



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
OA/18670/2012

Appeal Number:

OA/18671/2012

**THE IMMIGRATION ACTS**

**Heard at: Columbus House, Determination  
Newport Promulgated  
On: 22 October 2014 On: 24 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**RUWAIDA ABDIRAHMAN SAID  
RIQIYA ABDIRAHMAN SAID**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G Hodgetts instructed by South West Law  
For the Respondent: Mr I Richards, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the continuation of an appeal by the Appellants, two children presently resident in Ethiopia. They are Somali citizens. Their appeal against refusal of entry

clearance to join their parents Faahiye Garceesaan Said (formerly known as Abdirahman Sharif Said) and Zaynab Abdirahman Farah in the United Kingdom first came before First-tier Tribunal Judge Ghaffar on 24 September 2013 and was allowed by reference to Article 8 ECHR. The Secretary of State applied for permission to appeal to this Tribunal and following the grant of permission a Vice-Presidential panel decided that the decision of the First-tier Tribunal contained material errors of law and set that decision aside. In doing so the panel considered that no part of the First-tier Tribunal decision could survive. The appeal was retained in the Upper Tribunal for a new decision to be made.

2. At the resumed hearing before me Mr Hodgetts represented the Appellants and Mr Richards the Respondent. Neither representative submitted a skeleton argument. Mr Hodgetts confirmed that the Appellants' parents live together in the United Kingdom with the four of their six children (the other two being the Appellants) and added that a further child is expected in February 2015. The child Muaad Ali Hussein who travelled to the United Kingdom with the Appellant's mother as her adopted child is now living in Bahrain. Mr Hodgetts conceded that the Appellants were unable to satisfy the maintenance and accommodation requirements of the Immigration Rules.

### **Oral evidence**

3. Faahiye Garceesaan Said (formerly Abdirahman Sharif Said), the Appellants' father, gave oral evidence and confirmed his identity and address and adopted his written witness statements.
4. Cross-examined by Mr Richards Mr Said agreed that he obtained indefinite leave to remain in 2004 and is now a British citizen. He said that he went to Ethiopia at the beginning of 2006 where he met Zaynab Abdirahman Farah, the Appellants' mother. She was living with Muaad and with family friends, Saynab Ibrahim Ali and Ferdousa Mohamed. Both are ladies aged about 40. Saynab is from the same tribe as Mr Said. When he met Zaynab Mr Said said that he was married but it was not a good relationship and he was about to divorce. He stayed in Ethiopia for about 3 months.
5. Asked why Riqiya's entry clearance application gave her date of birth as 1 January 2006 Mr Said said that when they applied for entry clearance for the children his wife was sick and they guessed the dates of birth. They know the

correct dates now because he traced back his journey and he has met a few people who told him.

6. Mr Said said that he next travelled to Ethiopia at the beginning of 2007 and stayed for a few months but only spent one week with Zaynab before going to Diredawa. He did not stay with Zaynab longer because she was told that her previous husband was still alive so Mr Said had to go. He agreed that in this one week period Zaynab conceived his child. He said that her husband sponsored her to come to the United Kingdom and she then found out that she was pregnant by Mr Said.
7. Mr Said agreed that after he returned from Ethiopia he met Zaynab's first husband (Ali Hussein Sharif Hassan) in Bristol but said that he never talked about Zaynab. He did not know that he was her first husband. He only became aware of this after Zaynab came to this country when he saw them living together. Referred to paragraph 10 of his latest witness statement Mr Said said he was not sure that Mr Hassan was Zaynab's husband when he met him in Bristol and only became sure when he saw them living together. He did not tell Zaynab that he had met her first husband. Referred again to his statement (paragraph 11) he said that Zaynab already knew.
8. Mr Said thought that Zaynab and her first husband got back in touch with each other because Mohamed Sharif would have told them. Mr Sharif knows Saynab and Ferdousa and they told Mr Sharif one week before Mr Said went back.
9. Mr Said said that Zaynab started living with Saynab and Ferdousa when she left Somalia. She applied to join her first husband rather than Mr Said because she wanted to live with her first husband even though Mr Said was the father of her daughters. Zaynab told her first husband about her two daughters when she came here. She told him everything about her life. Zaynab was in the United Kingdom for 10 to 14 days before she contacted Mr Said. She told him she had nowhere to go because her husband had told her to leave.
10. Mr Said denied Mr Richards suggestion that it was always the intention for Zaynab to come to the United Kingdom to live with him. He denied the suggestion that she applied to join her first husband as a pre-flight spouse because she did not need to meet the maintenance and accommodation requirements. He said that things happened the way they happened. A wife cannot marry two husbands.

