



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/24530/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> December 2017**

**Decision & Reasons  
Promulgated  
On 11<sup>th</sup> January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**MR MOHIDIN SHARIF HUSSEIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Somalia. His date of birth is recorded as 1<sup>st</sup> January 1958. On 26 April 2016, he made an application for leave to remain in the United Kingdom on family and private life grounds. Part of the Appellant's claim related to his contention that he would be at risk of serious harm were he to be returned to Somalia. The Appellant understood and continues to understand that that aspect of his claim is something which falls outside of this appeal. The Secretary of State has informed the Appellant that if he wishes her to consider an asylum claim he should make it in the proper form. This matter is confined to human rights. In the event the application was refused. The date of decision was 1<sup>st</sup> October 2016.

2. The Appellant appealed. His appeal was heard on 16 December 2016, before Judge of the First-tier Tribunal McIntosh. Judge McIntosh dismissed the appeal. Two findings were made. One was that the Appellant had not proved that MMH was in fact the son of the Appellant and even if he were, it had not been established that there was regular contact sufficient to engage Article 8. Private life considerations were given to the appeal that the Appellant did not meet the requirements of paragraph 276ADE. The judge was unable to identify sufficient reason to allow the appeal having regard to the wider application.
3. Not content with that decision by Notice dated 9<sup>th</sup> July 2017 the Appellant made application for permission to appeal to the Upper Tribunal.
4. On 25<sup>th</sup> July 2017 Judge of the First-tier Tribunal Kelly granted permission identifying as an arguable basis for pursuing the appeal that there was no sufficient examination of the best interests of the child.
5. My preliminary view of this matter was that there was no error because there was no need for the judge to look to the nature of the relationship with a person whom the judge had found was not the son. Nor was there need to look at the nature of the relationship which was at least tenuous.
6. However, in the course of the proceedings it became clear that there was another basis upon which it might be said that the judge had fallen into error. The refusal makes reference to the appellant having applied for leave to remain in the United Kingdom as the parent of HMA. The person with that name is not, and it has never been claimed to be, the son of the Appellant. He is a nephew of the Appellant's ex-wife. It is of note that at paragraph 4 of Judge McIntosh's decision and reasons reference is made to HMA and it is also of note that at paragraph 12 reference is made to MMH.
7. Mr Melvin sought to persuade me that the refusal letter reflected a typographical error but that it was not material. I do not agree. In my view, there has been some confusion both by the Secretary of State and possibly by the judge. It is not possible to know in my judgement from reading the decision as a whole the extent to which, if at all, the confusion over the names led the judge to come to the view that MMH had not been established to be the son of the Appellant; all the more so when paternity did not appear to have been put in issue in the refusal. (Though the refusal of course was focussing on HMA). In those circumstances, there is a material error of law and I set aside the decision.
8. Having set aside the decision I have to decide whether to remit the case or remake it. I was able to deal with matters today as the Appellant was here together with his witness in accordance with the directions. The Appellant recognised that the basis of the appeal focussed on the wider application of Article 8 (human rights with respect to family and private life). He accepted and understood why he did not meet the Immigration Rules and understood that it was, as I have already said, the wider application of Article 8 that fell to be considered.

9. The Appellant told me that he had a parental relationship with his son, that he visited him at his home, that is to say his child's home, and the reason why the child lived with his mother was because the Appellant had another eight children and that as MMH was the only child of his mother it was only fair that the child should live with his mother. But the Appellant would frequently see his son and he takes him to sporting activities. His son would sometimes call him when he wants something and the Appellant would attend parents' evenings at school. Although the relationship has broken down with the child's mother, still the Appellant would from time to time see her when collecting his son from his house. The sort of activities that he would take his son to would be football training, organised I was told by a person within the Somali community.
10. I was told that the man who was going to give evidence in due course, and who did, was the Appellant's neighbour whom he has known for three or four years. However, I heard from that "neighbour", Kadar Maxammad Clai who in fact lives in [ ] but the relationship I was told between Mr Clai and the Appellant was that they were distant relations. Mr Clai lives some twenty minutes' drive from the Appellant, hardly a neighbour. The Appellant had told me that his son did not stay overnight at his place. Mr Clai told me that he did.
11. I have to decide this case by applying the civil standard (balance of probabilities), the burden of proof being on the Appellant to establish his case. If the facts were established it is for the Secretary of State to justify an interference in any rights established.
12. I found the Appellant and his witness to be unreliable witnesses. Not only was Mr Kadar clearly not the Appellant's neighbour, and clearly there was a conflict over whether the son stayed overnight at his father's home, there was a significant absence of the sort of evidence that one might have expected in an appeal such as this. There was no letter from the son. There was no letter from the child's school, notwithstanding the fact that the Appellant told me he went to parents' evenings. Indeed, there were no sufficient documents from the school at all. One might have expected a letter or some correspondence from the boy's mother if she thought that it was important for the Appellant to play a part in the boy's life. It is not as if there was said to be no contact between the Appellant and the mother. The evidence with respect to the sort of activities which the Appellant took his son to was vague and there was no letter or any sufficient evidence provided from the person whom I was told provided the training. I have seen some photographs of the Appellant with a boy. I cannot tell from those photographs whether that boy is in fact HMA or MMH. I note that the nephew HMA is 12, only three years older than the Appellant's son.
13. Although there is a presumption in Article 8 cases of a family life between a parent and child the evidence here is so discrepant, the witnesses so unreliable, the evidence that I was expected to receive so lacking, that the Appellant does not establish his case and I should say for the avoidance of doubt that I have considered the evidence of Mr Omar and I have read the

letter but he did not attend to questioned but frankly set against the other evidence that I have heard I attach little weight to it.

**Notice of Decision**

The decision of the First-tier Tribunal contained a material error of law and is set aside. In the re-making of the appeal the appeal is dismissed. The decision of the First-tier Tribunal is affirmed.

Signed

Date: 9 January 2018

Deputy Upper Tribunal Judge Zucker