



Upper Tribunal  
(Immigration and  
Asylum Chamber)  
Appeal Number

HU/08779/2020

UI-2021-000518

**THE IMMIGRATION ACTS**

Heard at Manchester on  
On the 8 July 2022

Decision and Reasons  
Promulgated  
On the 01 September 2022

**Before**

**Upper Tribunal Judge Lane  
Deputy Upper Tribunal Judge Sills**

**Between**

**AMINA ALI ABDI  
(Anonymity Direction Not Made)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**ERROR OF LAW DECISION**

**Representation:**

For the Appellant: Ms Penrose  
For the Respondent: Mr McVeety

**Introduction**

1. The Appellant (A) appeals against the determination of First-Tier Tribunal Judge Sarwar (the Judge) dated 20 July 2021, dismissing her appeal against the refusal of her human rights claim.

**Factual Background**

2. The Judge summarises the factual background as follows at para 2-4:

*2. The Appellant is a citizen of Ethiopia born on 11 February 1974.*

*3. The Appellant had applied on the 7 September 2020 for leave to enter the United Kingdom under Appendix FM of the Immigration Rules, on the basis of her family life with her daughter in the United Kingdom.*

*4. The Appellant is appealing against the decision of the Respondent made on the 10 November 2020 to refuse leave to enter the United Kingdom. The refusal made reference to EC-DR 1.1 of Appendix FM for adult dependent relatives.*

*5. The Appellant has appealed under s.82 (1) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act), against the refusal of her application.*

3. A's appeal was then dismissed by the Judge. It was conceded before the Judge that A could not satisfy the requirements of the Immigration Rules. After setting out various legal principles, and agreed matters, the Judge found that A's Sponsor (S) could travel to Uganda to see A. Noting the submissions made on A's behalf about her being a victim of domestic violence, the Judge states:

*40. However I am not satisfied that this relationship alone is enough to succeed on an Article 8 regulation. Whilst I am sympathetic to the plight experienced by both the Sponsor and the Appellant neither is now faced with the severity of the situation they were once in.*

*41. I am not satisfied that that the appeal should succeed on the evidence before me.*

*42. I have considered whether the Appellant has discharged the burden of proof on her to show that the terms of Regulation 8 are met.*

*43. Taking into consideration all of the above, I find that the Appellant has not discharged the burden of proof on her, on the balance of probabilities, to show that the terms of regulation 8 of the Regulations are met.*

*Decision*

*44. The appeal is dismissed under the Immigration (EEA) Regulations 2016.*

*45. The appeal is dismissed under article 8 of the ECHR.*

4. A applied for permission to appeal arguing *inter alia* that the Judge had inadequately assessed the human rights appeal on ECHR Article 8 grounds, and in particular failed to properly address the question of proportionality.
5. Permission to appeal was granted by FTT Judge Moon on 3 October 2021, noting, in addition to the matters raised in the grounds, reference to the incorrect standard of proof at para 25 and two references to the 2016 EEA Regulations. R did not file a Rule 24 response.

### **The Hearing**

6. At the hearing, Mr McVeety rightly conceded that the reasoning in the decision is inadequate and hence the decision and reasons contained a material error of law. The parties agreed that the appeal should be remitted to the FTT for a fresh determination of the appeal.

### **Findings**

7. The Respondent's concession is rightly made. We highlight some of the main inadequacies in the reasoning of the determination. At para 25 the Judge states:

*25. I have taken a global assessment of credibility (see R (Sivakumar) v Secretary of State for the Home Department [2003] UKHL 14, [2003] 1 WLR 840). I have considered KS (benefit of the doubt) [2014] UKUT 552 (IAC); and Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11. Looking at all the evidence, the evidence in the round to the lower standard. [sic]*

8. These cases and principles all relate to the approach to asylum claims. They do not apply to A's appeal.
9. There is further confusion in the decision and reasons about precisely what appeal the Judge is considering. At para 34 the Judge states:

*34. The Regulations and case law place no requirement for dependency to exist for any particular period and I am satisfied that in terms of the chronology the Appellant has provided an explanation as to why he needed the financial support of the Sponsor.*

10. Subsequent passages make clear that at para 34 the Judge is referring to Regulation 8 of the Immigration (European Economic Area) Regulations 2016 (the EEA Regs). I have set out paras 40-43 above.

They refer to the Judge not being satisfied that the relationship is enough to succeed on an 'Article 8 regulation'. Paras 42 and 43 refer to 'Regulation 8'. At para 44, the Judge dismisses the appeal under the 'Immigration (EEA) Regulations 2016'. There was no such appeal before the Judge. The Judge has not only erroneously considered the EEA Regs, but also confused and conflated ECHR Article 8 with Regulation 8 of the EEA Regulations.

11. The Judge's consideration of ECHR Article 8 itself is inadequate. The Judge does not apply the long established approach to appeals on ECHR Article 8 grounds set out in the case of Razgar [2004] UKHL 27. There is no consideration as to whether A and S enjoy family life together and if so whether the decision interferes with that family life. There is no consideration of the question of proportionality. There is no balancing exercise. There is no consideration of s117B of the Nationality Immigration and Asylum Act 2002. Having found that the reasoning is inadequate, the Tribunal sets aside the decision of the First-tier Tribunal with no findings preserved.
12. The Tribunal has considered whether to re-make the decision or remit the case to the First-tier Tribunal. Both parties submitted that it was appropriate for the appeal to be remitted in view of the fact that a fresh hearing was required with no findings preserved. The Tribunal has had regard to para 7 of the 2014 Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal. As a fresh hearing is required, it is appropriate to remit the appeal to the First-tier Tribunal.

### **Notice of Decision**

The decision of the First-tier Tribunal contains a material error of law and is set aside.

The appeal is remitted to the First-tier Tribunal sitting at Manchester to be considered afresh with no findings preserved by a judge other than First-tier Tribunal Judge Sarwar.

Signed

Date 8 July



2022

Deputy Upper Tribunal Judge Sills

Listing Directions: list at Manchester First-tier Tribunal: first available date: not Judge Sarwar: 2 hours.