Referred to his reference to 'mistakes' in his statement (paragraph 15) Mr Said said that it was a mistake for Zaynab to leave the children and travel to the United Kingdom.

11. Mr Said said that he could not go and live in Ethiopia because he has four children here to look after, Zaynab is sick and the children need a father and a mother. Fatwa has a heart problem and needs specialist treatment.
12. Answering questions from me Mr Said said that he met Muaad in Bristol when he was in hospital about a year after Zaynab came here. This was the only time apart from when he was in Ethiopia.
13. Zaynab Abdirahman Farah gave oral evidence and adopted her written witness statements. She clarified that she applied to join Ali Hassan in the United Kingdom at the end of 2007. He never visited her in Ethiopia.
14. Cross-examined by Mr Richards Mrs Farah said that she was able to re-establish contact with her first husband because someone told her that he lived in the United Kingdom. He telephoned her because the man who told her gave him her telephone number. She thought he was called Mohamed and was a friend of Ferdousa. She did not tell her first husband that she had a child because he was not aware. She did not tell her husband because she had not seen him for a long time. Asked why when she applied for a visa she brought Muaad but left her two daughters Mrs Farah said that Muaad was related to her husband and she thought she could ask for her daughters to come after she came to the United Kingdom. Asked why she said on the visa application form that she had no children she said this was because she did not tell her husband she had children.
15. Answering questions from me Mrs Farah said that the Appellants are living with Saynab and Ferdousa. They do not have children of their own and are much older than Mrs Farah. They did not have husbands when she was there and in the three years she lived with them she never asked them whether they were married. She last saw Muaad in early 2012 when he was in hospital in Bristol

### **Submissions**

16. For the Respondent Mr Richards said that it was common ground that the Appellants cannot meet the maintenance and accommodation requirements of the Immigration Rules. Dealing with Article 8 he asked me to look at the whole of the evidence. This is a family that has

practiced deception. A lot more has come out since the original hearing. It was clear when the matter first came before the Upper Tribunal that there was more to the circumstances than met the eye. This is borne out by the evidence. There were falsities in Mrs Farah's entry clearance application. There were falsities when she made her application for indefinite leave to remain on the basis of a continuing relationship with her first husband in 2011.

17. Mr Richards said that the whole scenario is simply unbelievable. It was always the intention that Mrs Farah come here to join Mr Said. The application to join Mr Hassan was a cynical ploy because there was no need to meet the maintenance and accommodation requirements for a family reunion application. Mr Richards suggested that when weighing matters in the proportionality balance it should firstly be borne in mind that the rules are not met and that the burden of supporting the family will fall on the British taxpayer. Secondly the deception of the sponsors should be weighed in the balance. The best interests of the children is a primary consideration but the best interests of all the children has to be considered. The additional two children mean two more inhabitants in a property that does not meet the accommodation requirements and two more mouths to feed. When balancing the rights of the individuals against the wider need for effective immigration control a refusal is proportionate and is not unjustifiably harsh.

