



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004142
First-tier Tribunal No:
HU/52095/2023
LH/03076/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

HASSAN ELMI
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms S Saifolahi, Counsel
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 30 May 2024

DECISION AND REASONS

1. The appellant is a citizen of Somalia who claims to be born in 2006 and was thus under 18 when he applied for entry clearance. For reasons given in the appended decision I found an error of law in the First-tier Tribunal's decision dismissing his appeal. This decision is the remaking of the decision in his appeal following the resumed hearing before me. I am grateful to both advocates for their assistance.

Background

2. The appellant is a citizen of Somalia who claims to be born in 2006, who applied in December 2022 for entry clearance as the child of someone present and settled in the UK, his mother. He claimed his father was dead. At the time of the application, he was purportedly 16 years old, at the date of the hearing before me he is over 18. The respondent did not accept:

- a. The appellant's father was dead;
 - b. The appellant was the age he claimed to be;
 - c. And in the alternative, there were no family or other considerations making exclusion undesirable.
 - d. Finally, the decision would not breach the appellant's Article 8 rights.
3. The two representatives agreed that the above 3 issues were the live issues in the case, albeit as Ms Saifolahi very fairly accepted, the real focus is on a and b above. She did not resile from c, but accepted that if the appellant's father was not dead as he asserted but was under 18 then it would be difficult to see what circumstances would make exclusion undesirable given he is living in Cyprus with a pending asylum claim.

The hearing

4. The sponsor gave evidence through the assistance of an interpreter. She was cross examined by Mr Tufan. After she gave her evidence I heard submissions from both parties. The appellant had provided an updated bundle containing updated statements and evidence from Somalia addressing the points in hand. Both parties had produced updated skeleton arguments on which I am most grateful for the work undertaken before the hearing.

Decision and reasons

5. It is convenient to set out at the outset that the burden is on the appellant to show that he meets the provisions of the immigration rules. The standard of proof is the balance of probabilities.
6. The appellant has to show that as of the date of application:
- a. His father had died;
 - b. He was under 18
7. The appellant claims that he was born in 2006. His mother was 59 years old at the time. His parents had married in 2005, and were together for a few years. The sponsor does not say when she left Somalia, or when she came to the UK. I have no information about her circumstances, other than she is a British Citizen who was issued with a passport in 2020. No material has been provided as to:
- a. Her circumstances of leaving Somalia;
 - b. Her arrival in the UK
 - c. What status she had on arrival
 - d. What status she had leading to her obtaining nationality
 - e. Any information about her life prior to coming to the application from her son.
8. The appellant says he lived with his father in Somalia until his father died.
9. The appellant has provided a death certificate of his father, who it is said died in an Al-Shabab attack on 20 April 2022 in Afgoye. The appellant's evidence is that following this attack he was in hiding for several months, he left Somalia and travelled to Cyprus via Ethiopia and Turkey.

10. He did not obtain the declaration of his father's death until 24 October 2022 which was after he had established contact with his mother in the UK and was making preparations to make the application to join her here.
11. The sponsor can only assist to a certain degree in relation to this as she was in the UK at all material times. The burden is not on the sponsor but on the appellant, her son. He is now an adult, albeit that is irrelevant for this appeal as he applied when a child, however he is old enough to be able to provide evidence to show the material factors.
12. In my judgment the appellant has failed to show on a balance of probabilities that his father is dead. He has given an extremely vague account of the circumstances as to how he travelled from Somalia to Cyprus. There is a paucity of evidence in relation to that and his current living conditions.
13. He further has given a vague account of what happened after the attack on his father and how he lived in Somalia. His statement simply says that he "went into hiding" where he remained unable to contact anyone. He then says he contacted his uncle who advised him to leave the country. No evidence has been provided which supports his claim, most notably there is no evidence from his uncle corroborating the account.
14. I have considered the evidence provided by the appellant in relation to his father's death. He has provided the death certificate along with a witness statement from Mr Dahir who is named on the death certificate as one of the men who reported the appellant's father's death. The witness statement is signed, however does not contain a statement of truth. Nor does it say that the document was read back to him in a language he understood. I also have absolutely no explanation as to how this statement was obtained. It is noteworthy that I have no material before me either as to how the statement was obtained, who helped obtain it, or how it was taken. This is different to the situation often seen in entry clearance cases where a supporting letter is written, there is no document before me which suggests that the witness had any input into the contents.
15. A second issue I have with the statement of Mr Dahir is that there is no explanation as to why it was only obtained in February 2024, after the First-tier Tribunal hearing. There may be good reasons, there may not be, but no explanation has been given.
16. Thirdly, no identification documentation has been provided from Mr Dahir to confirm his identity. As a result of the above concerns I place very little weight on Mr Dahir's statement.
17. That leaves me solely with the death certificate itself as a document. I find that I am unable to afford it much weight. The evidence of the sponsor, and of the appellant, as to why it took them 6 months to register his father's death is in my judgment not credible. I find the respondent's submission that there is no explanation as to what had been reported to the authorities to obtain the certificate, as well as there being no evidence from the other man who reported the death Mr Ali, or any objective evidence as to an Al-Shabaab attack in April 2022 to be persuasive.

