



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

Appeal Number: OA/13959/2013

THE IMMIGRATION ACTS

Heard at Field House

On 22 July 2014

Determination

Promulgated

On 5 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

MISS LAYLA ABDI DAHIR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS
EXTEMPORE JUDGEMNT

1. The Appellant in this appeal was the Respondent at the First-tier Tribunal and I refer to the parties as they were known at the First-tier for convenience.
2. The Respondent appeals the decision of First-tier Tribunal Judge Crawford promulgated on 13 May 2014 in which he allowed the Somalian

Appellant's appeal against the refusal of entry clearance as the dependant child relative of a refugee on Article 8 grounds. The Respondent argues that the judge materially misdirected himself in law in his approach to the Article 8 assessment as he did not apply the guidance in the case of **Gulshan (Article 8 - new rules - correct approach) [2013] UKUT 00640** and similar jurisprudence and in particular that the judge failed to give adequate reasons as to why the Appellant's circumstances were compelling or exceptional. Mr Saunders has renewed those grounds before me today.

3. The Appellant, although previously represented, is unrepresented as at today's hearing but her Sponsor, Mrs Nunra Abdalla Sherif-Ali attended to support her case and invited me to find that there was no error in the judge's determination.
4. This was an out of country application. The Entry Clearance Officer in the terms of the decision recognises that the out of country Rule at paragraph 319 of HC 395 are not a complete code in the context of this application, and goes on to deal with the wider Article 8 European Convention on Human Rights, and specifically the question of the best interests of the children, and so decides the application with reference to both the Rules and Article 8 ECHR. Similarly, when the case was put before the First-tier Tribunal Judge the Home Office representative took no issue with the need for the judge to move on beyond the rules position to a consideration of Article 8 ECHR.
5. The judge makes it clear that the basis of the rules refusal is fully taken into account as the starting point of the Article 8 consideration. The judge looks at the coverage of the Rules, and the reasons for the Entry Clearance Officer's refusal. The ground of refusal which the judge found sustainable on the facts was the financial requirements.
6. The judge found that the Respondent's concerns about the relationship between the Appellant and the Sponsor fell away in light of the positive DNA evidence. The judge found the sponsor and her husband to be truthful and reliable witnesses, and on their evidence was satisfied that the Appellant had been brought up by the Sponsor from the age of 2 and was part of the Sponsor's pre-flight family, and found that the minor appellant is now living alone and is vulnerable. The judge applies the findings of fact that he has made, set out at paragraph 11, to the rules and significantly finds that sub-paragraph 319X (ii): that there are serious and compelling family or other considerations which make exclusion of the child undesirable, is met.
7. The findings were contrary to the findings of the Entry Clearance Officer, but are sustainable on the evidence as it was before the judge. In the light of the finding in respect of serious and compelling circumstances the judge's decision to engage with Article 8 ECHR is unassailable.

8. Mr Saunders today pressed me to note that that the Appellant's relatives ie the husband of the Sponsor along with his children, chose to leave the Appellant behind, and travel on their visas as granted, and that is why the Appellant is alone and vulnerable rather than as a result of the respondent's decision. I find that the submission takes the matter no further not only was it not raised in the grounds upon which permission was granted it was not argued by the Respondent's representative on the day. The Appellant is a child, not responsible for the Sponsor's husband and children travelling to the United Kingdom to join the sponsoring wife and mother, but in any event as a result he was able to attend the Appellant's hearing and give evidence about her history and current living conditions, and his evidence was found to assist the court.

9. The First-tier Tribunal Judge made sustainable findings of fact and clearly had regard to the failure to meet the financial requirements of the rule. The judge was entitled to conclude that on the facts that position was not determinative of balancing of the competing interests in the Article 8 consideration. The judge applied the jurisprudence in respect of Article 8, correctly self-directing in terms of the question of the interference with family life and the severity of the interference, as well as the best interests of the child. The judged weighed the competing interests and whilst having regard to the weight to be attached to the public interest in restricting entry to those who meet the strict requirements of the rules, found on the facts, and including taking into account the finding that the Sponsor is a genuine refugee could not be reasonably expected to relocate, reached a conclusion which is not perverse on the evidence. In short I find that the decision of the First-tier Tribunal Judge reveals no material error of law and it stands.

Signed

Date

Deputy Upper Tribunal Judge Davidge