



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/17552/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 15th August 2014

Determination Promulgated
On 28th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MR NADO AHMED AYANLE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Evans
For the Respondent: Mr McVeety

DETERMINATION AND REASONS

Introduction

1. The Appellant born on 1st January 1945 is a citizen of Somalia. The Appellant was represented by Miss Evans of Counsel. The Respondent was represented by Mr McVeety, a Home Office Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for entry clearance for settlement as the adult dependent relative of her son in July 2013. Her application was refused by the Respondent on 6th August 2013. The Appellant appealed that decision and her

appeal was heard by Judge of the First-tier Tribunal Brunnen sitting at Manchester on 29th April 2014. He had dismissed the Appellant's appeal under both the Immigration Rules and the Human Rights Act 1998.

3. Application for permission to appeal was made and granted by Judge Ievins on 20th June 2014. The judge noted that the Grounds of Appeal may be thought little more than a disagreement with the conclusions reached by the judge but it was said that if certain factors were taken into account they may amount to something more than a disagreement. Directions were issued for the Upper Tribunal to decide firstly whether or not an error of law was made. The Respondent had opposed the Appellant's application. The matter comes before me in accordance with the directions issued.

Submissions on behalf of the Appellant

4. Miss Evans referred again to the application for permission to appeal and made reference to the judge not taking account of postdecision features such as the attack on a shopping mall arguing that such features were nevertheless circumstances appertaining at the time and should have been taken into account in terms of the Appellant's ability to live in Kenya.

Submissions on behalf of the Respondent

5. Mr McVeety noted that the Appellant could not meet the Immigration Rules and he submitted that the judge had correctly identified matters under Article 8.
6. At the conclusion I reserved my decision to consider the submissions made. I now provide that decision with my reasons.

Decision and Reasons

7. The judge in this case had provided a detailed and considered determination. He had clearly had some sympathy with the Appellant's circumstances as he recorded at paragraph 31 of the determination.
8. The judge had noted at paragraph 20 that Miss Evans of Counsel on behalf of the Appellant had rightly accepted that the Appellant was not able to meet the Immigration Rules. The Appellant's case was essentially put on the basis of Article 8 of the ECHR.
9. I deal firstly with the specific point raised before me that the judge had failed to take account of postdecision events in Kenya but that in reality those events merely disclosed the attitude of the Kenyan Government to Somali refugees existing as at the date of application.
10. The judge was clearly aware of the Appellant's personal circumstances in Kenya as evidenced within the determination and was alive to the evidence and submissions made on behalf of the Appellant. It is also clear the judge was aware of country material that had been specifically drawn to his attention as well as being contained

within the Appellant's bundle and he made reference as such at paragraph 30 of the determination. There is a reference by the judge in paragraph 30 to two separate areas of evidence. Firstly, there was the general evidence contained within various news reports that outlined the difficult conditions in which refugees from Somalia are living in the camps in Kenya. The judge was aware of that fact and indeed had already referred to such difficulties at an earlier stage in his determination at paragraph 15. The second aspect of the news report that the judge was referred to was the specific security operation that took place in March and April 2014 that sought to identify the criminals and supporters of Al Shabab as a response to the attack on the Nairobi Shopping Mall in September 2013. That was a specific security operation and it may well have affected individuals directly or indirectly related to that terrorist organisation. There was no evidence presented by the Appellant that as a 69 year old woman she had been directly affected by that matter which postdated her application. In reality there is little or no relevance attaching to that terrorist attack in relation to the Appellant. In so far as the Government may have taken a more robust or adverse approach to Somali refugees the judge was aware of that evidence and indeed had referred to it in his determination and had it in mind as part of his assessment generally.

11. In dealing with Article 8 outside of the Immigration Rules the judge had taken a most careful look at the Appellant's circumstances but had properly considered her circumstances under Article 8 in accordance with the proper approach laid down in case law. At paragraph 21 the judge had noted that there was at least an arguable case that the result produced by the Immigration Rules was unjustifiably harsh and it was for that reason that the judge as he noted found it appropriate to look at Article 8 outside of the Immigration Rules. He had taken note of all the relevant evidence and had reached conclusions based on that evidence and for proper reasons given at paragraph 31 found the refusal of entry clearance was not disproportionate and did not produce an unjustifiably harsh result.
12. The Grounds of Appeal were in reality no more than a disagreement with the judge's conclusions and there was no material error of law made in this case.

Decision

13. There was no material error of law made by the judge and I uphold the decision of the First-tier Tribunal.

Signed

Date

Deputy Upper Tribunal Judge Lever