



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

Appeal Number: OA/07315/2012

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 3 October 2013**

**Determination issued on  
on 8 November 2013**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**HALW ISHAQ HERSI**

Appellant

**and**

**ENTRY CLEARANCE OFFICER, CAIRO**

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Mr N Barnes,  
Solicitor

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

Introduction.

- 1) The appellant identifies herself as a citizen of Somalia, born on 16 June 1996. On 2 January 2012 she applied for entry clearance for settlement as the dependent relative of her sister in the UK under paragraph 319X of the Immigration Rules.

2) The respondent refused the application by notice dated 13 March 2012. The respondent did not accept that the appellant's sister in the UK was the only person able to care for her. No evidence had been given of the accommodation available in the UK or her sister's ability to provide. The only evidence of the appellant's identity was a "UNHCR refugee card ... issued without documentary evidence and in the details you give." It was not accepted that she was less than 18 years of age. There was no evidence that the UK sponsor was responsible for her financial well being or had input into her health, education and life decisions. The Entry Clearance Officer was not satisfied that the appellant was wholly dependent on her sponsor or that she was not leading an independent life. There was no evidence of maintenance and accommodation without recourse to public funds. The notice does not refer to Article 8 of the ECHR.

### Grounds of appeal from the ECO's decision to the FtT.

3) The grounds were:

- i) There are serious and compelling family considerations which merit the issue of UK entry clearance.
- ii) The appellant maintains that she is 16 years of age as claimed.
- iv) The appellant maintains she enjoys family life with the sponsor and that refusal of entry clearance breaches her right to family life under Article 8 ECHR.

4) There was no ground (iii). While grounds do not have to intimate an appellant's case in detail, these lacked any useful specification.

### The First-tier Tribunal decision.

5) Judge Clough heard the appellant's appeal on 29 January 2013. In her determination, promulgated on 27 February 2013, the judge says at paragraph 11 that she checked a website regarding payments allegedly made by the sponsor to the appellant, and found discrepancies which undermined the sponsor's evidence. At paragraph 12 the judge notes discrepancies between the sponsor's family information as given at screening interview and at substantive interview. At paragraph 13 the judge says that the case was argued on Article 8 only. The only documentary proof of relationship was the untranslated UNHCR refugee registration card, which the respondent had not accepted because the details were supplied by the appellant. The judge notes that the card gives the appellant's name as Hallow Hersi "not Halwo Isihag Hersi or a similar transliteration". At paragraphs 14 and 15 the judge is unable to find that the appellant and sponsor are related as claimed, that the appellant is living alone in Cairo or that the sponsor sent her money. Article 8 was therefore not engaged, and the appeal was dismissed both under the Rules and under Article 8.

Grounds of appeal to the Upper Tribunal.

- 6) Ground one is that the First-tier Tribunal Judge erred in law by relying upon post-hearing internet research without giving parties an opportunity to make submissions thereon. Reference is made to EG (Post-hearing internet research) Nigeria [2008] IMM AR 457.
- 7) Ground two is that the judge erred at paragraph 13 “in discarding the UNHCR refugee registration document”, because the UNHCR is an international body charged with protection of refugees, and has developed detailed procedures.
- 8) Ground three is that the judge erred by failing to exercise anxious scrutiny in finding the registration document to have no probative value.
- 9) The second and third grounds are linked. The points were not argued to the First-tier Tribunal.
- 10) On 9 April 2013 First-tier Tribunal Judge Chambers granted permission to appeal on the post-hearing internet research issue. The grant does not seem to extend to the other two grounds, but is perhaps not entirely clear.

The hearing in the UT.

