



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

Appeal Numbers: OA/16440/2012  
OA/16448/2012  
OA/16461/2012  
OA/16463/2012  
OA/16465/2012  
OA/16467/2012  
OA/16468/2012  
OA/16469/2012

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 August 2013**

**Determination Promulgated  
On 13 August 2013**

**Before**

**UPPER TRIBUNAL JUDGE MOULDEN**

**Between**

**MRS L M D  
and seven other appellants  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER - NAIROBI**

Respondent

**Representation:**

For the Appellant: Mr S Jaisri of counsel instructed by Freemans solicitors  
For the Respondent: Mr P Deller a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are citizens of Somalia. The first appellant (I will refer to her either as "the wife" (although the relationship is disputed) or "the first

appellant" as the context merits) is the mother of all the other appellants except for the second appellant ("I") (I will refer to them as "the children"). Her husband, the sponsor, is the father of all the children. He arrived in this country on 29 October 2010 and claimed asylum. He was granted refugee status on 25 November 2010. The appellants were born in 1970, 1999, 2002, 2004, 2006, 2007, 2008 and 2009. I have put these dates in chronological order. They are not the order in which the appeal numbers appear or in which they are listed in the heading to the determination under appeal.

2. The appellant has been given permission to appeal the determination of First-Tier Tribunal Judge Wiseman who dismissed their appeals against the respondent's decisions of 28 July 2012 to refuse them entry clearance for settlement in the United Kingdom as the wife and children of the sponsor under the provisions of paragraph 352A (in respect of the wife) and 352D (in respect of the children) of the Immigration Rules.
3. The respondent was not satisfied that the wife and the sponsor were married, that their marriage was subsisting or that they intended to live permanently with each other. The application was refused under the Immigration Rules and after consideration of Article 8 grounds. In relation to the children the respondent did not accept that the sponsor was their father or that the requirements of paragraphs 352D (iii) and (iv) were met.
4. The appellants appealed and the appeal was heard by the judge on 1 May 2013. Both parties were represented, the appellant by Mr Jaisri, who appears before me. The sponsor gave evidence through an interpreter. By this stage there were DNA reports showing that the wife and the sponsor were the parents of all the children other than I and that the sponsor was his father. The position appears to have been accepted by the respondent's representative, the judge accepted that the claimed relationships were established and they have not been called into question since then.
5. After a careful review of the evidence the judge found that the appellants had not established that the marriage of the wife and the sponsor was subsisting, that they were together when he left for the United Kingdom or that the children were part of the sponsor's family unit at that time. He dismissed the appeals under the Immigration Rules and on Article 8 human rights grounds.
6. The judge also made an anonymity direction which I direct should remain in force.
7. The appellants appealed and permission to appeal was granted by a judge in the First-Tier Tribunal. The four grounds of appeal argue that the judge erred in law. Firstly, by misunderstanding the nature of the relationship between the sponsor, his wife and his other wives in the light of both the evidence and Islamic culture. Secondly, by failing to make a clear finding as to the credibility of the sponsor in particular as to how the family became separated. Thirdly, and in the alternative, by rejecting the sponsor's evidence as to how

the family came to be separated without giving proper reasons. Fourthly, that if the judge had concerns about the evidence he should have put these to the appellants' representatives so that they could be dealt with at the hearing.