18. There is no credible explanation as to why the death certificate was seemingly not obtained in a way the usual way as outlined in the review of the appeal before the FTT by the respondent. The appellant has not addressed this matter since.
19. The document further appears to have been issued twice, once in English and once in Somali. There are four stamps on the English version, which have dates of 1 November 2022 written on. There is also an unidentifiable signature on the document. These stamps are dated 1 November 2022, a week or so after the date of the alleged registration. The Somali version simply has one stamp from the Waberi District Court, but no separate date. I also note that whilst on the face of it the two documents are purportedly issued by the Waberi District Court I have no explanation why they are on different letter heads. I observe that it appears that the English language version was the only one submitted with the application as it is the only one which appears in the respondent's bundle. There is no suggestion that both copies were submitted to the ECO.
20. Ultimately the burden is on the appellant to show on a balance of probabilities that his father is dead, I find that he has not done so to that relevant standard.
21. In respect of the appellant's age it is not in dispute that the sponsor is the appellant's mother, they have provided DNA evidence to show it. Issues have arisen since the refusal date however which go to the question of his age. His mother's evidence is she was 59 years old when she conceived and gave birth to the appellant. She had been married for 1 year, and the appellant is the only child of their marriage, born in 2006.
22. Whilst I have the sponsor and appellant's witness statements which seek to explain their history, I have very little by the way of persuasive evidence as to his year of birth being 2006. Firstly I have not been provided with any of the circumstances of the sponsor's arrival in the UK, I do not know what she told the respondent, whether an entry clearance officer or the Secretary of State in the UK as to her history and circumstances. One would have thought that if she had a child born in 2006 she would have declared that at some point in her immigration history, however no evidence of this has been provided.
23. The only evidence of his date of birth other than the witness testimony is the birth certificate itself and the hospital birth certificate, however I consider there is only very limited weight that I can attach to either document. In relation to the hospital document there is no credible explanation as to why no birth certificate was obtained from his alleged birth in 2006 until November 2023. In addition it is that this document was only provided for the Upper Tribunal proceedings, no explanation has been given why this was not obtained sooner. I am persuaded by the respondent's submission that the lack of an explanation as to why one was not obtained when he was born is even more strange given the appellant is said to have been born in a hospital.
24. In relation to the birth certificate itself, again no credible explanation has been given as to why this document was only obtained in September 2022. The sponsor has given no explanation as to why the appellant's birth was not registered sooner, she has provided 3 witness statements in the lifetime of this appeal and has not explained once why no registration happened when he was born.