18. For the Appellants Mr Hodgetts conceded that Mrs Farah had denied her own children in her application and had falsely claimed to be in a relationship with her former husband to obtain indefinite leave in 2001. The chickens have come home to roost. There was however no deception by Mr Said. Mrs Farah rejected him. She had been separated from Mr Hassan for 15 years. She thought he was dead. She found out that he was alive and having started to look after Muaad she formed a strong bond with him. The strength of her relationship with Muaad was a factor. I was asked to look at the best interests of the children, that should be the starting point. The children should be with both parents. There are illegal residents in Ethiopia, they are not in education and are unlikely to be in the future. The children here are British. They cannot be expected to live illegally in Ethiopia. It is in the best interests of the children for all siblings to be together. The primary interests of the children tips the balance.

19. I reserved my decision.

## **Decision**

20. This appeal involves two infant appellants now aged 8 and 7 years of age. They were born in Ethiopia and have lived in the household of Saynab Ibrahim Ali and Ferdousa Mohamed since their birth. Their father has never lived with them and their mother lived with them until February 2009 when she came to the United Kingdom. Since arriving in the United Kingdom the Appellant's mother has given birth to four more children and a fifth is expected in February 2015. She has not been back to visit them as she has been pregnant for most of the five and a half years she has been here. The Appellants have applied to join their mother, father and siblings in the United Kingdom but do not meet the requirements of the Immigration Rules because their parents are unable to satisfy the maintenance and accommodation requirements. It is argued on their behalf that the Respondent's decision to refuse admission is in breach of Article 8 ECHR.
21. As a starting point it must in my judgment be accepted that the Appellants, despite living apart from their parents and siblings share a prima facie family life with them and, dealing with the Razgar [2004] 2 AC 368 criteria that the consequences of continued separation are of sufficient gravity to engage the Convention. The decision is in accordance with the Immigration Rules because the Appellants do not meet the requirements of the rules and for that reason it is in accordance with the legitimate aim of immigration control. The issue to be determined is therefore one of proportionality.
22. Before proportionality can be properly assessed and the positive and negative factors weighed in the balance it is important in the circumstances of this appeal to address the facts and the credibility issues arising from those facts. It is the Appellants' case, as put forward by their sponsoring parents, that their mother came to the United Kingdom lawfully in the expectation that they would be able to join her shortly thereafter once she had explained their existence to her first husband Mr Hassan.
23. The facts as put forward on behalf of the Appellants are that Mrs Farah married her cousin Mr Hassan in Somalia in about 1995 but they became separated a few months after their marriage and she thought that he was dead. Having fled Somalia in about 2005/6 she lived in Ethiopia in the household of Saynab and Ferdousa with her adopted child Muaad who was related to her husband (his sister's child). In 2006, more than 10 years after losing contact with Mr Hassan, she met Mr Said who was visiting Ethiopia and finding out that

he lived in England asked him if he knew her husband but he did not. Why she thought he may know her husband is not revealed in her statement and was not explored in evidence. In any event a relationship developed between Mrs Farah and Mr Said and they got married a few weeks after meeting each other. Mr Said stayed for a month and during that time Mrs Farah became pregnant with Riqiya. Mr Said returned to the United Kingdom and came back to Ethiopia the following year. He stayed with Mrs Farah for about a week and she again became pregnant. At around the same time or shortly thereafter Mrs Farah learned that her first husband was alive and living in Bristol, the same city where Mr Said had his home. Contact was re-established and, despite being pregnant with Ruwaida Mrs Farah decided that her feelings for Mr Hassan were stronger than those she held for Mr Said and that she wanted to be with him. She did not tell him about her child or her pregnancy.

24. In late 2007 before giving birth to Ruwaida, her second child by Mr Said, Mrs Farah applied along with Muaad to join Mr Hassan in the United Kingdom. On her entry clearance application form she said she had no children because she had not told Mr Hassan about her daughters by Mr Said. Mrs Farah's application was refused but she appealed the decision and her appeal was allowed. In February 2009 she and Muaad came to the United Kingdom to join Mr Hassan leaving her two daughters in Ethiopia with Saynab and Ferdousa. Mrs Farah thought that Mr Hassan would accept her two daughters but when she told him about them shortly after her arrival in Bristol he became extremely angry and left their home. Mrs Farah contacted Mr Said and moved in with him as she did not know anyone else in Bristol. Their relationship was rekindled and in December 2009, 10 months after her arrival in the United Kingdom Mrs Farah's third child by Mr Said was born. When Mrs Farah's leave to remain was about to expire in 2011 she sought help to obtain further leave to remain and in doing so got Mr Hassan to sign the form to say that they were still together. She was granted indefinite leave to remain and has since obtained British nationality.