- 11) Mr Winter advised us at the outset that parties were agreed that the first ground discloses error of law. He said the case should be remitted to the First-tier Tribunal.
- 12) We observed that if the judge’s findings based on internet research were removed from the determination, the findings of non-relationship and of discrepancies in family details remain, and it was difficult to see how the appeal might have succeeded on the evidence which was placed before the First-tier Tribunal, and why there should be another hearing.
- 13) Mr Winter submitted that the grant of permission might be construed as giving permission also on grounds two and three. He accepted that permission to appeal on a wider basis could have been sought from the Upper Tribunal, following receipt of the grant, but that was not done. He said there had been some legal aid difficulties in the interim.
- 14) We referred to the various points set out in the respondent’s refusal notice, summarised above. Mr Winter conceded that there was no evidence to show that the requirements of the rules could be met, leaving Article 8 only. It had to be accepted that there was nothing to show adequate provision of accommodation and maintenance, so the appellant would enter the UK on that understanding. Her Article 8 case depended on her best interests as a child. In Egypt her only status was her UNHCR registration,

and she lived in accommodation provided by UNHCR. It was unclear whether she lived with a second cousin or with a friend. Mr Winter suggested that the appellant would be on a legally more secure basis in the UK than in Egypt, and would be able to work. He accepted that there had been no evidence of any job available to her, and that she would have no access to benefits. However, he said it reasonably be inferred that in Glasgow she might find jobs such as shop work or cleaning. He could not point to anything else to demonstrate how her best interests might be served by her being in the UK, and agreed that the same amount of money sent to her in Egypt would go further than in the UK.

- 15) Mr Winter said that if error of law could be derived from grounds 2 and 3, there might eventually be a finding that the appellant and sponsor are related as sisters. If the determination were to be set aside, he would apply to lead further evidence. A statement had been obtained from the sponsor, although only in the last 24 hours. The present finding was that Article 8 was not even engaged, due to lack of relationship, but UNHCR documents are readily verifiable, and the judge erred by not appreciating this, even if the argument was not made. The UNHCR publishes detailed guidance on its registration procedure, although such information was not before the First-tier Tribunal, and no formal application (in accordance with procedure rules and practice directions) had been made to introduce it before the Upper Tribunal. He understood that UNHCR keep photographic records and parentage details and that checks made with them might resolve the doubts raised by the Entry Clearance Officer. The Entry Clearance Officer and the judge failed to ensure that such checks were carried out. As the legal aid position had been resolved only within the 24 hours before the Upper Tribunal hearing, the appellant had not yet caused any enquiries to be made with the UNHCR.
- 16) Finally, Mr Winter submitted that the accepted error by the judge might have so influenced her further findings that they were not to be relied upon.
- 17) We advised that the appeal would be dismissed.

#### Our conclusions and reasons.

- 18) The judge's error was not so much in her internet research (although that is usually undesirable) as in not reconvening the hearing after having identified the information she did.
- 19) We note in passing that although the judge fell into error, the appellant has not yet suggested that, having been alerted, she is able to remedy the deficiencies spotted by the judge.
- 20) The judge's further findings were not influenced by the error about internet research. Even without that error, the appellant could not have succeeded on the evidence she placed before the First-tier Tribunal. On the most benevolent view, it was incapable of making out her case. Failure

under the Rules meant that it had to be accepted that on arrival in the UK she could not be adequately accommodated and maintained. There was nothing to show that placing her in such a situation might promote her interests as compared to living in Egypt in receipt of similar remittances, which on the face of it would put her in a better position in Egypt than in poverty in the UK.

- 21) The judge was not bound to embark of her own initiative on an investigation into UNHCR procedures. No proper application has been made to bring evidence of such procedures into these proceedings. That would come much too late. An unrelated error of law does not entitle an appellant to assemble a case which she failed to formulate either to the ECO or to the First-tier Tribunal when she had the chance.
- 22) The judge's error does not require us to set the determination aside, because the appellant could not have succeeded anyway, on the case she chose to present.
- 23) The appellant's remedy is by way of further application to the respondent, if she now has the necessary evidence. We record that given the inadequacy of the evidence before her, the judge's findings were necessarily so incomplete that they should not, without further consideration, be relied upon against the appellant in any future application.
- 24) The determination of the First-tier Tribunal shall stand.
- 25) No order for anonymity has been requested or made.



9 October 2013  
Judge of the Upper Tribunal