25. I accept that in general registrations can happen later, but the issue in this case is there is no explanation why this registration happened so many years later.
26. The sponsor says in her most recent statement that there were some family members who knew her age at the time the appellant was born and she will be relying on statements from some of them. Despite this the appellant has not provided any statements which confirm the sponsor's age at the time of his birth. The only statement provided is that of Ms Mohamed.
27. In her statement Ms Mohamed says that she was the sponsor's neighbour. In her statement she confirms that the appellant was born in 2006, albeit she cannot remember the month. She makes passing reference to the sponsor's age in her statement as "in her fifties", albeit she is not more precise. It is to be recalled that it is said that the sponsor was 59 when the appellant was born, however she was only 3 months from her 60th birthday.
28. Whilst I do have a copy of this person's Somali passport, the statement again does not contain a statement of truth and nor does it confirm that the statement has been read back to her in a language she understands. I also note that the signature section simply contains a straight line, with no actual signature, albeit the same appears in the person's passport so I have less reason to doubt that individual idiosyncrasy.
29. I have no explanation how this statement was taken, or who helped obtain it. There is no suggestion that this statement was taken from a document in Somali either. I am therefore left without any explanation as to how it was taken, any confirmation that it is true, or any confirmation that it was read back to the person who made it. I therefore consider I can only attach very little weight to it.
30. I attach little weight to the document from Cyprus showing his 2006 date of birth, that document was produced on the information given by the appellant, it is not corroborative of his claimed date of birth.
31. I find therefore that the appellant has failed to show on a balance of probabilities that he was born in 2006 as claimed.
32. I accept in principle that there is no medical, biological or scientific reason why the sponsor could not have given birth to the appellant when she was 59 years old, however it is plain that the possibility of that is more remote than were she younger. However in this case it is not her age which has led me to conclude that the appellant has not shown he was born in 2006, but the totality of the evidence relied on not being reliable for the reasons given.
33. For the above reasons I therefore consider that the appellant has not shown that his father is dead, or that he is the age he claims to be. The appellant cannot meet the immigration rules.
34. As the appellant cannot show on balance that he was born when he claims to have been I find that he has not shown he was under 18 at the date of the application. The consequence of this is that he cannot access the alternative provision as to whether there are any family or other considerations making exclusion undesirable.

35. I consider that the appellant has in any event failed to show that the refusal is disproportionate for the purposes of his Article 8 rights. The appellant has failed to provide any evidence to support his assertions as to the conditions he is living in in Cyprus. I find the lack of clarity over his father's death, his journey to the UK and his living circumstances in Cyprus lead me to pause to consider whether the appellant has given a candid and truthful account as to how he is living in Cyprus.
36. The appellant and sponsor claim to be in electronic communications over WhatsApp but no evidence of this has been provided. Similarly, whilst there was evidence in 2022 of money transfers, there is no evidence of ongoing financial support. That strongly suggests in my judgment that the appellant does not require the support he claims to be lacking in Cyprus. If he was in as desperate a situation as he claims, there is no explanation at all as to why his sponsor has not been able to provide him with any further support. I accept the respondent's submission that either this shows he is self-sufficient in Cyprus or that he has other means of support there.
37. In any event he has in the past received support from his sponsor from the UK, I was given no explanation as to why this could not continue. Further I agree with the respondent's submission that the appellant's claim to have no support, or no medical support, as an asylum seeker in a prosperous European country to be unevicenced.
38. Given the above I consider that the appellant has not shown that Article 8(1) is engaged. There is no evidence that there is a dependency going beyond the normal emotional ties between him and the sponsor, his mother. The evidence simply does not establish any reliance from him on her, or any interdependence of her on him.
39. Even if I am wrong on that, there is nothing in the evidence before me to show that the refusal of entry clearance is a disproportionate interference with his Article 8 rights. The appellant is probably over 18, he is living in circumstances in Cyprus that are unclear, but certainly not ones which require the constant financial support of the sponsor. I reject the claim that he has no support there, it is as improbable as it is unevicenced. The claim that he suffers from allergies which are causing him difficulties there however the evidence does not support any proposition that the allergies are so severe that he can not cope in Cyprus.
40. The only other document is a letter from Ms Hadjianastasi who says that the appellant has an egg allergy, and that this illness causes him to not eat sufficiently. This letter takes the matter no further, it appears that at its highest the letter outlines that the appellant should avoid eating eggs, and that he is missing the stability he had when he was living in Somalia. That may be the case, however there is a complete lack of evidence as to his circumstances in Cyprus as outlined above, and the weight I give to her letter is limited.
41. The respondent's decision is proportionate.

Notice of Decision

The appellant's appeal is dismissed.

Case No: UI-2023-004142
First-tier Tribunal No: HU/52095/2023

Judge T.S. Wilding

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 16th July 2024



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004142

First-tier Tribunal No: HU/52095/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

HASSAN ELMI
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms N Bustani, Counsel

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 2 November 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Rastogi ('the Judge') who in a decision of 19 August 2023 dismissed the appeal.

