Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/12594/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 April 2018	**On 19 July 2018**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MS BABA HASSAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Hersi, Solicitor, Hersi and Co Solicitors
For the Respondent: Mr P Durm, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Somalia, born in January 1955. On 9 October 2015 she made an application to enter the United Kingdom to join her children, in particular NA.

2. The focus of the application was that NA, born 4th July 2001, had special needs and would require her mother, the appellant, to assist her with those.

3. Entry clearance was refused in the decision of 28 October 2015, on the basis that the appellant failed to meet the Immigration Rules and in particular failed to satisfy the requirements for accommodation and maintenance and indeed had not passed an English language test. It was also considered that there was nothing that was exceptional outside of the Rules such as to require entry clearance.

4. The matter came for hearing before First-tier Tribunal Judge Lawrence on 13 October 2017. In a decision dated 25 October 2017 the appeal was dismissed.

5. Challenge has been made to this decision. Firstly on the basis of a failure to take the best interests of the child into account and secondly, failure to take into account whether there were insurmountable obstacles for family life between the child and the mother taking place in Somalia or other country. It was on the basis of the second ground that leave to appeal to the Upper Tribunal was granted. Thus the matter comes before me to determine that issue.

6. The appeal was predicated on the basis that there were six children of the appellant in the United Kingdom, four of them British citizens. Mr Hersi however clarified before me that in fact there were four who were British citizens and two who were not British citizens and living elsewhere.

7. By way of background the children became separated from the appellant in the course of the troubles in 2002. Fadumo, aged 38, had come to the United Kingdom at an early stage and acquired settled status.

8. In 2002 NA and Rahma had been left with their brother, Mahad. In 2009, both were sponsored by Mahad to enter the United Kingdom under refugee family reunion provisions. Mahad is now married with a child and seemingly NA (aged 17) lives with Fadumo, who has indefinite leave to remain.

9. NA is partially sighted and it is said suffers from longstanding learning difficulties. There is very little by way of medical detail about those matters but they were analysed with great care by the Judge in the decision. She attends or attended the school for the partially sighted. There is a letter from the Joseph Clarke School speaking of the fact that NA's special educational needs relate to her severe sight impairment, as a result of which she is performing significantly below aged-related expectations. Thus it would seem that the educational needs are not related to her intellect but rather to her sight difficulties which make her slow to absorb information. She needs significant adult support. It was the conclusion of the Immigration Judge that such support was being received by her and Section 55 was looked at in detail.

10. As indicated, she had entered the United Kingdom in 2009 and has been living with her siblings and attending school. Her welfare and other safeguarding issues have been well taken care of and she has been nurtured and looked after by her family since arriving in the UK.

11. It is the case for the appellant that in 2015 she became reunited with her children and communicates with them over the internet and by other means of communication.

12. The manner in which the application was initially presented to the Entry Clearance Officer, and indeed the way in which, seemingly, it was presented at the hearing

before the First-tier Tribunal Judge, is illustrated by the skeleton argument that was then presented by Mr Amunwa dated 13 October 2017. Submissions were made on the basis that NA was a child who was vulnerable, who needed her mother, the appellant, and that it was in her best interests that her mother be allowed her to come to the United Kingdom.

13. It was the conclusion, however, of the Judge that NA was not neglected nor abused nor had any unmet needs. Although understandably she was wanting to see her mother, she had no particular needs that required to be met by her mother that were not met already.

14. It was the finding of the Judge, having considered the Immigration Rules, that the appellant did not meet the language requirements nor accommodation, nor the maintenance requirements. The judge, however, considered that in terms of those matters, particularly in terms of accommodation and maintenance, there could be future improvement such as to support a possible new application.

15. The Judge did not find there to be otherwise any compelling or serious circumstances to disapply the requirements of the Immigration Rules and found nothing of a compelling nature to be considered outside those Rules so to meet Article 8 ECHR.

16. The burden as I said of the skeleton argument was to address the Immigration Rules to contend that in the circumstances they had been met and that the needs of NA were compelling such as to permit the appeal to be allowed.

17. In terms of the challenge relating to the best interests of NA, I do not find there to be any substance to that matter. It is clear that the Judge gave the most anxious consideration to it.

18. Mr Hersi, in his submissions, contends that the decision is, however defective in that it has failed to consider human rights and family life in a more holistic context.

19. The focus as I indicated was in relation to the ability of the sponsor to meet the requirements of the Immigration Rules. There are two bundles of documents which were presented on behalf of the appellant. The first bundle contains essentially a number of witness statements together with bank records and the reports in connection with NA. The second bundle consists almost exclusively of financial documents and bank statements.

20. In the bundle is a witness statement from the appellant, undated. It sets out her situation and circumstances. It makes it clear that in 2015 she applied for a settlement visa as a parent of her youngest child, NA.

21. The appellant was born in Kismayo, Somalia in 1955. She was married and had eight children. Sadly two of those children are now deceased. The family suffered at the hands of militia men in Somalia because of the civil war. Her family and herself are members of the Reer Hamar minority clan. She was forced to flee from her home in

Marka and states that she is now living in Uganda. Her husband was killed in Marka. NA and Rahma were looked after by Majad as from that point, living with him and his family

22. Between 2002 and 2010 the appellant went to Kismayo to stay with her mother's relative and then returned to Marka. She had to leave there because of Al Shabaab. In 2014 she left Somalia and went to live with her second nephew in Uganda.