8. I heard oral submissions from both representatives. Mr Jaisri relied on the grounds of appeal. He submitted that the sponsor had been married four times but that only three of these marriages were potentially relevant. Apart from his marriage to the first appellant the two subsequent marriages were both in 2006 and were terminated by divorces in 2008 and 2009. They were barely relevant because they ended long before the applications were made. I is the child of the sponsor by one of these two marriages in 2006. Mr Jaisri drew my attention to the sponsor's screening interview, which was before the judge. He also said that those instructing him had now produced the sponsor's full interview record, although he accepted that this was not before the judge. He was of the view that this did not impinge on or make any difference to the question of whether the judge erred in law. He submitted that when, in paragraph 56, the judge referred to the "odd history" he had shown that he had failed to consider this in the light of Somali culture and values.
9. Mr Deller submitted that the main difficulty encountered by the judge was not so much contradictory evidence as a dearth of evidence needed to establish the circumstances on which the appellants relied. He submitted that the judge correctly applied the relevant Immigration Rules. It was clear that he appreciated the situation in this war-torn country. Looking carefully at the evidence before the judge he submitted that there was a proper appreciation of the religious and cultural norms of the country and that, absent expert evidence, these did not explain the unusual circumstances of two of the sponsor's four marriages and divorces. Both parties were represented at the hearing, the appellants by competent and experienced counsel. It was clear that the judge had not applied and overly literal or strict interpretation of the Immigration Rules. On their own evidence the family were not together when the sponsor left Somalia.
10. In his reply Mr Jaisri said that the sponsor had been a prosperous shopkeeper. He had had to divorce two wives because of the deteriorating situation in Somalia. He was not able to explain why there was no witness statement from the wife. The judge should not have taken account of the circumstances of the sponsor's other marriages and divorces. These were irrelevant bearing in mind that the last of them had come to an end in 2009. The last of the children was born in November 2009, only one month before the family separated. I was asked to find that the judge erred in law and to set aside the decision. I reserved my determination.
11. The judge records that at the beginning of the hearing he expressed concerns that he might not have had the full respondent's bundle(s). Both representatives assured him that he had. I agree with his conclusion expressed in paragraph 2 that there is likely to have been further material in the respondent's bundles, but since then nobody has suggested that anything

relevant was missing except possibly the record of the sponsor's full interview when he came to this country. This would not necessarily have been in any of the respondent's bundles. Mr Jaisri said that he had seen it and it had no relevance to the grounds of appeal.

12. In paragraph 53 of the determination the judge said that after about eight years of marriage to his wife during which four of their children were born the family situation then went "somewhat haywire". He went on to explain what he meant by this and to address his concerns in the following paragraphs. I can find no indication that this very experienced judge assessed the facts in the light of British perceptions or that he failed to take into account the history, religious requirements and cultural norms of Somalia. The whole tenor of the determination indicates that he did take these into account, for example the references to the "war-torn country" and "the very different customs in countries such as Somalia" (paragraph 46).
13. Whilst it would not be unusual for the sponsor to take more than one wife the fact that he had married a second and a third wife in the same year, 2006, and then divorced them in 2008 and 2009 was unusual and merited further explanation. The judge was entitled to find that the sponsor's explanation, that as a Muslim he was entitled to take more than one wife and he wanted more children, was not persuasive. The explanation provided by Mr Jaisri at the hearing before me, that the sponsor married his second and third wives when he was a prosperous shopkeeper but had to divorce them when conditions in the country deteriorated, was not the explanation the sponsor provided at the hearing before the judge.
14. I do not accept the submission that the judge's consideration of the sponsor's second and third marriages was irrelevant. He was entitled to find that it was relevant to his consideration of his marriage to the first appellant and the family situation generally. The close interconnection of the wives and children is emphasised by the fact that I is the child of one of the wives the sponsor married in 2006.
15. I can find no merit in the argument that the judge failed to make a clear finding in relation to the sponsor's evidence as to how the family became separated. In paragraph 59 the judge accepted that the sponsor and the appellants had lived apart for a significant period prior to his departure because they "had become scattered by the problems in Somalia".
16. The appellants were represented by experienced and competent counsel to whom the gaps in the sponsor's evidence would have been obvious. The judge did not raise any new issues not covered by the reasons for refusal and I can find no merit in the argument that there were any points which the judge should have put to the appellants' counsel or the sponsor at the hearing.
17. It is significant and the judge was entitled to take into account the surprising absence of any statement from the wife. The sponsor's explanation, that he

was not aware of the need to this takes no account of the fact that he was legally represented and said that he was "comfortable" with his representation. The way in which the judge dealt with the lack of a statement from the wife (paragraph 62) was not so much as a matter going to credibility but because she should have been able to shed light on the important areas relating to their relationship where the sponsor's evidence was vague, unpersuasive, or incomplete.

18. The judge found that the appellants had failed to show that they met the requirements of the Immigration Rules. On the evidence that was a conclusion open to him. There is no error of law and I uphold the judge's determination.

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Signed  
Upper Tribunal Judge Moulden

Date 9 August 2013