Background

2. The appellant is a citizen of Somalia who claims to be born in 2006, who applied in December 2022 for entry clearance as the child of someone present and settled in the UK, his mother. He claimed his father was dead. At the time of the application, he was purportedly 16 years old, and 17 by the date of the hearing before the Judge. The respondent did not accept:
 - a. The appellant's father was dead;
 - b. The appellant was the age he claimed to be;

- c. And in the alternative, there were no family or other considerations making exclusion undesirable (it is unclear the relevance of this to a. and in particular b. above but for reasons that will become clear this does not require determining at this stage).
3. The appellant appealed, and his appeal came before the Judge on 9 August 2023. He was represented by Ms Bustani who also appeared before me. The respondent was not represented. As part of the preparation of the appeal, the appellant filed and served a skeleton argument, and bundle of documents. The respondent filed and served a bundle of documents and a review of the appellant's skeleton argument. These are the documents that the Judge had before her.
4. Having heard from the sponsor, and submissions from Ms Bustani, the Judge dismissed the appeal. Her decision gave the following reasons on the key issues:

'12. The appellant claims to have been born on 16 January 2006 making him 16 years of age at the date of application and 17 at the date of hearing. He has been internally consistent about his date of birth throughout his evidence. He further claims that he has been accepted as a minor in Cyprus since arriving there on 17 June 2022 having left Somalia on 15 June 2022 following his father's death at the hands of terrorists on 20 April 2022.

13. The sponsor's appeal witness statement does not deal with the appellant's age in terms. The sponsor addresses the format and date of the certificate rather than providing any evidence of the appellant's birth or his age. The sponsor is 77 years of age. It is evident from the covering letter to the application that DNA evidence was supplied and no issue was taken with the relationship between the appellant and sponsor. This means that if the appellant was born on 16 January 2006, the sponsor would have been about 60 years of age.

14. In support of his claim, the appellant provided a birth certificate and an identification card from Somalia both of which are dated 4 September 2022 and both of which refer to the appellant's date of birth as 16 January 2006. The respondent found neither reliable and subsequently asserted the birth certificate did not comply with the procedures set out in the UNICEF data as to late registration.

15. The UNICEF data provides the legal framework for the registration of birth, deaths and marriages. As for births, Ms Bustani pointed out, and I accept, that the Child Act 2010 post-dates the appellant's date of birth. However, it is clear from that Act that late registration is permitted and there is no penalty. The procedure for doing so is set out and, for children who are over 15, that procedure is that they are "referred with a letter from the Civil Registry to the Medical Commission Functioning for an age estimation" and there is a nominal fee. On the face of it, the appellant could not have complied with this procedure given that by the time of the issue of the certificate (4 September 2022) he was out of the country. I find this to cast doubt on the reliability of the birth certificate.

16. In addition, the birth certificate was signed by the Mayor of Mogadishu and issued by the Municipality of Mogadishu. According to the UNICEF

data the three authorities responsible for registering births are the “Civil Registration Authority Ministry of Interior; the Department of Statistics’ Birth and Death Register, Ministry of Health and the Central Bureau of Statistics”. There is no reference to any of these authorities on the appellant’s birth certificate. This is another inconsistency which undermines the reliability of the certificate.

17. The appellant’s identification card [166] was also issued by the Municipality of Mogadishu on 4 September 2022. Endorsed onto this document is a photo (presumably purporting to be the appellant) and a right thumb print. The appellant was not in the country on the date of issue of this certificate and he has not provided an explanation as to how he obtained this document and provided his photo or thumbprint for use on the document. This undermines the reliability of this document.

18. The appellant arrived in Cyprus on 17 June 2022, and says he was treated as a minor by the authorities there. The letter from the social worker describes the appellant as 17 years old [page 60]. The bundle contains emails between the appellant’s representatives and the social worker as to why she could not provide her letter on official stationery and she provides contact details for her manager at the Social Welfare Office should clarification be required [page 62]. I find this evidence sufficiently reliable to accept that the appellant is being treated as a minor by the Cypriot authorities. That does not mean to say that a positive decision has been made that he is a minor, especially as his asylum claim remains pending. I do not find the fact that the appellant is being treated as a minor in Cyprus to have any probative value in this appeal given the lack of evidence of the methodology by which the Cypriot authorities arrived at their decision to treat him as a minor and the absence of evidence that a positive decision on his age has been made.

