM-SE had been complied with when considering the 1st Respondent's appeal and whether she required long term personal care to perform everyday tasks as the result of her mental condition.
5. Permission to appeal was granted by First-tier Tribunal Judge Cruthers on 7th July 2015. He found that it was arguable that First-tier Tribunal Judge Mace had paid insufficient attention to the evidential requirements contained in Appendix FM-SE.

ERROR OF LAW HEARING

6. The Appellants' counsel arrived late to the hearing, having been very recently asked to substitute for another member of his chambers who was still in another court. In her grounds of appeal the Appellant had put the Tribunal and the Respondents on notice that she would be applying to rely on additional evidence which was not before the First-tier Tribunal Judge. The copy of the application form was not made available to just prior to the hearing. However, the Respondents' counsel did not object to it being adduced and in any event they had been on notice that the Appellant would be relying on this form since they were served with her notice of appeal. I admitted the copy of the application form under Regulation 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. In the notice, the Appellant had explained that it had not been before the First-tier Tribunal Judge as she had not been able to provide a Home Office Presenting Officer for that hearing. I find that the delay in producing the application form was not unreasonable. I also reminded myself of the overriding objectives which underpinned the Regulations, which include the need to deal with cases fairly and justly, avoiding unnecessary formality and avoiding delay.

7. However, I gave counsel time to take instructions on the document, which were provided by the Appellants' sponsor and other family members. He told me that he was instructed to continue with the hearing and that the 1st Respondent had not completed the application form but had relied on an agent to do so. Therefore, any inconsistencies arose from errors made by that agent.
8. The Home Office Presenting Officer noted that in the application for entry clearance submitted on 12 December 2012 the 1st Respondent had said that she lived with her husband and worked as a teacher at the Khatoon-E-Pakistan English Medium School in Karachi. He submitted that this contradicted her present application which said that her husband had died on 23 February 2012 and that even before his death she was wholly dependent upon her husband and was not working. This cast doubt on the evidence given by her witnesses at the hearing before First-tier Tribunal Judge Mace.
9. The Respondents' counsel replied and said that he was instructed that the application in 2012 was made by an agent. He was also instructed that the 1st Respondent was not fluent in English and was illiterate. He submitted that as the application form had not been relied upon by the Entry Clearance Officer or Entry Clearance Manager or served with the application for permission to appeal, I should attach little weight to it. In addition, he submitted that the email address on the 2012 application was not hers and that the telephone number was also wrong and he relied on the fact that the application form was not signed.
10. He also submitted that paragraphs 12, 14, 15 and 16 of the First-tier Tribunal Judge's decision and reasons referred to sufficient evidence to establish that the 1st Respondent met the requirements of Section EC-DR of Appendix FM. In addition, he asserted that it was not in the 2nd Respondent's best interests to be prevented from going outside or going to school. In addition, he submitted that, if there were any errors of law in the decision and reasons, they were not material and asserted that the evidence relied upon met the requirements of Appendix FM-SE.
11. Paragraphs 34 to 37 of Appendix FM-SE to the Immigration Rules details the evidence which an applicant needs to provide to show that he or she requires long-term personal care. Paragraph 34(a) states that medical evidence is needed to show that his or her physical or mental condition means that he or she cannot perform everyday tasks. The First-tier Tribunal Judge took into account letters written by Dr. Shahid Daudpote, dated 2nd May 2014 and 30 December 2014. I note that she should only have taken into account the contents of those letters which were evidence of the circumstances appertaining at the date of the Entry Clearance Officer's decision. Therefore, she was only entitled to take into account evidence relating to her appointments prior to 21 March 2014. This was restricted to the fact that she attended his surgery on 2 March 2012 when he diagnosed her as suffering from great depression and severe anxiety

following the death of her husband. He did not confirm that her mental condition was such that she could not perform everyday tasks.

12. In addition there was no evidence to establish that the 1st Respondent could comply with paragraph 35 of Appendix FM-SE and show that, even with the practical and financial help of the sponsor in the UK, she could not obtain the required level of care in Pakistan. This evidence needed to be from (a) a central or local health authority (b) a local authority and (c) a doctor or other health professional. There was no evidence from a central or local health authority or a health authority and Dr. Daudpote simply did not address this issue. At most he said that she required constant care and attention. In relation to paragraph 36 the 1st Respondent had also not shown why her family could not continue to support her in Pakistan.
13. The First-tier Tribunal Judge's failure to address these evidential requirements of Appendix FM-SE amounted to an error of law. This error of law also impacted on the 2nd Respondent's case as she had sought settlement as the 1st Appellant's dependent.
14. The First-tier Tribunal Judge Mace did not go on to consider the appeals in the context of Article 8 of the ECHR but, even if she had, the contents of the application form submitted in 2012 now cast doubt on whether she continues to enjoy a family life in Pakistan.
15. Counsel for the Respondents said that he was instructed that the form contradicted the evidence given at the appeal before First-tier Tribunal Judge Mace because it had been completed by an agent. However, in answer to question 121 of the application form the 1st Respondent had said that she had not used an agent or representative to complete the application. The front page of the application form also said that she had submitted the form in person and that it had been submitted on line. I accept that this is why it was not signed by her.
16. Counsel for the Respondents said that he was instructed that the 1st Respondent was illiterate and could not speak English but did not explain why the previous application form had said that she taught at an English medium school or what evidence was provided to establish that she was for the purposes of application for entry clearance as visitors. I also note that the earlier form indicates that she had an email address connected with the school she was said to work at and that the core part of telephone numbers given on both application forms was the same.
17. I have also taken into account the fact that there was no mention of the 1st Respondent being in need of long term care in the letter, dated 7 March 2014, from the Respondents' solicitor. Instead, the letter referred to them meeting the requirements of unspecified immigration rules and asserted that the 1st Respondent was a widow who was wholly and solely dependent upon the sponsor and that the Respondents did not have any male relative to look after them in Pakistan.

18. I note that the Respondents had relied on a death certificate said to be of the 1st Respondent's husband but its authenticity is cast into doubt by the new evidence now before the Tribunal. This also casts doubt on the oral evidence given before First-tier Tribunal Judge Mace and her findings of fact. Therefore, I find that the proper response is to remit the appeal to the First-tier Tribunal to be re-heard in the light of all relevant evidence, including any evidence which may have been submitted in support of the 2012 application.
19. Taking all of this into account I find that the First-tier Tribunal Judge's decision and reasons did contain material errors of law, as she had not referred to the requirements contained in Appendix FM-SE.

Notice of Decision

1. The First-tier Tribunal Judge's decision and reasons to allow the Respondents' appeals did include material errors of law and I set aside her decision.
2. I remit the appeal to the First-tier Tribunal for a *de novo* hearing under Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 before a First-tier Tribunal Judge other than First-tier Tribunal Judge Mace.



Signed

Date 9 October 2015

Upper Tribunal Judge Finch