



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-002026
UI-2023-002027

First-tier Tribunal Nos: EA/11586/2021
EA/11573/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

28th February 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Muna Elmi Muhamad (First Appellant)
Osman Elmi Muhamad (Second Appellant)
(NO ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Sponsor with interpreter
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

Heard at Field House on 29 January 2024

DECISION AND REASONS

1. This is an application challenging the determination of First-tier Tribunal Judge Turner (the judge), promulgated on 15 January 2022, who dismissed the appellants' appeals against the Entry Clearance Officer's decisions of the 6 July 2021 refusing their applications for entry clearance.
2. The appellants are citizens of Somalia born on 15 March 2004 and 21 May 2005 and they challenge the refusal of their applications for a family permit under the EU Settlement Scheme in accordance with Appendix EU (Family Permit) of the Immigration Rules, (Appendix EU(FP)) and are supported in their appeal by their sponsor Hassan Owjama, their brother. It was submitted that the appellants currently resided with their friends in Kenya and previously lived with their mother in Somalia. Since the appellant's brother's death the family were said to be unable to manage and lived together and applied to join the appellant's

sponsor in the United Kingdom. The appellant's mother had been successful in her application and travelled to the UK to reunite with her son. The appellant's applications were refused. The sponsor refused the application on the basis the appellants had failed to provide adequate evidence that they were family members of the sponsor, as defined.

3. The appellants provided the respondent a DNA report to evidence that they were the siblings of the sponsor. They also produced money transfer receipts to show that the appellants were reliant upon the sponsor for financial support. They claim that they satisfy the eligibility requirements, as defined and qualify for a family permit. The respondent submitted that the appellants had failed to show they are family members of a relevant EEA citizen.
4. The judge recorded at paragraphs 18 and 19 that the appellant produced a bundle of documents to the Tribunal which was not paginated but included the covering letters setting out the grounds of appeal, reasons for refusing the letters, witness statement of the appellant's mother, ID of the sponsor, letter regarding DNA evidence, application forms, IAFT-5s, evidence of the mother's family permit and letter from the sponsor.
5. The respondent failed to produce a bundle in this appeal. The appeal proceeded on the basis that the respondent relied only on the Reasons for Refusal Letter in accordance with directions issued by the Tribunal dated 3 December 2021.
6. At paragraph 22 the judge recorded that in relation to the evidence that the appellants were related to their sponsor, the appellants had claimed to have produced DNA evidence to the respondent in support of their applications. The judge clearly stated "These documents have not been produced to the Tribunal."
7. Further to paragraph 23, the judge noted with reference to Rule 23 of The Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014, that the respondent should have produced a bundle but it was still for the appellants to prove their case on the balance of probabilities. Regardless of the failure on the part of the respondent to serve the documents required, the appellants were still required to provide sufficient evidence. The judge recorded at paragraph 28 that the DNA evidence that had been presented to him did not provide any evidence that the appellants were related to the sponsor as claimed. The judge stated 'it is not clear to me what DNA evidence has been presented to the respondent for consideration'.

Grounds for permission

8. The grounds for permission to appeal submitted that the judge failed to consider or engage with the DNA evidence that went to the heart of the appeal. The judge acknowledged the fact that he or she did not have a respondent's bundle and that the DNA evidence relied on with him was not before him.
9. The DNA evidence relied on consisted of legal DNA test reports setting out the methods used to ascertain results and the results of the DNA tests, which showed in all probability they were related to the mother. It was recognised at paragraph 8 of the grounds that the nature of the paper hearings meant the judge had limited ability to secure the missing evidence.

10. It followed that the judge did not have the material evidence and they were deprived of a proper and fair hearing through no fault of the judge. Indeed, the judge's conclusion at paragraph 31 that he noted that the sponsor's mother had been issued with a family permit but there was no evidence to link the appellants to the sponsor's mother to allow the judge to make findings of relationship in that way, constituted a material error and demonstrated the applicants did not have an effective appeal.
11. Paragraph 31 revealed that the judge did not adequately engage with the statements of the sponsor and the appellant's mother. It appeared from paragraph 18 that the judge did not even have sight of the sponsor's statement.
12. In all the circumstances the determination was unsafe as the applicants had not had a fair consideration of their evidence.

