Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: EA/06252/2020 [UI-2021-000651]
EA/06254/2020 [UI-2021-000681]
EA/06256/2020 [UI-2021-000684]

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre **Decision & Reasons Promulgated**
On the 11th March 2022 **On the 22nd April 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MARYAN HUSSEIN IBRAHIM
MARYAN AHMED IBRAHIM
ANYI MOHAMED NOR

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Smega-Janneh, instructed by Deane & Bolton Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are Somali nationals, born on 17 March 2004, 16 February 2005 and 19 November 2003 respectively. They are cousins and are all the nieces of the sponsor, Ms Remko Hussein, a Norwegian national living and exercising Treaty rights in the UK. They appeal, with permission, against the

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decision of the First-tier Tribunal dismissing their appeals against the respondent's decision to refuse to issue them with EEA family permits to enter the UK as extended family members of the sponsor under the Immigration (European Economic Area) Regulations 2016.

2. The appellants applied for EEA family permits on 4 October 2020 to join their aunt, but their applications were refused by the respondent on 18 November 2020. In refusing the applications, the respondent considered there to be a lack of evidence of the appellants' and their family's circumstances to show that their essential living needs could not be met without the financial support of the sponsor. Further, the statement of transfers produced for money transfer remittances from the sponsor to a third party whom the appellants claimed to be their care-giver, dated between January 2018 and October 2018, had been found, through enquiries conducted with Dahabshiil and confirmed in a document verification report (DVR), not to be a genuine document. As such the respondent did not accept that the appellants were genuinely dependent upon the sponsor in accordance with Regulation 8 of the EEA Regulations.

3. The appellants appealed against that decision. Their appeals came before First-tier Tribunal Judge Jepson on 20 July 2021. It was argued, in a skeleton argument before the judge, that the appellants had escaped the captivity of Al-Shabab in early 2018 and were living with a family friend who had then contacted the sponsor. The sponsor was living in Norway at the time and she had arranged for the appellants to be moved to the home of a family friend, Mr Malow (various versions of his name were given), and had supported them financially from that time. In November 2019 the appellants were moved to Ethiopia in order to make an application for entry to the UK as the sponsor's dependent relatives and the sponsor continued supporting them financially pending the outcome of the application and after she moved to the UK. It was asserted that the money transfer receipts were genuine and that the DVR was unreliable as it did not take account of the different variations in the name of the recipient and that the online Dahabshiil account could be accessed as proof of the transfers.

4. At the hearing, Judge Jepson was invited by the appellants' representative to allow the sponsor to log in to the Dahabshiil account or for the Tribunal or the Home Office to access the account. The Presenting Officer objected on the basis that it was a last minute attempt to adduce new evidence. Judge Jepson refused the request, considering that it was a matter which should have been addressed before the hearing. He considered that he could not be satisfied that the support said to be provided by the sponsor was affordable for her and found there to be a lack of evidence of the appellants' essential living needs. He found that there was insufficient evidence to show that the requirements of the Regulations were met and he dismissed the appeals.

5. The appellant sought permission to appeal to the Upper Tribunal on the following grounds: that the judge had erred by failing to grant permission for the sponsor's Dahabshiil online account to be accessed at the hearing as proof that the money transfers were genuine; that the judge had misconstrued the

sponsor's evidence in relation to when Mr Malow ceased caring for the appellants; that the judge had misunderstood the evidence of the sponsor's earnings and therefore erroneously concluded that she could not afford the remittances to the appellants; that the judge had erred by taking irrelevant matters into account, namely the position of the sponsor's partner; that the appellants had been deprived of a fair hearing as the sponsor had not been given the opportunity to explain matters which were taken against them in relation to funds remitted; and that the judge had erred by assessing the sponsor's ability to send large remittances to the appellants in 2018 against her income in the UK rather than her income in Norway where she was living at that time.

6. Permission to appeal was granted in the First-tier Tribunal on 6 October 2021 on the first ground, although the other grounds were not excluded.

7. The matter was then listed for hearing and came before me. Both parties made submissions and I shall address those submissions in the discussion below.