19. Looking at the above evidence in the round, I do not find the appellant to have produced reliable or sufficiently probative evidence to corroborate his claim to have been born on 16 January 2022. In fact, I find the content of the documents to have features of concern (see [15-17] above), that damage the appellant and sponsor’s credibility. Therefore, I do not find the appellant to have discharged the burden upon him to satisfy me it is more likely than not he was under 18 at the date of application.

...

21. I find my adverse credibility findings to infect the appellant’s evidence about the circumstances in which the death ‘certificate’ was obtained. Given that it does not purport to be a ‘death certificate’ rather a ‘Declaration of Death’ and therefore does not appear to comply with the procedure set out in the UNICEF data, absent any corroboration of the authenticity and validity of the document from an official source, or any expert evidence, I do not find this to be a reliable document.’

5. The appellant appealed. Permission was granted by First-tier Tribunal Judge Austin on 26 September 2023.

The hearing

6. At the hearing Ms Cunha, on behalf of the respondent accepted that the Judge had materially erred in law. She accepted that in relying on the sponsor being 59 years old at the time of the appellant's claimed birth the judge erred because she did not ask the sponsor anything about the point. It was not one that the respondent had raised in either the decision or the review, and as such given the Judge took it against the appellant it was unfair not to ask the sponsor.
7. Ms Cunha however did argue that the findings of fact in relation to the documents were sustainable and not infected by the above error. She asked that these findings were preserved. The points had been made in the review, the UNICEF documentation had been referred to and the appellant was no notice.
8. Ms Bustani submitted that the findings regarding the age infected the findings of the documents. It was impossible to disentangle the documents vis a vis the appellant's age from the observations made about the sponsor's age. The error as conceded therefore infected those findings of fact.
9. In relation to the death certificate the Judge's reasoning at paragraph 21 relied on those in relation to the birth certificates and so was also infected with the error in relation to the age.

Determination and reasons

10. Given Ms Cunha's concession I find that the Judge materially erred in law by failing to ask the sponsor about the age issue. She plainly considered it relevant to the issues at hand, but did not allow the sponsor an opportunity to address the question. Whilst the central question in the case was whether the appellant was born when he says he was, no issue was taken with the sponsor's respective age at the appellant's claimed date of birth previously. The Judge ought to have asked the sponsor about this. She did not, and that was as a consequence unfair.
11. In relation to whether there are any findings of fact that can be preserved, I have considered the submissions of Ms Cunha with care, however I do not agree that the error as conceded has not infected the findings on the documentation.
12. This is because the issue in relation to the birth certificate is that it is not accepted as evidence as to the appellant's age. If the document remains unreliable then the respondent's concession that it was a material error of law not to ask the sponsor about her age when the appellant was born is immaterial.
13. It is plain in my judgment that the reference to the age, which has been accepted as a material error, obviously was relevant to the overall assessment of the appellant's claimed age which in turn impacted the assessment of the documents.
14. I set the Judge's decision aside and do not preserve any findings.
15. I canvassed at the hearing as to whether it should remain in the Upper Tribunal, or to be remitted. The parties were neutral on the matter. Having considered it

carefully, and given this is an entry clearance case, on a narrow point, I have decided to retain the matter in the Upper Tribunal.

16.A further hearing is necessary for the evidential issues to be addressed by submission and, so far as is necessary, oral evidence.

Notice of Decision

The decision of the First-tier Tribunal is vitiated by material error of law and I set it aside.

Directions

1. The case is to remain in the Upper Tribunal and listed before Deputy Upper Tribunal Judge Wilding.
2. The appellant to have leave to file and serve, if so advised, further evidence he wishes to rely no later than 21 days before the resumed hearing.
3. The appellant to file and serve, if so advised, a skeleton argument no later than 14 days before the resumed hearing.
4. The respondent to file and serve, if so advised, a skeleton argument no later than 7 days before the resumed hearing.

Judge T.S. Wilding

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 20th November 2023