



**Upper Tribunal
(Immigration and Asylum Chamber)**
OA/23350/2012

Appeal Numbers:

THE IMMIGRATION ACTS

Heard at Field House

On 25th June 2014

**Determination
Promulgated**

On 27th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

ABDIJABBAR ABDULLE HASSAN

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr A Mahmood, Aman Solicitors
For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The Appellant is a citizen of Somalia born on 1st January 2003. He appeals against the determination of the First-tier Tribunal dated 6th February 2014 dismissing his appeal against the Respondent's decision of 22nd October 2012 refusing entry clearance under paragraph 319X of the Immigration Rules and on Article 8 grounds.

2. At the appeal before the First-tier Tribunal, it was conceded that the Appellant could not satisfy the maintenance requirements of the Immigration Rules. The appeal was considered under Article 8.
3. The Appellant was now 11 years old and had applied to join his aunt, Jamilo Hasan Duale, the Sponsor. She had been granted limited leave as a refugee until 28th March 2017. The Sponsor's husband, Ali Mohamed, had also made an application to join her, but his appeal against the refusal of entry clearance was dismissed by Judge Cohen in December 2013. The Sponsor gave evidence in his appeal and Judge Cohen found that she was not a credible witness.
4. In the Appellant's appeal, Judge Hembrough relied on the adverse credibility findings in the determination of Judge Cohen. She found that the Sponsor's evidence was equally vague and lacking in candour. The Appellant and Sponsor had lost contact in 2008, the year before the Sponsor married Mr Ali. The Appellant was not named in the Sponsor's asylum interview and, looking at all the evidence in the round, the Appellant had failed to show that he was the Sponsor's nephew or that he was part of her pre-flight family in Somalia. In light of these findings the Judge found that Article 8 was not engaged.
5. Permission to appeal was granted by First-tier Tribunal Judge Nicholson on 8th May 2014 on the grounds that it was arguable that First-tier Tribunal Judge Hembrough erred in law in relying on the decision of First-tier Tribunal Judge Cohen against which permission to appeal had been granted.
6. At the hearing before me, I gave the parties a copy of the determination of Deputy Upper Tribunal Judge Alis promulgated on 28th May 2014. Judge Alis found that there was no material error of law in the determination of Judge Cohen and the decision promulgated on 18th December 2013 should stand.
7. Mr Mahmood was aware of the decision in Ali Mohamed and stated that an application for permission to appeal was pending. He submitted that although Judge Hembrough could rely on the determination of Judge Cohen, it could not be a determinative factor. It would appear that a lot of weight was attached to Judge Cohen's credibility findings. Judge Hembrough's credibility findings were not independent; the Appellant was different and the relationship was different.
8. Mr Mahmood submitted that the Sponsor's statements were not vague nor was her oral evidence. She had responded to all the questions put to her and there was no indication in the record of proceedings that she was evasive or vague. She was asked a number of questions and had provided a full response. This pointed to the fact that the Judge had not

reached his credibility findings independently and significant weight was attached to Judge Cohen's decision.

9. The Sponsor referred to her nephew twice in the asylum interview (Questions 4 and 34) and she was not asked to supply his name. In fact she did not mention anybody's name, so she should not be unfairly criticised. It was unfair of the Judge to rely on her failure to mention that she had brought up the Appellant with her own child, at paragraph 26 of the determination, when she was not asked about this. The appeal should be reconsidered.
10. Mr Parkinson submitted that at the date of the hearing before the First-tier Tribunal the decision of Judge Cohen was valid and had not been overturned. Judge Hembrough was entitled to rely on the findings therein. According to Judge Cohen's determination there were significant adverse credibility findings and at the date of the Appellant's appeal there was no decision on whether there was an arguable error. Ground 3 was without merit. In any event, any error was not material as Judge Cohen was upheld by Judge Alis.
11. Grounds 1 and 2 were in relation to the Judge's approach to the evidence. He was entitled to rely on Judge Cohen's determination and there was no strict rule as to how to approach findings of fact. It was open to the Judge to start with the determination of Judge Cohen. This did not indicate that he had made his mind up before he considered the evidence before him.
12. It was acknowledged that the Appellant could not meet the requirements of the Immigration Rules and therefore the appeal was decided under Article 8. The Judge looked holistically at the evidence before him. He found that there was evidence that a forged document had been submitted in relation to the application by the Sponsor's husband and the birth certificates were dated a few days before the application. There were considerable inconsistencies in the Sponsor's evidence before Judge Cohen and there was no adequate evidence to show that the Appellant was part of the Sponsor's pre-flight family.
13. The statement from the Sponsor's son took the matter no further given the adverse credibility findings. The Appellant had to prove his relationship with the Sponsor to succeed under Article 8. There was little evidence in the Sponsor's asylum interview of the claimed relationship; that the Appellant was in essence the Sponsor's adopted child. The two references to a nephew were insufficient for the Appellant to show that he had established family life with the Sponsor. The appeal must fail under Article 8.