Discussion

8. As I pointed out to Mr Tan at the commencement of the hearing, the grounds appeared to me to be correct in identifying various factual errors made by the judge. Ground two correctly identified an error made by the judge in regard to the evidence of when Mr Malow ceased caring for, and receiving funds on behalf of, the appellants. At [44] the judge found it odd that the sponsor spoke of Mr Malow parting company with the appellants in November 2019 yet she still sent him money the next month, whereas the sponsor's evidence, as the grounds point out, was that the appellants left Somalia in November 2019 and went to Ethiopia and that Mr Malow accompanied them there and stayed with them for a month. Therefore he did not cease caring for them in November 2019 and there was nothing inconsistent in the account of him receiving funds for them after November 2019. Grounds three and four correctly identified an error in the judge's consideration of the sponsor's earnings, considering her payslips to show monthly pay rather than fortnightly pay, which in turn led to his concerns about her ability to remit the amounts she was claiming to the appellants. The same ground, as well as ground seven, correctly identified that the judge wrongly considered some remittances against the sponsor's UK income, whereas the remittances of concern, in particular one of $6,000, was sent when the sponsor was living and working in Norway before she came to the UK. Ground five properly found that the judge took account of an irrelevant matter, namely the situation of the sponsor's husband, when he was not part of the sponsorship and lived in Norway.

9. It was Mr Tan's submission that those errors were peripheral and were not material to the decision, for two main reasons. Firstly, because the appellant had failed to produce evidence to rebut the allegations made in the DVR as to the reliability of the Dahabshiil money transfer receipts, despite being directed to provide such evidence before a date specified in directions made at a case

management review hearing. Secondly, because the judge had found that, irrespective of the issue of support provided by the sponsor, there remained a lack of evidence to show that the appellants required financial support to meet their essential needs, which in itself, Mr Tan submitted, was determinative of the appeal.

10. However, I am in agreement with Mr Smega-Janneh that those errors were material to the decision reached by the judge since they cumulatively informed his conclusions as to the credibility of the application made by the appellants and supported by the sponsor.

11. It is relevant to the first reason given by Mr Tan to note that the judge did not find at any point that there had been fraud and deception arising from the DVR, but it is clear from his findings at [38] that the concerns arising from that report formed part of a number of concerns that undermined the credibility of the appellants' and sponsor's account. It is also clear that those other concerns were largely based on the errors mentioned above. As for the remittance receipts, the judge accepted that those referred to in the DVR related only to a period in 2018 and that the reliability of the other, more recent, receipts produced had not been questioned. The judge addressed the appellants' representative's argument about the concerns as to the investigative process behind the DVR and did not reject it outright. Although it is clear from his findings at [43] to [47] that the judge was not entirely persuaded by the suggestion that it was the variations of Mr Malow's name that gave rise to the adverse conclusion in the DVR, it is also relevant to note that, at [39], he accepted that no clear reason had been given in the DVR for the conclusion reached. Accordingly it is clear that the concerns about the remittance receipts arising out of the DVR were not determinative of the question of financial support, but formed only a part of a wider picture, as the judge stated at [40], which involved matters that he had clearly misunderstood and misinterpreted. The issue of the respondent and the judge refusing to accept the sponsor's offer to access her Dahabshiil account was not, therefore, a particularly relevant one.

12. As for the second reason given by Mr Tan for the factual errors being immaterial, namely that the judge's findings at [60] to [62] on the lack of evidence from the appellants to show that they required financial support to meet their essential needs was in itself determinative of the appeal, I am again in agreement with Mr Smega-Janneh's argument to the contrary. Mr Smega-Janneh's submission on that point was that there was evidence of the appellants' need for financial support, in the form of the sponsor's own written and oral evidence. In her witness statement at [14] to [17] the sponsor had explained why the appellants needed financial support and how that support was used. Clearly, the judge's assessment of that evidence, in the absence of supporting documents, would have been informed by, and infected by, his adverse findings on the sponsor's evidence of the financial support she provided to the appellant. The judge's findings on that matter cannot, therefore, be considered independently of the previous adverse credibility

findings he had made and those adverse credibility findings were, as discussed above, tainted by his misunderstanding of parts of the evidence.

13. In the circumstances it seems to me that the appellant's grounds have been made out and that the judge's decision is infected by errors of fact giving rise to material errors of law and is unsustainable. The judge's decision has to be set aside in its entirety and the appropriate course is for the case to be remitted to the First-tier Tribunal to be heard *de novo*.

DECISION

14. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Jepson.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 11 March 2022