Upper Tribunal
(Immigration and Asylum Chamber)

Appeal numbers: OA/10280/2012
OA/10286/2012
OA/10299/2012
OA/10276/2012
OA/10293/2012

THE IMMIGRATION ACTS

Heard at Field House, London	**Determination Promulgated**
On 25 September 2014	**On 13 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

ENTRY CLEARANCE OFFICER - NAIROBI

Appellant

and

ABDI-WALLI ABDULLAHI AHMED
SADAL ABDULAHI AHMED AHMED
FARTUN ABDULAHI AHMED
FAISA ABDULAHI AHMED
FARDOWSA ABDULAHI AHMED

Respondents

Representation:
For the Appellant: Mr S Whitwell, Home Office Presenting Officer
For the Respondents: Mr H Hersi, Hersi & Co Solicitors

DETERMINATION AND REASONS

1. Whilst this is an appeal by the Entry Clearance Officer (ECO), for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal

2. The appellants are nationals of Somalia. They are siblings, two brothers and three sisters, the youngest two are twins. They are the children of Abdulahi Ahmed Hersi (the sponsor) who has indefinite leave to remain in the UK. The appellants applied for entry clearance to join their father in the UK. The Entry Clearance Officer refused the applications as he was not satisfied that the appellants met the requirements of paragraph 297 (i), (iii), (iv) and (v) of the Statement of Changes in Immigration Rules, HC 395 (the Immigration Rules). Judge of the First-tier Tribunal Denson allowed the appeals. The ECO now appeals with permission to this Tribunal.

3. For the purposes of these appeals the relevant provisions of paragraph 297, as it applied at the date of the applications and refusals, are as follows;

> "297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:
>
> (i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:
>
> …
>
> (d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or
>
> (e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; or
>
> …
>
> (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
>
> (iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and
>
> (v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and
>
> …"

4. The background to these appeals as put forward by the appellants is that the appellants' elder sister travelled to the UK and claimed asylum in 2002. She was granted asylum. The appellants' parents lost contact with them in 2009 when Al Shabab attacked their school and the children went missing and were presumed kidnapped. In fact they escaped to Ethiopia with a family friend and are still

there. The appellants' parents were unable to trace the children. As a result of inquiries within the Somali community the sponsor traced his elder daughter and travelled to Ethiopia to make arrangements to meet her there. The appellants' mother died in January 2010 on the way to Ethiopia and the sponsor met his elder daughter in Ethiopia and applied for entry clearance to join her in the UK. His application was refused but the appeal against that refusal was allowed in May 2011 and he was subsequently issued with entry clearance and travelled to the UK. As a result of his ongoing inquiries the sponsor located the appellants and made arrangements for them to stay in Ethiopia with a friend in October 2011. He travelled there to be reunited with them in April 2012 and stayed for 3 months. The appellants, who were all under 18 at the time of the applications, applied on 4 April 2012 for entry clearance to join their father. The sponsor and his daughter moved into larger accommodation to accommodate the appellants. The sponsor was in receipt of benefits and the application was made on the basis that the appellants would be supported by the sponsor, their sister and their father's brother-in-law.

5. The First-tier Tribunal Judge accepted that the appellants were the sponsor's children. He accepted that the appellants' mother had died as claimed and that the sponsor has financially supported the appellants since they were reunited. He was therefore satisfied that the sponsor had sole responsibility for the children The Judge found that there was no evidence that the children were living an independent life. The Judge accepted that the landlord was aware that the sponsor's five children were being sponsored to come to the UK and that the accommodation was adequate. The Judge calculated the total income available from the sponsor, his daughter and his brother-in-law was £1355.18 per month. The Judge calculated that, using the comparator of the relevant income support rates, there is sufficient funds for four out of the five appellants to be maintained without recourse to public funds. The Judge went on to consider the appeal of the fifth appellant, one of the twins, under Article 8 of the European Convention on Human Rights and decided that the interference to her family life and that of the other appellants is not proportionate to the legitimate aim of the enforcement of immigration control.

6. At the hearing before me Mr Hersi raised a preliminary issue as to the timeliness of the ECO's application for Permission to Appeal to the Upper Tribunal. He submitted that the ECO served the application for Permission to Appeal on the Upper Tribunal ten months late. However the grant of permission by Upper Tribunal Judge Eshun states that the application was made on 21 November 2013 and, although a hole was punched on the date of the faxed application, it appears to state 21 November 2013. On the basis of this evidence I was satisfied that the renewed application for Permission to Appeal to the Upper Tribunal was lodged on 21 November 2013 which was in time as the First-tier Tribunal refused Permission to Appeal on 8 November 2013.

7. There are four issues raised in the grounds of appeal to the Upper Tribunal. It is firstly contended that the First-tier Tribunal Judge erred in his consideration of the determination of the First-tier Tribunal Judge who had decided the sponsor's appeal. It is contended that the previous Judge did not make a clear finding that the sponsor's wife had died. However it is clear from reading the determination of Judge Elvridge of 11 May 2011 that he did accept the evidence before him that the sponsor's wife had died on the way to Ethiopia. In any event Judge Denson also made an independent finding at paragraph 38 that, based on the oral and documentary evidence before him, the appellants' mother is deceased. The Judge did not therefore err in his treatment of Judge Elvridge's determination or in his finding that the appellants' mother is dead.

8. The grounds of appeal further contend that the Judge erred in considering post-decision evidence to the effect that the accommodation was available for all five children. However the Judge properly said that the post-decision letter from the landlord could not be considered. He said that he accepted the oral evidence from the sponsor and the appellants' sister that '*at all material times the landlord was fully aware that all five children were being sponsored to be reunited with their father*'. I am satisfied that this finding was open to the Judge on the basis of the oral evidence taken with the landlord's letter submitted with the applications. Even if the Judge considered the post-decision letter it was clearly considered in relation to the circumstances as they appertained at the date of the decision. The Judge did not err in making this finding.

9. The grounds of appeal contend that the Judge erred in relation to his findings as to the maintenance requirements. The grounds contend that the appellants *'seek entry clearance as a unit of siblings, as such, the Rules are there to determine if all siblings meet the Rules, not if 4.5 siblings meet the Rules.'* Mr Whitwell submitted that the Judge made an artificial distinction between the appellants in considering four under the Immigration Rules and separating the fifth on an arbitrary basis. He submitted that, as he did not have sufficient funds for all five children, the sponsor could have selected those who could apply. He submitted that the ECO was assessing the maintenance requirement based on the income support comparator relating to the sponsor and five children as a family unit.

10. Mr Hersi submitted that the wording of paragraph 297 says that it applies to 'a person' seeking to enter the UK. He submitted that each appellant made an individual application on a separate application form and paid a separate fee and that a separate decision was issued in respect of each appellant who had each lodged a separate appeal. He submitted that one of the children could have chosen not to appeal or to withdraw the appeal. He submitted that the appeals were separate and were only considered together for administrative convenience. He submitted that the Judge had made a comprehensive and thorough decision.

11. I accept Mr Hersi's submissions on the issue of maintenance. I accept that the appellants made separate applications and appeals which were properly

considered by the First-tier Tribunal Judge. Each appellant was entitled to a separate decision in relation to his or her appeal and the appeals were listed together and a joint decision issued for administrative convenience. The Judge was entitled to consider each appeal separately. He did not arbitrarily consider the fifth appellant's case separately. He made a reasonable decision to consider the appellants on the basis of their ages, although this was less straightforward than it may have been as the youngest are twins. However it was reasonable to consider one of the twins as the fifth appellant. As the applications and appeals were individual it would have been perverse for the Judge to have decided that none of them could meet the maintenance requirements. The Judge made no error in his approach to the maintenance requirements of the Immigration Rules.

12. The final issue raised in the grounds of appeal is the Judge's assessment under Article 8. It is contended that the Judge's decision under Article 8 is unsound as it is erroneously based on the fifth appellant's inability to satisfy the Rules and has been considered on a 'near miss' basis. In light of my findings above I am satisfied that the Judge was right to consider the fifth appellant's appeal under Article 8. There is no specific error identified in the Judge's approach to the Article 8 assessment and I do not see any. In considering family life and the five stages set out in R v SSHD ex parte Razgar [2004] UKHL 27 the Judge took all relevant factors into account and made a decision open to him on the evidence.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal shall stand.

Signed Date: 12 November 2014

A Grimes
Deputy Judge of the Upper Tribunal

Consequential Directions

Forthwith on receipt of this decision the respondent shall issue entry clearance provided the respondent is satisfied there are no circumstances arising after the date of the decision under appeal which make it necessary to refuse to do so.

Signed Date: 12 November 2014

A Grimes
Deputy Judge of the Upper Tribunal