



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

Appeal Number: OA/03768/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 February 2016**

**Decision & Reasons Promulgated
On 24 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MISS W E A
(ANONYMITY ORDER MADE)**

Appellant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandagani, counsel instructed by Lambeth Law Centre

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ethiopia, born on 8 November 1996. On 24 April 2014, she made an application for entry clearance in order to join her father and Sponsor, who had been granted ILR as a refugee in the United Kingdom. This application was refused on the basis that the ECO was not satisfied that the Appellant was part of the Sponsor's family unit at the time he left Ethiopia. The ECO further doubted the relationship claimed.

2. The Appellant appealed against this decision and the appeal came before First-tier Tribunal Judge Moore for hearing on 22 July 2015. In a decision and reasons promulgated on 5 August 2015, the Judge dismissed the appeal. He

accepted at [23] in light of the Cellmark DNA report of 21 February 2014 that it is more likely than not that the Sponsor is the father of the Appellant but found at [24] that the Appellant was not part of the Sponsor's family unit at the time he left Ethiopia, as he was not aware that she had been born until 2002.

3. An application for permission to appeal to the Upper Tribunal was made in time on 10 August 2015. The grounds in support of the application dated 16 August 2015 asserted *inter alia* that the Judge had erred materially in law in that the familial relationship began at birth and the Respondent's policy instructions at 4.3. provide that "*children conceived before the refugee fled to seek asylum in the UK but born post flight are considered part of the sponsor's pre-existing family.*"

4. Permission to appeal was granted by First-tier Tribunal Judge Grimmett on 15 January 2016 on the basis that it was arguable that the Judge erred in not considering the Respondent's policy instructions with regard to the children of refugees.

Hearing

5. At the hearing before me, Mr Jarvis produced a letter dated 16 February 2016 in which he states: "*the ECO takes the view that the Appellant has made out her case that the FtT materially erred in its approach to the question of whether or not the A was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of his habitual residence in order to seek asylum ...the ECO accepts the A's contention that a child conceived prior to flight from the relevant country is included in the definition of family unit.*" The letter also expressly accepts that the Appellant meets the definition and requirements of paragraph 352D(iv) and there was no suggestion by the ECO that the Appellant had formed an independent life and in any event the argument was not being pursued in light of NM ("leading an independent life") Zimbabwe [2007] UKAIT 00051. It was suggested that the Appellant be allowed substantively.

6. Mr Jarvis confirmed at the hearing that this represented the ECO's position and with the agreement of Mr Bandagani I indicated that, in light of the ECO's concession and stated position, I found that the First-tier Tribunal Judge had erred materially in law and the appeal should be allowed.

Decision

7. The decision of First-tier Tribunal Judge Moore is vitiated by material error of law and cannot stand. I substitute a decision allowing the appeal on the basis that the Appellant meets the requirements of paragraph 352D of the Immigration Rules, as has been accepted by the ECO. In light of the fact that the Appellant's father and Sponsor has been diagnosed with cancer and is seriously ill, I would request that the Entry Clearance post give consideration to expediting the grant of entry clearance to the Appellant so she might join her father as soon as is reasonably possible.

Deputy Upper Tribunal Judge Chapman

18 February 2016