



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/02771/2014  
OA/01841/2014, OA/01842/2014  
OA/01845/2014, OA/01831/2014  
OA/01847/2014, OA/01830/2014  
OA/01849/2014, OA/01832/2014  
OA/01851/2014, OA/01840/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23rd November 2015**

**Decision and Reasons  
Promulgated  
On 17<sup>th</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**Malak Muna Haji (born 1/1/63) (First Appellant)  
Randa Abdullahi Mohamed Said (born 14/1/1997) (Second Appellant)  
Fatuma Abdullahi Mohamed Said (born 2/10/1997) (Third Appellant)  
A S (born 28/6/1998) (Fourth Appellant)  
M S (born 20/3/1999) (Fifth Appellant)**

**Mohamed Abdullahi Mohamed Said (born 1/2/1996) (Sixth Appellant)  
Ahmed Abdullahi Mohamed Said (born 15/9/1996) (Seventh Appellant)  
Suad Abdullahi Mohamed Said (born 14/5/1997) (Eighth Appellant)  
F S (born 16/1/1998) (Ninth Appellant)  
A S (born 10/8/1998) (Tenth Appellant)  
A A S (born 30/3/1999) (Eleventh Appellant)**

**(NO Anonymity Direction Made)**

**and**

**ENTRY CLEARANCE OFFICER -RIYADH**

Appellants

Respondent

**Representation:**

For the Appellant: Mr S Harding, instructed by Sentinel Solicitors  
For the Respondent: Ms Brocklesby-Weller, Home Office Presenting Officer  
appearing on behalf of the Entry Clearance Officer

**DECISION AND REASONS**

**The Appellant**

1. The first appellant is the first wife of the sponsor, Mr Abdullahi Mohamed, and the subsequent four appellants (second appellant to fifth appellant) are said to be the children of the first appellant and the sponsor.
2. The last six appellants are said also to be the children of the sponsor and his second wife Faduma (she made no application to join the sponsor). The first appellant is the step-mother of the last six appellants.
3. For clarity I have listed the mother (or step-mother) as the first appellant and the next four appellants (the children of the sponsor and first appellant) in birth order and the subsequent six appellants (the children of the sponsor and the second wife) also in birth order.
4. They made applications on 2<sup>nd</sup> January 2014 to join the sponsor in the United Kingdom. Those applications were dismissed and appeals lodged. The matter came before First Tier Tribunal Judge Devittie who dismissed the appeals on all grounds.
5. It was agreed at the First-tier Tribunal that the Entry Clearance Officer should have considered the matter under Paragraph 352A rather than Appendix FM.

**Application for Permission to Appeal**

6. An application for permission to appeal was made on the basis that at the First-tier Tribunal, a concession was made by the Home Office Presenting Officer to the effect that the appeals of the first five appellants should be granted. Permission was granted by First-tier Tribunal Judge Kelly and he noted that he could not locate the Record of Proceedings. He granted permission in respect of all appellants on the basis that should the first five appellants succeed this may affect the decisions in relation to the remaining appellants.
7. At the first hearing before the Upper Tribunal I requested witness statements of both representatives be submitted as to any concession. The matter was adjourned to allow for witness statements from both representatives at the First-tier Tribunal to be submitted.

## **Conclusions**

8. There would appear to be confusion as to any concession and the extent of any concession. Mr Bose, Home Officer Presenting Officer at the First-tier Tribunal, indicated in his witness statement that to his recollection the appellants could potentially qualify under the Family Reunion Policy but he had made no unqualified concession. Mr Collins, representative at the First-tier Tribunal for the appellants, tendered a statement to the effect that at the First-tier Tribunal, Mr Bose conceded that the appeals of the first five appellants (as listed above) fell to be allowed.
9. There was no record of any reference to any concession in the decision of Judge Devittie and nothing to clarify the matter from any Record of Proceedings. Clearly the matter was discussed and was of fundamental importance but there was no reference made to it in the decision or otherwise.
10. As such there was an error of law in a failure to record and engage with an important issue which may have a material effect on the outcome and indeed affect the overall findings in respect of all appellants. In the interests of justice and in accordance with the overriding objective of the Tribunal, and the nature and extent of the findings to be made, I find the all the appeals listed above should be remitted to the First Tier Tribunal for a hearing de novo.
11. I also note that I could not locate a decision regarding Mohamed Abdullahi Mohamed Said (OA/01847/2014) and this should be addressed by the respondent. The issue of DNA evidence was also raised at the hearing before me. The sponsor made clear that he did not require an interpreter at any subsequent hearing.
12. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed

Date 4<sup>th</sup> December 2015

Deputy Upper Tribunal Judge Rimington

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**Directions**

The appellants' representatives are to serve, within 6 weeks of this notice, a fresh composite bundle on the Tribunal and Entry Clearance which should be indexed and paginated and which should include DNA evidence.

The Entry Clearance Officer is directed to serve, within 6 weeks of this notice, a decision on the Tribunal and Appellants' representatives in relation to Mohamed Abdullahi Mohamed Said (OA/01847/2014).

Signed

Date 4<sup>th</sup> December 2015

Deputy Upper Tribunal Judge Rimington