25. In giving this account Mrs Farah accepts that she has employed deception in two ways. Firstly by denying the existence of her children on her entry clearance application form and secondly by falsely asserting in her application for indefinite leave to remain in 2011 that her relationship with Mr Hassan was subsisting.

26. Mr Richards asks me to find that Mrs Farah's deception goes much deeper than that and also that Mr Said is

party to her deception. I am satisfied that this assertion is correct. I do not believe the account that both Mrs Farah and Mr Said give me about the history of their relationship or indeed about other pertinent factors involving the Appellants.

27. I do not believe that Mrs Farah could live with and thereafter leave her children with Saynab and Ferdousa without having asked any questions about their own spouses or children and having little idea about them other than their names. I do not believe Mrs Farah when she tells me that she had no idea of the whereabouts of Mr Hassan until just before her entry clearance application at the end of 2007. I find the fact that Mr Hassan and Mr Said lived in the same city in England just too much of a coincidence to be believable. I do not accept Mrs Farah's evidence when she tells me that having married Mr Said, given birth to her first child by him and conceived her second that she felt her feelings for Mr Hassan, a man she had last had contact with about two months after their marriage in 1995 were stronger. In my finding when Mrs Farah made her application to join Mr Hassan in 2007 her deception was not limited to the denial of her two children it was the most fundamental deception of claiming to be coming to join Mr Hassan when her true intention was to join Mr Said. I find it wholly unbelievable that she completed her entry clearance application when heavily pregnant and sought to join Mr Hassan without telling him about her children. I find it even more incredible that Mrs Farah would take the refusal of her entry clearance application to appeal, an appeal that Mr Hassan clearly supported as sponsor without telling him these basic details. I do not believe that having arrived in the United Kingdom to join Mr Hassan she would fall out with him within two weeks and immediately move in with Mr Said the father of her two children who just happened to live in the same city and almost immediately become pregnant with their third child.

28. Having found that Mrs Farah had no intention of joining Mr Hassan the deception goes further again because the falsity was not confined to the entry clearance application but was extended to presenting false evidence at appeal before the First-tier Tribunal. The deception continued. Having been granted entry clearance to join Mr Hassan and having instead moved in with Mr Said Mrs Farah was in breach of the conditions of her leave to enter and remain. Further when it came to applying for indefinite leave Mrs Farah conspired with Mr Hassan to present false information to obtain that indefinite leave to remain. If the truth had been known indefinite leave would not have been granted, Mrs Farah did not qualify. Mrs Farah's has gone on to obtain British citizenship as a result of



that deception. It is a catalogue of falsity. I have no doubt that Mr Said is party to the deception. Having already brought his first wife to the United Kingdom as a pre flight spouse Mr Said was aware of the Immigration Rules in this regard. In my finding the relationship between Mrs Farah and Mr Said has subsisted throughout and having made this finding it can only follow that Mr Said at the very least knew about Mrs Farah's deception in her entry clearance application, appeal and indefinite leave application and more probably than not that he was part of the plot. Mrs Farah's presence in the United Kingdom is premised on this catalogue of lies. Without them she would not be here, she would not be British and would be living with her daughters in Ethiopia.