14. I asked Mr Mahmood why the decision would be disproportionate even if the Appellant's case was accepted. He submitted that the Judge should have taken into account the Appellant's living conditions in Ethiopia: the lack of water, electricity, permission to work and schooling, and the fact that the Sponsor paid the rent.
15. Mr Mahmood submitted that there was clear evidence of family life in the statement from the Sponsor's son and the Judge had failed give a reason for rejecting this evidence. This indicated that the Judge had failed to consider the evidence in the round and had just placed reliance on Judge Cohen's decision.

Discussion and conclusions

16. I find that Judge Hembrough was entitled to rely on the determination of Judge Cohen in assessing the Sponsor's credibility. He was entitled to rely on the inconsistencies in her account and the fact that a forged document had been submitted with her husband's application. The weight to be attached to those findings was a matter for the Judge. There was nothing wrong with the Judge's approach to the evidence in adopting the determination of Judge Cohen as a starting point.
17. In addition, the Judge assessed the Sponsor's evidence given in the Appellant's appeal taking into account all the evidence before him (paragraphs 7 and 27). The Judge found that the Sponsor was vague and lacking in candour. The Judge gave adequate reasons for coming to this conclusion at paragraphs 23 to 26 of the determination.
18. Mr Mahmood's submission that the record of proceedings indicated otherwise amounted to a disagreement with the Judge's findings and did not disclose an error of law. The Judge's finding that the Sponsor was not a credible witness was not perverse as alleged in the grounds.
19. The grounds also contend that the Judge failed to take into account the witness statement of the Sponsor's 10-year old son, Mohamed Hamed Abdirahman. At paragraph 7 the Judge specifically stated that he had taken into account the evidence in the Appellant's bundle.
20. I find the failure to specifically refer to the witness statement of the Sponsor's son in the subsequent findings was not material to the decision given that the Sponsor did not name the Appellant in her asylum interview and she did not state that she had brought him up with her own son. In her screening interview the Sponsor was asked how many children she had. She replied that she had a child from her first husband and named her son, Mohamed. She made no mention of the Appellant whom she now claimed was more like a son and she had looked after him since he was three months old, prior to the birth of her own son. The Judge had not acted unfairly in relying on this failure to

mention the Appellant when specifically asked in her screening interview, at paragraph 26 of the determination.

21. Judge Hembrough found that the Appellant had failed to show that he was related to the Sponsor as claimed or that he was the nephew from whom she claimed to have been separated in 2008 or that he formed part of the pre-flight family in Somalia. In view of these findings Article 8 was not engaged. These findings were open to the Judge on the evidence before him.

22. In any event, the appeal was brought under Article 8, and taking the Appellant's claim at its highest, the refusal of entry clearance was not disproportionate in the circumstances. The Appellant could not satisfy the maintenance requirements of the Immigration Rules. He had lost contact with the Sponsor in 2008 and, at best, had been living with her son until 2012, when Mohamed came to the UK. He was not alone or destitute. He lived in a rented room with electricity and the water supply was intermittent. The Appellant was not allowed to go to school and the Sponsor's son missed him very much. In the particular circumstances of the Appellant's case the refusal of entry clearance did not breach Article 8. There was no material error of law in the Judge's determination.

23. I find that Judge Hembrough made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated 6th February 2014 shall stand.

Deputy Upper Tribunal Judge Frances
26th June 2014