23. In 2015 she heard of the children and was delighted to make connection with them.

24. The statement concludes that she wants to come to the United Kingdom to be with NA and help with her upbringing because she is her mother and NA needs her. She was upset at being away from her children and speaks to NA and Fadumo every day by telephone, Viber and WhatsApp. The appellant gives very little detail about her own situation and circumstances in Uganda or details any compelling reasons why she should come to the United Kingdom otherwise than be with several of her children.

25. Considerable reliance is placed upon the decision in **MM [2017] UKSC 10**.

26. In essence that was a decision considering the requirement that a sponsoring partner should have a gross annual income of at least £18,600. It was the contention that such was unreasonable and unlawful as a condition for family unity. Generally the decision of the Supreme Court was that that was a proper requirement to be imposed. There was a recognition, however, in the course of the judgment that in certain circumstances such an approach should not be slavishly followed. It was to be recognised that the Rules will not always cover every situation and circumstance in which a person may have a valid claim to enter or remain in the United Kingdom as a result of his or her Article 8 rights.

26. That matter was highlighted particularly having regard to the pre-entry language requirement and to the decision in **BB [2015] UKSC 68** granting an express exemption where there are exceptional circumstances which prevent the appellant from being able to meet that requirement.

27. The facts of **SS** were also considered in the decision at paragraph 35. **SS** was a citizen of the Democratic Republic of Congo resident in the United Kingdom with British citizenship. Her husband sought to enter. That was refused on the basis that the requirement of MIR was not met. A slightly more flexible approach however was taken by the Tribunal recognising that joint income would meet the requirement, recognising also that there was a real need for **SS** following a miscarriage to be supported and helped by her husband but that family life could not take place otherwise than in the United Kingdom.

28. The case of **Jeunesse v The Netherlands [2015] 60 EHRR 789** was also cited with approval. The ultimate issue was whether a fair balance has been struck between individual and public interest, taking into account the various factors identified.

29. In paragraph 93 reference is made to **MM** in these terms:-

> "We have described the restrictions in the rules on taking into account prospective earnings of the foreign partner, or guarantees of third party support. The most striking example, in the cases before us, is found in that of **MM** and his wife. On the face of it there is a strong case on the merits for admitting her consistently with the general objectives of the new Rules. The couple have no realistic prospect of living together in any other country and although his earnings on their own are below the MIR she is a pharmacist with good prospects of finding skilled employment here and they have apparently credible promises of support from other family members. They are unlikely to be a burden on the state or unable due to lack of resources to integrate. Yet the strict application of the Rules will exclude them."

30. Once again, in paragraph 104, taking the factors in **Jeunesse,** family life would effectively be seriously ruptured, because they could spend only short periods of time together. While both spouses originated from the DRC, the sponsor has been in the UK for many years and was naturalised as a citizen as long ago as 2006. He also has two children who are British citizens so his ties UK were extensive. The First-tier Tribunal found that there are insurmountable obstacles in the way of their living in DRC, there are no factors of immigration control or public order weighing in favour of exclusion. Although it was a post-flight relationship, formed when there was no guarantee that the applicant would be admitted, it began in 2010 before the Rules were changed when the sponsor would easily have met the old adequate maintenance test.

31. In case before me, family life with the appellant was somewhat limited, there having been many years of complete separation from the family and contact had only recently begun again in 2015 with communication between mother and children. No significant aspect of dependency was raised other than the claim made by the appellant that there was a dependency by NA upon her, which was not accepted upon the finding of the Judge. There was very little about the personal circumstances of the appellant as to whether she needed the support of her children or whether there was an emotional dependency by her upon her children. There was little about her living conditions or her needs, so as to consider those matters in the overall balance of fairness and proportionality to determine whether it would be right in all the circumstances to exclude her from her family and the United Kingdom. The evidence of the appellant was that she was living with other relatives in Uganda. It seems to me to be unduly wide to seek to apply the reasoning of **MM** that simply because a parent is separated from their children should entitle them to come to the United Kingdom notwithstanding that the Rules are not met.

32. As I have indicated, the very burden of the submissions made in the course of the appeal was that the Rules were met, subject to the question of the language certificate, alternatively that the health and wellbeing of NA were the compelling reasons otherwise to grant entry clearance. The Judge for sustainable reasons found

that the Rules were not met and that the compelling circumstances as advanced did not exist.

33. It seems to me that a Judge is required to determine the issues that are presented rather than to widen the scope of consideration to matters that were not specifically raised. It was not a case that the Judge considered that the appellant would be permanent excluded from the United Kingdom, rather that there was some prospect of the requisite conditions being met in time. The grounds of appeal which lay before the Tribunal Judge was that the appellant met all the requirements of the applicable Rule for access to the child and had provided sufficient evidence in respect of those matters, alternatively that in the event the decision was not proportionate and breached the appellant and her child's human rights. This is a very focused application and received as I so find a proper and focused response which found nothing of a compelling nature that would justify a departure from the Rules. I find the Judge was entirely justified in coming to that conclusion. The wish to be with her children without more does not, it seems to me, such a circumstance as to permit a departure from the Rule.

Notice of Decision

34. In the circumstances I do not find there to be any material error of law in the decision. This appeal before the Upper Tribunal is dismissed. The decision of the First-tier Tribunal Judge shall stand, namely that the appeal in respect of the Immigration Rules and of Article 8 stands dismissed.

35. No anonymity direction is made.

Signed Date 6 July 2018

Upper Tribunal Judge King TD