



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/04069/2015**

Appeal Numbers:

OA/04070/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 21 September 2017**

**Decision & Reasons
Promulgated
On 11 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

**AMUN ABDI IBRAHIM (FIRST APPELLANT)
IKRAM ABDI IBRAHIM (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellants: Mr D Ball of Counsel instructed by Hersi & Co Solicitors
For the Respondent: Mr E Tufan, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Somalia. Amun Abdi Ibrahim was born on 18 May 2000 and Ikram Abdi Ibrahim was born on 3 March 1999. The appellants are sisters. The appellants applied for entry clearance to settle in the United Kingdom under paragraph 297 of the Immigration Rules. The appellants' application was supported by their sister Ubah Abdi Ibrahim. She lives in the UK and is now a British citizen. The Entry Clearance Officer refused the appellants' applications on 26 January 2015.

The appeal to the First-tier Tribunal

2. The appellants appealed against that decision to the First-tier Tribunal. Following a hearing on 24 October 2016 First-tier Tribunal Judge Beg dismissed the appellants' appeals. The judge did not find the sponsor to be a credible witness and found that the appellants did not meet the requirements of the Immigration Rules.
3. The appellants applied for permission to appeal against the First-tier Tribunal's decision. On 2 June 2017 First-tier Tribunal Judge Brunnen refused to grant permission to appeal. The appellants renewed their application for permission to appeal to the Upper Tribunal and on 7 August 2017 Upper Tribunal Judge Finch granted the appellants permission to appeal.

The hearing before the Upper Tribunal

4. The grounds of appeal that were submitted in support of the application for permission to appeal are lengthy, wide ranging, in several parts irrelevant and also in parts do not appear to bear any resemblance to the decision of First-tier Tribunal. At the start of the hearing Mr Ball submitted amended grounds of appeal together with an application to amend the grounds of appeal. Set out in the amended grounds of appeal is a succinct summary of the grounds relied on. Rather than pick through and try to find relevant grounds of appeal from the lengthy document I referred to earlier, I will refer to the commendably succinct grounds of appeal supplied by Mr Ball. There are three grounds of appeal set out in the amended grounds (that relate to grounds submitted in support of the application for permission to appeal) together with a fourth ground that was not contained in the application. I permitted the appellants' to amend the grounds of appeal add the fourth ground of appeal.
5. The first ground of appeal asserts that the First-tier Tribunal decision is flawed because the Tribunal required documentary evidence. Such requirement for documentary evidence is unreasonable in the context of the situation in Somalia.
6. The second ground of appeal asserts that the decision is flawed because the rejection of credibility failed to give weight to the cogency and consistency of the appellants' and sponsor's evidence. It is asserted that it was inconsistent to expect the sponsor to send someone to trace her mother or uncle or to discount that the mother may have disappeared when travelling to find her brother.
7. The third ground asserts that the decision is flawed because the judge failed to consider Article 8 at all and failed to consider the best interests of the child as an aspect of Article 8 and failed to properly recognise that the burden of establishing that an interference is proportionate rests on the Entry Clearance Officer.
8. The new ground of appeal is that the First-tier Tribunal erred in failing to make key findings of fact relating to the primary constituents of Immigration Rule 297(i)(f) as to whether there are serious and compelling

family or other considerations which make exclusion undesirable. It is asserted that the First-tier Tribunal Judge failed to make findings about:

- (a) whether the girls are living in Ethiopia unlawfully with precarious immigration status;
 - (b) whether they are living in insecure and unsanitary accommodation with no running water or heating;
 - (c) whether they were arrested;
 - (d) whether they are vulnerable to sexual abuse;
 - (e) whether they have a male protector;
 - (f) what their emotional needs are as required by **Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 00088 (IAC)**.
9. Mr Ball amplified the grounds of appeal. He asserted that the judge properly referred to the case of **Mundeba** but the judge should have carried out a proper assessment as set out in paragraph 37 which says that Section 55 should be a point of consideration under the Immigration Rules. He referred to the case of **T (s.55 BCIA 2009 - entry clearance) Jamaica [2011] UKUT 00483(IAC)**, an Entry Clearance Officer is only required to look at the spirit of Section 55, however, no consideration has been given by the Entry Clearance Officer or the judge.
10. Mr Ball submitted that the judge failed to deal with the fundamental issues. He submitted that the judge has not rejected the entirety of the sponsor or the appellants' accounts. The judge must consider the current position of the children. In relation to adverse credibility findings he submitted that the judge failed to take into account relevant factors and took into account irrelevant factors. At paragraph 7 the judge took irrelevant factors into account when finding that there was no documentary evidence. He submitted this was too high a hurdle given the situation in Somalia. In paragraph 8 he submitted there was nothing inherently implausible about the mother not knowing what contact details would be available as she was only going for two days. At paragraph 9 the judge states there is no evidence that the sponsor has sought to find somebody to trace the appellants' mother. He submitted that in Somalia there is hardly likely to be an abundance of private detectives to look for the uncle. At paragraph 10 the judge found that there was no corroborative evidence but failed to take fully into consideration that Somalia is a failed state as is established in the Home Office guidance. The judge acted inappropriately in seeking documents where none exists. With regard to paragraph 11 he submitted that the arrangement for the cousin to look after the appellants was for a couple of days. The cousin could not be expected to take on a lifelong responsibility and there is nothing implausible in the appellants' mother's cousin going to Saudi Arabia with her husband. With regard to paragraph 14 there were no

