



18 December 2013

PRESS SUMMARY

AA (Somalia) (FC) (Appellant) v Entry Clearance Officer (Addis Ababa) (Respondent) [2013] UKSC 81

On appeal from 2012 EWCA Civ 563

JUSTICES: Lady Hale (Deputy President), Lord Wilson, Lord Reed, Lord Carnwath, Lord Hughes

BACKGROUND TO THE APPEALS

The issue in this appeal is whether AA falls within the definition of an “adopted child” in paragraph 352D of the Immigration Rules.

AA was born in Somalia on 21 August 1994. Her family were torn apart by events in Somalia and her father was killed in the mid-1990s. AA became separated from her mother and other siblings during the fighting. Around the end of 2002, she went to live with her brother-in-law, Mohamed. He had a daughter, Fadima and step-daughter, Amaani. Mohamed took AA into his family home under the Islamic procedure known as “Kafala” (described as “a process of legal guardianship akin to adoption”).

In October 2007, Mohamed left Somalia and came to the UK in November 2007. He was granted asylum on 21 July 2008. The three girls, AA, Fadima and Amaani, were left with a maternal aunt in Mogadishu. An application for entry into the UK was made for all three girls. Entry clearance was granted to Fadima and Amaani who came to the UK in January 2010. It was refused for AA who remained in Addis Ababa pending her appeal.

Her appeal was heard in the First-tier Tribunal (“FTT”) on 3 September 2010. Exert evidence, accepted by the tribunal, was to the effect that, although adoption as such does not exist under Islamic law, under the legal institution known as Kafala a person may become a “protégé and a part of the household of an adult”; and that this “only falls short of a full blown adoption in that such adoptee does not enjoy a right of inheritance under Islamic law”. The FTT allowed the appeal both under paragraph 352D and article 8 ECHR (right to respect for private and family life). The Secretary of State appealed.

The Upper Tribunal (“UT”) allowed the Secretary of State’s appeal in respect of paragraph 352D but confirmed the FTT’s decision under article 8. On 2 May 2012, the Court of Appeal confirmed the UT’s decision. On 14 May 2012, AA was given entry clearance and she arrived in the UK on 4 June 2012.

AA appeals to the Supreme Court in respect of paragraph 352D of the Immigration Rules.

JUDGMENT

The Supreme Court dismisses the appeal. Lord Carnwath gives the lead judgment, with which Lady Hale, Lord Wilson, Lord Reed and Lord Hughes agree.

REASONS FOR THE JUDGMENT

The correct approach to construction of the rules is well settled, as explained by Lord Brown in *Mabed v Entry Clearance Officer* [2010] 1 WLR 48. Read in accordance with those principles, it is clear that paragraph 352D does not cover AA's case and cannot be rewritten in order to do so [14-15]. Whether or not Kafala could be treated as a form of "adoption" for other purposes, the definition of "adoptive parent" in paragraph 6 is more restricted. It extends to "de facto adoption" only within the limitations laid down by paragraph 309A, which does not cover this case [15-16].

A number of international instruments call for a broad approach to the protection of the interests of children. The "best interests" principle is now, in appropriate areas of law, recognised both by domestic and international law [17]. However, taking them at their highest, there is no specific obligation covering the position of AA [18]. Subject to the issue of discrimination, there is no international obligation which goes further in practical terms than the protection which has been afforded to AA under human rights law [21].

It appears harsh that under the rules AA is treated less favourably than her adoptive siblings, largely because of the tragic circumstances in which parental responsibility passed to her brother-in-law, taken with the lack of any functioning legal system allowing for formal adoption in the country from which she comes. However, it is unnecessary to decide in the context of the present appeal whether or not such treatment could give rise to a claim for unlawful discrimination under article 14 ECHR or otherwise. This is because any rights which AA has in that respect would apply equally to her position in this country, regardless of the basis of her admission. In exercising any discretion in relation to the grant or extension of definite leave to remain, the Secretary of State is obliged to act in conformity with the Convention, including article 14. It is not necessary to reinterpret the rules to achieve that result [24].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html