Conclusions

13. The hearing before the Upper Tribunal on 27 January 2023 was adjourned and a notice of directions dated 27th January 2023 was sent to the parties, both by email and by post to the sponsor Mr Hassan, in the following terms,
 1. *Having inspected the filing systems there is no record of any full DNA report having been filed prior to 15th January 2022 (date of promulgation of First-tier Tribunal decision) in the above cases. A maximum bundle of 52 pages of evidence was filed with the IAF6 on 28th July 2021 by Eid Solicitors and a further 32 pages by email on 8th October 2021. The email of 28th July 2021 from Eid Solicitors merely refers to 'appeal grounds.pdf; Bundle docs.pdf; Muna IAF6 form.pdf'. There is no reference to a DNA report.*
 2. *Neither document bundle contained a full DNA report.*
 3. *I note that representatives changed on 15th February 2022 to Goldsmith Chambers. The documents filed by either the appellants or the Home Office to the First-tier Tribunal do not reflect the bundle forwarded to the Upper Tribunal on 27th January 2023 by Ms Norman at the hearing before me which runs to 109 pages and which contains an index and a DNA report. I make clear I make no criticism of Ms Norman in this regard.*

Directions

4. *The appellants' representatives are to file and serve **no later than 10th February 2023** confirmation of an email/correspondence to the First-tier Tribunal **prior** to the determination of the First-tier Tribunal on 15th January 2022 **specifically referencing the filing of and attaching the full relevant DNA report.***
5. *The Secretary of State is to confirm to both the appellants' representatives and the Upper Tribunal **no later than 10th February 2023** whether the full DNA report (said to run to five pages) was served on the ECO/Home Office and is within the respondent's bundle and the date and when that report was served.*

14. At the hearing before me Mr Lindsay confirmed that the Secretary of State had received no DNA evidence; there was none with the ECO or with the Home Office or within the respondent's bundle.
15. There was no confirmation from the appellants as to when they had filed and served the DNA report prior to the hearing on 15 January 2022 before the First-tier Tribunal Judge.
16. The sponsor stated to me that a further DNA test had been undertaken in January 2024. That evidently was not before the First-tier Tribunal judge.
17. In my view and as I explained to the sponsor the refusal decision was based on a lack of DNA evidence. As such, the judge's conclusions at paragraphs 28 - 30 were accurate as follows:
 28. *I have considered the evidence that I have seen in the Appellants' documents which relate to DNA evidence. The document is headed DNA Legal and notes the Sponsor's name, date of birth and contains a copy of the Sponsor's Dutch passport. The DNA evidence that has been presented to me does not provide any evidence that the Appellants are related to the Sponsor as claimed. It is not clear to me what DNA evidence has been presented to the Respondent for consideration.*
 29. *I have seen no birth certificates to demonstrate that the Appellants and the Sponsor have the same parents.*
 30. *Overall, the Appellants have failed to provide to the Tribunal sufficient evidence to prove that they are related to the Sponsor, as claimed."*
18. The grounds also asserted that the judge should have considered whether to adjourn the matter. It is for the appellants to prove their case and to provide the relevant evidence and the standard directions from the FtT are clear in that respect. The appellants failed to provide the relevant evidence to the First-tier Tribunal and failed to provide me with any confirmation that such evidence had been presented to the First-tier Tribunal despite the fact that they were represented until the first hearing before the Upper Tribunal. At the last hearing before the Upper Tribunal the appellants were represented by experienced Counsel who withdrew. There was no material error or procedural error in the judge's approach to consider any adjournment noting that this was a matter decided on the papers, that the evidence was not available in this application nor in this appeal. There is no indication the judge failed to have in mind the overriding objective and the test is fairness and any adjournment was not even likely to produce the documentation.

Notice of Decision

19. The decision of First-tier Tribunal Judge Turner discloses no material error of law and will stand. The appellants' appeals remain dismissed.

H Rimington
Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

23rd February 202