



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/16025/2012

THE IMMIGRATION ACTS

Heard at Field House
On 30 October 2014

Determination Promulgated
On 31 October 2014

Before

Deputy Upper Tribunal Judge Pickup

Between

Abdiyo Hagar
[No anonymity direction made]

Appellant

and

The Entry Clearance Officer Nairobi

Respondent

Representation:

For the appellant: Mr D Ball, instructed by Hersi & Co Solicitors
For the respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Abdiyo Hagar, date of birth 1.1.30, is a citizen of Somalia.
2. This is her appeal against the determination of First-tier Tribunal Judge Davidson promulgated 10.1.14, who dismissed her appeal against the decision of the respondent dated 23.11.11, to refuse entry clearance to the United Kingdom as the

dependent parent of her son Mohamed Mahamud, a British citizen present and settled in the UK. The Judge heard the appeal on 11.12.13.

3. First-tier Tribunal Judge Cruthers granted permission to appeal on 19.3.14.
4. The appeal then came before Deputy Upper Tribunal Judge Monson on 23.4.14, at which hearing there was no attendance on behalf of the appellant. Judge Monson dismissed the appeal, finding no error of law. However, it then came to his attention on 19.6.14 that the appellant's solicitors had produced evidence that the notice of hearing had not been served. Judge Monson gave directions that the determination should not be promulgated but the appeal relisted before him.
5. The appeal was then listed before Judge Monson at Field House on 23.7.14. It transpired that contrary to his instructions, the dismissal decision had been promulgated. Unaware of the judge's directions of 19.6.14, the appellant's representatives applied to the Upper Tribunal in June 2014 for permission to appeal to the Court of Appeal on the grounds of procedural unfairness. On 23.7.14 under Rule 43(1) Judge Monson set aside his previous decision on the basis that a party's representative was not present at the hearing. He then directed that the appeal should be relisted before another Upper Tribunal Judge for rehearing of the appeal to the Upper Tribunal.
6. Thus the matter came before me on 11.9.14 as an appeal in the Upper Tribunal. For the reasons set out in my error of law decision promulgated on 29.9.14, I found that there were errors of law in the decision of the First-tier Tribunal such that it should be set aside and remade. In particular, I found that the First-tier Tribunal Judge failed to take into account all the available evidence demonstrating the sponsor's financial support of the appellant. I also found that the judge had miscalculated the relevant income requirements and wrongly disregarded Child Tax Credit and Working Tax Credit.
7. I reserved the remaking of the decision to myself in the Upper Tribunal, and it was thus listed before me on 30.10.14.

Findings of Fact

8. The issue of relationship is now beyond dispute by reason of DNA test.
9. There remain two issues at large: whether the appellant can demonstrate that she is financially wholly or mainly dependent on the sponsor as claimed, and whether she can be adequately accommodated and maintained in the UK without (further) recourse to public funds.
10. In respect of the first issue, financial support, the sponsor produced further money transfer receipts to those previously submitted and those itemised in Mr Ball's skeleton argument. I also accept his argument that post-decision receipts are

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make a full fee award.

Reasons: The appeal has been allowed.

Signed:

Date: 30 October 2014

Deputy Upper Tribunal Judge Pickup