

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

OA/18651/2013,
OA/18656/2013,

OA/18662/2013



Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House, London

On 22 July 2014

**Determination
Promulgated**

On 14 August 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AHMED ABDULAHI MAHAMUD
ABDULWAHID ABDULAHI MAHAMUD
ABDULASIIS ABDULAHI MAHAMUD
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: Miss Gunanal, of Counsel

DETERMINATION AND REASONS

1. In this appeal the Appellant is the Secretary of State for the Home Department and the Respondents are Ahmed Abdulahi Mahamud, Abdulwahid Abdulahi Mahamud and Abdulasiis Abdulahi Mahamud. For the sake of clarity however I shall refer to the Secretary of State as "the Respondent" and Ahmed Abdulahi Mahamud, Abdulwahid Abdulahi Mahamud and Abdulasiis Abdulahi Mahamud as the "the Appellants".

2. The Appellants are citizens of Somalia, born 1st January 1996, 29th February 1998 and 5th April 2000 respectively. They are the children of Halimo Ahmed Dhabaney, a British national residing in the UK.
3. The Appellants made application for entry clearance on 8th May 2013 in order to join their mother (the Sponsor) in the UK. The Sponsor came to the UK in 2003 as a refugee from Somalia she was recognised as such, and she by now, I am told, acquired British nationality.
4. In considering the Appellants' application the Entry Clearance Officer looked at the Immigration Rules and refused entry to all three Appellants under paragraph 297(i)(a)-(f).
5. The Entry Clearance Officer's consideration and refusal fell into two distinct strands.
 - (i) He was not satisfied that the Appellants had shown that they were related as claimed to their Sponsor.
 - (ii) Neither was he satisfied that the Appellants had provided "satisfactory evidence that there are serious compelling circumstances that make your exclusion undesirable".
6. Although the Entry Clearance Officer had said that he had refused under paragraph 297(i)(a)-(f) there appears to have been no separate consideration of whether the Appellants could meet 297(i)(e).
7. The Appellants' appeals came before the First-tier Tribunal (Judge Borsada) which in a determination dated 6th April 2014 allowed the Appellants' appeals under the Immigration Rules. The Judge then went on to also allow the appeals under Article 8 ECHR.
8. The Respondent sought and was granted permission to appeal on one ground only, namely that the Judge had failed to give reasons or adequate reasons for findings on a material matters (sic). The grounds then appear to criticise the Judge's Article 8 assessment by saying,

"It was made clear in **Gulshan [2013] UKUT 00640 (IAC)** That the Article 8 assessment shall only be carried out when there are compelling circumstances not recognised by these Rules. In this case the Tribunal did not identify such compelling circumstances and its findings are therefore unsustainable. **Gulshan** also makes clear that at this stage an appeal should only be allowed where there are exceptional circumstances. **Nagre [2013] EWHC 720 Admin** endorsed the Secretary of State's guidance on the meaning of exceptional circumstances, namely ones where refusal would lead to an unjustifiably harsh outcome. In this case the Tribunal has not followed this approach and thereby has erred".
9. This criticism is picked up in the grant of permission which states,

"The Judge refers briefly to the oral evidence received however it is not clear what factors weighed in the Judge's mind when he decided that the

Appellants met paragraph 297 and their exclusion from the UK would be unjustifiably harsh. This lack of reasoning is an arguable error of law.

Given the Tribunal's decision in Gulshan (Article 8 - new rules - correct approach) [2013] UKUT 00640 it is also arguable that the Judge misdirected himself as to the law on Article 8".

10. At the hearing before me Mr Nath on behalf of the Respondent outlined the grounds seeking permission and submitted that the determination of the First-tier Tribunal should be set aside because the Judge's analysis and reasons were inadequate to support his findings. Mr Nath accepted that the core issue in this appeal was one of sole responsibility. He submitted however the three Appellants have a father and whilst it is said that the father's whereabouts are currently unknown, it is up to the Appellants to prove that they are alone and that their mother has therefore retained sole responsibility for them.
11. Miss Gunanal unsurprisingly in response sought to defend the determination. She submitted that the Judge had directed himself appropriately in the terms of the information and evidence which was before him. The Judge had taken note of the Appellant's bundle which contained a significant amount of evidence which proved firstly that the Appellants were the children of the Sponsor a point disputed by the Respondent, secondly took cognisance of the background evidence and thirdly found the Sponsor to be a credible witness. His findings for so doing are set out in paragraph 7 of the determination and are adequately reasoned.
12. Miss Gunanal went on to say that as the Judge had allowed the appeal under the Immigration Rules there was no need for his determination to go further than that. She accepted that the Article 8 assessment was somewhat lacking but since the Judge had already found for the Appellant under the Immigration Rules, any lack of analysis in the Article 8 ECHR issue would not render the determination unsustainable.
13. I find favour with Miss Gunanal's submissions. I do not find that the Judge has erred such as to render the determination unsustainable. I say this for the following reasons.
14. The first matter which exercised the Entry Clearance Officer's mind is not subject to any challenge before me. The Entry Clearance Officer, in refusing the Appellant's applications, focussed a great deal of his attention on whether or not the Appellants were related as claimed to the Sponsor. DNA evidence was produced to show that it is more likely than not that the Appellants are the children of their UK Sponsor. This is a finding which the Judge made and that finding has not been challenged. It also helps in deciding whether the sponsor is a credible witness.
15. So far as the rest of paragraph 297 is concerned, the Judge properly noted that the applications were refused under 297(i)(a)-(f). The Sponsor in her evidence, outlined that the three Appellants had become separated from

their father and that they had fled to a refugee camp originally in Kenya, but now live in Ethiopia. The Sponsor managed to trace them there. The evidence of the Sponsor, which the Judge accepted, is that the three Appellants have been left to fend for themselves in a country which is not their own country and depend upon money sent from their mother and a neighbour looking in on them. The Judge formed the view on the evidence before him that the Appellants' father's whereabouts is unknown and he accepted therefore that their mother exercised sole responsibility for them.

16. Those are the findings which the Judge made. It was not advanced by Mr Nath that those findings are either perverse or irrational. Therefore they are ones, which it can be said, were open to the Judge on the evidence before him. It may be said that the decision can be categorised as a generous one and another Tribunal may have found differently, but that does not amount to a sustainable challenge for legal error.
17. In these circumstances it was open to the Judge to find that the Appellants' mother, the Sponsor exercised sole responsibility for them and they came within the Immigration Rules paragraph 297(i)(e).
18. It is right to say that the Judge did go on to make an Article 8 assessment. It is a very brief assessment but nevertheless it is an adequate one. Considering that the Judge had found for the Appellants under the Immigration Rules, the brief Article 8 assessment does not mean that there is a material error in the Judge's determination.

DECISION

19. The determination of the First-tier Tribunal contains no error of law and therefore it stands. The appeal of the Respondent is dismissed.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated