Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/22343/2012

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 15th July 2014	**On 18th August 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ABDUSELAM SALEH ABDU

Appellant

and

ENTRY CLEARANCE OFFICER – NAIROBI

Respondent

Representation:

For the Appellant: Mr Siddique, Parker Rhodes Hickmotts, Solicitors
For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Abduselam Saleh Abdu, was born on 20 May 1997 and is a male citizen of Ethiopia. The appellant has appealed to the First-tier Tribunal (Judge Tully) against a decision of the Entry Clearance Officer, Nairobi dated 24 May 2012, to refuse to grant him entry clearance to the United Kingdom to join his mother (Kada Omar Ibrahim – hereafter referred to as the sponsor) a person present and settled in the United

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Kingdom. The First-tier Tribunal dismissed the appellant's appeal and the appellant now appeals, with permission, to the Upper Tribunal.

2. The Entry Clearance Officer's refusal notice records that the application was assessed under paragraph 297 of HC 395 (as amended). The Entry Clearance Officer concluded that the appellant had not provided any evidence to show that he was related to the sponsor as claimed. In addition, he had not shown that the sponsor had sole responsibility for him.

3. The First-tier Tribunal had before it DNA test results provided by the appellant. At [37] the Tribunal concluded that "given the results of the DNA test and the lack of the sponsor's credibility I do not accept that the appellant has discharged the burden of proof that he is the sponsor's child". The judge found the sponsor (who gave evidence before the Tribunal) to have been "generally evasive and did not answer questions readily". The judge identified a number of inconsistencies in the appellant's evidence [33-34]. The judge concluded that the appellant is not the child of the sponsor as claimed and went on, in any event, [38] to consider the question of sole responsibility and concluded that there was no evidence to show that the sponsor did exercise sole responsibility for the appellant. The Article 8 ECHR appeal was also dismissed.

4. The DNA test report had concluded that the sponsor was 66572 times more likely to be the mother of the appellant than an unrelated woman of similar ethnic origin. The probability of maternity is assessed at 99.9992%. The report also stated:

> If there is a possibility that a close relative of the alleged mother may be the biological mother of the child or that the individuals being tested are closely related in any other way i.e. grandmother/grandchild, siblings etc. this may invalidate the results of the test.

In her assessment of the report, the judge wrote as follows:

> In my view the report concludes that the parties are closely related but does not rule out another close relative as the mother of the appellant. Mrs Archibald [Presenting Officer] submitted that it was possible the appellant is the sponsor's brother or nephew and whilst there is no specific evidence to support this, I find that this is a possibility on the basis of the DNA report.

5. The grounds assert that the report did not "conclude" that the parties were closely related; rather, the report concluded that there was a probability of maternity as high as 99.9992%. I agree with that submission. I find the judge has placed too much weight on what appears to be a standard caveat asserted in the DNA report. The fact remains that (as the judge acknowledged in the determination) there was no evidence at all to show the sponsor and appellant might be related closely other than as mother and child. I am well aware that the judge has sought to assess the DNA report as part of the totality of the evidence and that she also found parts of the sponsor's testimony to be unreliable but I do

conclude, on balance, that the DNA report very strongly supports the sponsor's contention that she is the mother of the appellant and, in the absence of any evidence to indicate the contrary, I find that the judge has placed too much emphasis on the standard caveat in order to reject the report, the conclusions of which she found, perhaps, inconvenient in the light of the poor view she took of the sponsor's credibility. In the circumstances, I have decided to set aside the determination of the First-tier Tribunal and to remake the decision.

6. I did not hear evidence from the sponsor, who was at court. I did hear evidence from Ms Anne Burghgraef, clinical manager of Solace ("Surviving Exile and Persecution") of Leeds. I accepted Ms Burghgraef's evidence which, in effect, confirmed what she had said in her letter of 18 June 2012.

7. The appellant's application to the Entry Clearance Officer was advanced on two alternative bases. First, the appellant submits that he should succeed under paragraph 297(i)(d) on the basis that the sponsor is settled in the United Kingdom and that his father is dead. The alternative basis is that the sponsor has sole responsibility for him. Given that the appellant's clear evidence is that his father has died, his alternative basis appears to make little sense. The appellant has produced a letter from the Federal Democratic Republic of Ethiopia (Ministry of National Defence) which was submitted in support of the application for entry clearance and which confirms that the man who the appellant claims is his father (Saleh Abdu Mohammed) died on 11 June 2000 "while he was discharging his obligation" in the armed forces. Mr Siddique submitted that the appellant had signed and dated a declaration to the effect that the documents enclosed with his visa application were genuine and that he was aware that submission of forged documents might expose him to personal liability to prosecution by the Ethiopian authorities. The declaration further notes that the British Embassy staff in Addis Ababa "will make enquiries of the relevant institutions regarding this application". Mr Siddique referred also to the refusal of entry clearance which states that "any documents you have supplied in support of your application have been considered and recorded". The letter from the Ministry of Defence of Ethiopia had, therefore, been considered but had not been challenged or queried by the respondent.

8. As I have noted, I did not hear evidence from the sponsor. Ms Burghgraef's evidence neither supports nor undermines this part of the appellant's evidence, namely that his father is dead and that the sponsor is his mother. I am aware that the sponsor's witness statement [3] dated 8 November 2013 appears to indicate that when the sponsor travelled from Eritrea to the United Kingdom "my husband and son were in Ethiopia". In the same statement [4] the sponsor confirms that her husband was killed in 2000. I am aware also that problems arose over the translation of that witness statement and which is also the subject of a complaint made to the appellant's previous solicitors who were instructed at the time the visa application and First-tier Tribunal appeal bundle were prepared.

9. In the light of the fact that there is corroborative documentary evidence of the father's death (which has not been challenged in either the First-tier or Upper Tribunals or by the Entry Clearance Officer), I find that the inconsistency at [3] of the sponsor's witness statement is likely to have arisen as a result of problems in translation or communication during the preparation of the statement. On the standard of proof of the balance of probabilities, I consider that this explanation is more likely than that the statement containing the apparent inconsistency indicates that the sponsor has fabricated the account of her late husband's death.

10. As I have noted above, the documentary evidence relating to the death of the father has not been challenged by the respondent. In the absence of any challenge and having attached little weight to the apparent inconsistency in the sponsor's statement, I find as a fact that the appellant's father did die in 2000 as claimed. I find also, having proper regard to the DNA test report, that the sponsor is the biological mother of the appellant. It is accepted that the sponsor has settled status in the United Kingdom. In the light of those findings, I remake the decision by allowing the appeal under the Immigration Rules.

DECISION

11. The determination of the First-tier Tribunal which was promulgated on 19 March 2014 is set aside. I remake the decision. The appellant's appeal against the decision of the Entry Clearance Officer dated 24 May 2012 is allowed under the Immigration Rules.

Signed Date 10 August 2014

Upper Tribunal Judge Clive Lane