



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/01884/2013
OA/20749/2012
OA/20750/2012

THE IMMIGRATION ACTS

Heard at Field House

**On 27 May 2014
Prepared 27 May 2014**

**Determination
Promulgated
On 1 July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**S I M
A A Q
A A QM**

(ANONYMITY DIRECTION CONTINUED)

and

ENTRY CLEARANCE OFFICER - NAIROBI

Appellants

Respondent

Representation:

For the Appellants: Mr J Chipperfield, Counsel
For the Respondent: Mr S Whitwell, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellants, nationals of Somalia whose stated dates of birth are respectively 5 July 1999, 15 March 2004 and 12 May 2005, appealed against the Respondent's decisions in November and September 2012 to

refuse entry clearance for the purposes of settlement. Their appeals came before First-tier Tribunal Judge Scott-Baker (the judge) who, on 20 January 2014, dismissed their appeals under the Immigration Rules and Article 8 of the ECHR. Permission to appeal their decisions was given by First-tier Tribunal Judge Lambert on 7 April 2014.

2. From reading the papers and hearing the submissions I was wholly satisfied that the grounds to the First-tier Tribunal included an extensive claim with reference to both Article 8 of the ECHR and to the application of the spirit of Section 55 BCIA 2009. The evidence before the judge made brief, but some reference, to the statements of the Sponsors, that is Mr M A and Miss H F M A, and their concerns over the current wellbeing of the children. It is clear from the judge's determination and the reasoning that she concluded that the mother of the Appellants had voluntarily left them behind in the circumstances that then arose for as she said in paragraph 38,:

"... I do not find these decisions amount to an interference of rights protected by Article 8 as it has been the parties' choice that the family should be separated whilst the immigration process is undertaken and the decision merely maintains the status quo."

3. As Mr Whitwell points out there is a particular reference to the second Appellant's diabetic health issues being considered by the judge: The judge made reference to the refusal of entry clearance of that Appellant not amounting to a violation of rights protected by the ECHR or as she put it "the doctrine of the best interests of the child".
4. In those circumstances it was said by the judge that there was no evidence before her to establish the children's circumstances in Ethiopia had changed. The difficulty with that reasoning, even if it was to be accepted, were the references by the Sponsor and her husband concerns

about the children's present circumstances and the lack of adequate reasons for rejecting the same.

5. I find that there is an error of law by the judge in failing to give proper reasons which were sufficient and adequate for rejecting the concerns about the well-being of the children. See R (Iran) [2005] EWCA Civ 982 and E and R [2004] QB 1044 CA.
6. Mr Chipperfield sought at the outset of the hearing to add an additional ground of refusal by reference to an error in the calculations made by the judge on the issue of maintenance upon which she reached an adverse conclusion, with reference to paragraph 297(v) of the Immigration Rules HC 395 (as amended). It is also clear that the judge did not ultimately make any finding on the adequacy of the accommodation to be provided for the three child Appellants.
7. It is at least arguable that there may be an issue on the calculations about the maintenance. However, for the purposes of Mr Chipperfield's application I rejected the same because I did not find the evidence in the light of the submissions made, was sufficiently clear to show that there was an arguable an error of fact made by the judge; which would amount to an error of law. For that reason I rejected his application to amend the grounds.
8. However, in the light of the above findings the Original Tribunal's decision cannot stand and will have to be remade.
9. Given the President's amended statement on returning cases to the First-tier to be remade this is a good example of the need to do so by reason of fairness and the inconclusive nature of the case file provided: Which does not include any Record of Proceedings.

- 10 I have considered whether or not it could be that the Article 8 claim with reference to Section 55 claim was in fact not pursued before the judge but it does not seem to me that in the light of the way the judge has dealt with the matter that she regarded those claims as having been abandoned. However the relevant date for the Article 8 ECHR decision was the date of the Respondent's decision not as claimed the date of hearing by the judge.
11. The Original Tribunal's decision can not stand. Accordingly, the appeal must be remitted to the First-tier to be re made in accordance with the law.

DIRECTIONS

- 1) The only issue of which findings were made to stand is in relation to the relationships of the Appellants to Miss H F M A.
2. All issues under the rules to be decided, particularly Article 8 ECHR, the Rules and as applicable s.55 BCIA 2009.
- 2) Time estimate two hours.
- 3) Somali interpreter require.
- 4) List before any First-tier Tribunal Judge except Mrs Scott-Baker.
- 5) In the light of the circumstances of the case it is necessary for the anonymity order to be continued.

DIRECTION REGARDING ANONYMITY - RULE 45(4)(I) OF THE ASYLUM AND IMMIGRATION TRIBUNAL (PROCEDURE) RULES 2005

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Respondent and to the Appellants. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 24 June 2014

Deputy Upper Tribunal Judge Davey