29. Turning to the Appellants their position in Ethiopia is unclear. There is a paucity of evidence in this regard. The sponsor's first witness statements say only that they live with Saynab and that Mr Said is not able to afford to pay for them to go to school. The second statement adds that Ruweida has started to suffer from fits this year. In oral evidence I am told that they live with Saynab and Ferdousa two single middle-aged ladies and that they have lived in their household since birth. I am told that their life in Ethiopia is difficult and extremely insecure but there is little if any evidence of the nature of their difficulties or insecurity. It is clear that Mrs Farah was prepared to leave Ethiopia entrusting the care of her two daughters, then aged just one and two years old, to Saynab and Ferdousa. I note that Mr Said went to visit the children in 2012. Equally apart from that contained in Mr Said's first statement there is little evidence about the position of their siblings in the United Kingdom other than that Fatwa suffers from a heart defect. I accept that Fatwa and Ruweida have the medical conditions described and that Mr Said visited the Appellants in 2012. I find that I can place little weight upon Mr Said's evidence in other respects being satisfied for the reasons given above that both sponsors are dishonest witnesses who have conspired together to circumvent immigration control and who will unhesitatingly give expedient evidence to further their self serving ends.

30. Weighing matters in the proportionality balance the very strong weight on the positive side is that in most circumstances it is expected, and it will be in the best interests, of children to live with their parents and siblings. This is the fundamental ideal of family life although it is an ideal which, for various reasons, is frequently not attained. The fact that the Appellants do not qualify for entry clearance under the Immigration Rules is a negative in the balance but the reason that they do not qualify illuminates that negative.

In the first place the maintenance requirements are not met and in the second place the accommodation requirements are not met. Again there is a paucity of evidence to address the effect that this may have not only on the Appellants but also on their siblings other than the statement from Mr Peake to the effect that the sponsors will be able to claim child benefit and tax credits for the Appellants. Subject to this the resources currently used to maintain 2 adults and 4 (soon to be 5) children would have to stretch to maintain 2 adults and 6 (soon to be 7) children. The accommodation suitable, according to the tenancy agreement, for a maximum of 5 occupants, will need to accommodate 9. No details were submitted on behalf of the Appellants to show how their parents plan to maintain and accommodate the larger family group. The public interest in maintaining effective immigration control must be a very heavy weight indeed on the negative side of the balance because this is not simply a case where the Appellants do not meet the requirements of the rules but one where their sponsors have practiced fundamental deception without which the sponsor mother would not have been in the United Kingdom to sponsor their application in the first place.

31. None of the negatives in the proportionality balance are the fault of the Appellants. It is not their fault that their parents have practiced fundamental deception in order for their mother to obtain status in the United Kingdom and it is not their fault that their father does not earn sufficient to maintain them in the United Kingdom and does not have property suitable to accommodate them. It is not their fault that their mother, for whatever reason, thought it best to leave them in Ethiopia and migrate to the United Kingdom where she has since conceived 5 more children.
32. The public interest in immigration control is a most pertinent matter in this appeal. The fact that the Appellant's mother's status in the United Kingdom, a status that is fundamental to the application made by the Appellants to join her here is based upon deception is an extremely heavy weight on the negative side of the proportionality balance. I have very carefully considered the best interests of the children, both the British citizen children in the United Kingdom and the Appellants. I have considered their best interests in the light of ZH (Tanzania) [2011] 2 AC 166 and I have also had regard to the decision of the Supreme Court in Zoumbas v SSHD [2013] UKSC 74 which, although a deportation cases, has certain parallels to the matter before me. The best interests of the children is a primary consideration but it is not a trump card. In my finding in the unusual circumstances of this case the cynical and calculated

deception of the parents makes a mockery of immigration control. The public interest not only in immigration control but in the prevention of such practices substantially outweighs the strong positive weight of the desirability of family unity.

33. It must follow that I dismiss this appeal.

### **SUMMARY**

34. The decision made by the First-tier Tribunal contains a material error of law and has been set aside.

35. I remake the decision of the First-tier Tribunal and I dismiss the Appellants' appeal both by virtue of the Immigration Rules and Article 8 ECHR.

Deputy Judge of the Upper Tribunal

Date: **24 November 2014**