findings whatever about the situation of the children. There was no consideration of Article 8.

11. Mr Tufan submitted that in **Mundeba** it is stated that in entry clearance cases Section 55 is applicable in spirit. Section 55 considerations still come into play. There is nothing in this case to consider because the judge makes a conclusion that the children are looked after by family, a conclusion he arrived at after making negative credibility findings. He submitted the only way that the appellant can succeed is if the judge's findings are irrational. The lack of evidence is a matter the judge was entitled to take into consideration. Mr Tufan submitted that only the circumstances pertaining at the date of the decision can be taken into consideration. He referred to the case of **AS (Somalia)** in the House of Lords, in entry clearance cases under the old Rules any Article 8 considerations were those that were relevant at the date of the decision in entry clearance cases. He submitted that the appellants were not in Ethiopia at that time, that the evidence with regard to the arrest is not relevant as it postdated the decision.
12. In reply Mr Ball said that subsequent evidence can shed light on a situation at the date of the decision. He submitted that all the matters can be taken into account including why the children were arrested, where the children were living because this all underscores the lives they were living in January 2016. The appellants were living in Ethiopia at the date of the application.

Discussion

13. I will consider grounds 1 and 2 together. The first ground of appeal is that the Tribunal required documentary evidence and that that is unreasonable in the context of the situation in Somalia. The second ground is that the rejection of credibility failed to give weight to consistency of the appellants' and sponsor's evidence. It is asserted that it was inconsistent to expect the sponsor to send someone to trace her mother or uncle or to discount that the mother may have disappeared. The weight to be given to evidence is a matter for the judge. Whilst inconsistencies might lead to doubts about credibility and are likely to be set out by a judge, there is no requirement to draw attention to consistency. It is not evident that the judge has failed to have regard to the consistency in the accounts when assessing the evidence overall. I accept that the judge was speculating when considering that the sponsor had not considered hiring someone to look for her mother. I also accept that the judge appears to have weighed the lack of corroborative documentary evidence from Somalia against the sponsor and appellants in circumstances where such evidence would be unlikely to be available. However, this was not the only documentary evidence that was considered to be lacking by the judge. In this case there was a distinct lack of any documentary evidence whether from Somalia, Ethiopia or the UK with regard to the appellants' and sponsor's accounts. The judge set out:

- “7. ... The sponsor gave evidence that the appellants lived with their mother before she left them. She said that their father left about ten years ago to live in the Middle East. I find that there is no documentary evidence that the appellants’ father left the family and settled in the Middle East, possibly in Kuwait. Despite the sponsor’s evidence that she contacted friends in Kuwait who did not have her father’s telephone number or contact details, there is no documentary evidence from them that the sponsor contacted them looking for her father.
8. ... At paragraph 7 she states that the appellants were left in the care of her mother’s cousin, Fadumo Mohamed. I do not find it credible that if the appellants’ mother left them to go and see her injured brother in September 2014 that she would not have left telephone numbers for them to contact her. I find that she would have left her brother’s telephone number and the number of the neighbours who contacted her to let her know that her brother had been injured. Yet the sponsor in her evidence claimed that she did not have any telephone number for her uncle or indeed anyone else in Beledwayne.
9. Moreover the sponsor claimed that she has not been able to go to Beledwayne to look for her mother or to find her maternal uncle because it is too dangerous to go there. I take into account the objective evidence in the appellants’ bundle and the skeleton argument submitted on the appellants’ behalf by Miss Jaber. I find that whilst there are parts of Somalia that are indeed dangerous, there is no evidence before me that the sponsor considered hiring someone to go to Beledwayne to look for her mother and maternal uncle. Yet the sponsor was able to spend considerable funds in travelling out to see the appellants on at least three occasions. She said that she saw them once in Burao and twice in Addis Ababa. I find that there is no documentary evidence at all that the sponsor contacted a number of people to try to find the whereabouts of her mother.
10. In cross-examination the sponsor said that she also contacted the police in 2005 about her mother’s disappearance. She said the police do not provide documents and therefore she has been unable to provide corroborative evidence. I find that the sponsor did not give any detailed evidence about which police station she contacted or the name of the police officer that she spoke to or indeed the month in which she contacted the police. She claimed that she made a telephone call from the United Kingdom using a telephone calling card. On a balance of probabilities, I do not find the sponsor a credible witness. I find that there is no corroborative evidence that the appellants’ mother has disappeared and that the sponsor has contacted the police or anyone else about her mother’s disappearance.
11. The sponsor gave evidence that the appellants were looked after by her mother’s cousin Fadumo Mohamed. In cross-examination she said that her aunt left to live in Saudi Arabia in June 2015. She was forced to go there to join her husband. I do not find it credible that if Miss Mohamed was asked by the appellants’ mother to take care of her minor daughters in her absence, that she would just abandon them to go and live in Saudi Arabia. The sponsor gave no credible explanation other than that her husband forced her to go to Saudi Arabia as the

basis for why she would abandon the appellants to live on their own. Moreover I find that the sponsor did not travel to Somalia to ensure that the appellants were living safely and had someone to watch over them when their aunt allegedly left in June 2015. The sponsor gave evidence that she did not travel to Somalia until July 2016 and that was after she received a telephone call from a neighbour in Addis Ababa to say that the appellants had been arrested in Ethiopia.

14. The judge had the benefit of seeing and hearing the sponsor first hand when assessing the evidence. It is clear that the judge found the sponsor's evidence to lack detail with regard to contact with the police, a matter that is not concerned with corroborative documentary evidence. There was a lack of detail in many regards as found by the judge. The judge did not accept the explanation regarding the appellants' aunt abandoning them. The lack of detail coupled with the lack of corroborating evidence from any source were all matters that the judge was entitled to take into account when assessing the credibility of the evidence. The judge found:
 13. In considering the evidence in the round and on a balance of probabilities, I do not find the sponsor a credible witness. I find that there is no credible evidence before me that the appellants' mother disappeared after she went to visit her brother who was shot in September 2014. I find that there is no credible evidence before me that the sponsor contacted a number of individuals looking for her mother including the police in Burao. I find that there is no documentary evidence from the appellants' mother's cousin who allegedly looked after the appellants after she left them in her care. There is no corroborative evidence that the sponsor contacted her father in Kuwait to let him know that the appellants were left on their own in Addis Ababa and that their mother had disappeared.
 14. I find that the appellants continue to live either in Somalia or Addis Ababa supported by family members and supported financially by the sponsor in the United Kingdom. In respect of the second ground of refusal under paragraph 320(3) of the Immigration Rules; the appellants failed to provide a valid national passport or other document to establish nationality and identity, Miss Jaber in her skeleton argument at paragraph 35 onwards states that the appellants were able to obtain birth certificates from the Somali Embassy in Addis Ababa but these were not available to the Entry Clearance Manager reviewing the decision in respect of Amun's application. I find that the birth certificates were not before the Entry Clearance Officer. They were issued many years after the appellants were born and there is no credible evidence before me about what documents were produced for those birth certificates to be issued. In conclusion I find that the appellants do not meet the requirements of the Immigration Rules".
15. Although the judge may have erred in considering that corroborative evidence could have been obtained from Somalia, and whilst a different judge may have reached a different conclusion, on the totality of the evidence before the judge and the account given by the sponsor and the evidence of the appellants the conclusions reached were ones which were open to him. Any error was not therefore material.

16. Given the judge's finding that the appellants are supported by family members in Somalia or Addis Ababa there was no need for the judge to consider Article 8.
17. As the judge had rejected the credibility of the sponsor's and appellants' accounts of living alone without family support the judge did not need to make findings regarding the factors in Immigration Rule 297(i)(f).

Notice of Decision

The appeal is dismissed. The decision of the Entry Clearance Officer stands

No anonymity direction is made.

Signed P M Ramshaw

Date 11 October 2017

Deputy Upper Tribunal Judge Ramshaw