



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

Appeal Number: OA/03520/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 April 2015**

**Decision & Reasons  
Promulgated  
On 22 May 2015**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**SHARIFA ADEN AMIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - NAIROBI**

Respondent

**Representation:**

For the Appellant: Mr C Yeo, instructed by Wilson Solicitors  
For the Respondent: Mrs A Brocklesby-Weller, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Sharifa Aden Amin, claims to have been born on 25 December 1995 and is a citizen of Somalia. She seeks entry clearance to the United Kingdom for settlement with her father (Aden Amin Subow –

hereafter referred to as the sponsor). Her application was refused by the ECO, at Nairobi, by a decision dated 7 January 2014. She appealed to the First-tier Tribunal (Judge Horvath) which, in a determination promulgated on 3 December 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The ECO refused the application on a number of grounds. The judge found in favour of the appellant in respect of maintenance [22] and accommodation [19]. Those findings have not been challenged by the ECO. The judge was not satisfied, however, that the appellant was under the age of 18 years at the date she made her application under paragraph 297 of the Immigration Rules.
3. In a detailed and thorough determination, the judge considered the evidence which had been provided regarding the appellant's age. She appears to have placed considerable weight on a birth certificate which had been produced by the appellant. However, it is clear that both parties accepted that the birth certificate alone would not be sufficient or reliable evidence of the appellant's proper date of birth given that there was no central government in Somalia from 1991 and during 1995, the year in which the appellant claimed she was born. The judge recorded [14] that the Somali Embassy had issued a certificate on the basis of what the sponsor had told them as regards the appellant's date of birth. At [16], the judge concluded that she was "unable to accept the birth certificate in form and content because it lacks reliability and provenance in *Tanveer Ahmed* terms." Mr Yeo, for the appellant, submitted that the judge had unbalanced her analysis by dealing at such length with a document which neither party suggested could be determinative of the appellant's age. I find that there is some merit in that submission. The birth certificate is not a false document in the sense either that it is a forgery or that the sponsor has submitted it knowing that its contents are untrue. I accept that the decision of the judge gives the impression that the appellant's credibility generally had been placed in doubt by the fact that she had produced the certificate. If the judge did take that view, I accept that she may be entitled to do so provided she had properly weighed all the evidence regarding the appellant's date of birth. However, she did not do so and there is the danger that she may have ignored or given insufficient attention to evidence when she was already persuaded that the appellant and sponsor were lying.
4. I accept Mr Yeo's submissions that there were items of evidence to which the judge has not paid proper attention. First, there is an email from the Entry Clearance Officer to UKBA International Group (Beronica Karanja) which is dated 6 February 2014. This records that there was no "full copy of the screening interview notes" (see below) relating to the sponsor for his claim for asylum but does recall that there was a letter on the files of the respondent dated 25 May 2007 from Wilson & Co Solicitors in which reference is made to the present appellant having been "born c 1995." The judge refers to this email (indeed, she quotes at length from it at [15]). She does not, however, engage with the statement in the letter

(from which the email quotes) that the appellant was born “c 1995”. Rather, she concentrates on the (missing) screening interview of 1 October 2007 of the sponsor’s wife who had claimed that the present appellant was “15 years old at that point”. She then goes on to reject the sponsor’s wife’s explanation regarding that interview and her assertion that she would “not have just guessed [the appellant’s] age” because she had never met the appellant and “did not know much about her.” The judge does not deal with the fact that the transcript of the interview itself is missing; she has reached her findings about the interview solely on the basis of what the email says about it. I consider that the judge should, at the very least, have dealt with the fact that the transcript for the interview is not available and how that fact might have figured in her analysis.

5. There are additional problems concerning the judge’s analysis of other items of evidence. As the grounds record (ground 3), there are medical letters which support the appellant’s claimed date of birth but with which the judge failed to deal at all. Likewise, the Somali Community ID card (which was issued eighteen months before the application for entry clearance) also contained details of the date of birth but was rejected by the judge simply because the details had been provided “on the say-so of the appellant.” The judge fails to assess the evidence on the basis that the appellant and sponsor have, over a period time and prior to the making of the present application for entry clearance, stated that the appellant’s date of birth was 1995. Instead, the judge suggests that this evidence is simply self-serving, an arguably harsh judgment given the fact that accurate documentary evidence of dates of birth are simply not available from Somalia from the 1990s.
6. The judge was aware that a previous Immigration Judge (Judge Molloy) had found the sponsor and his wife credible. However, Judge Horvath noted that she had not seen “the papers submitted at that time and therefore I am in no position to comment upon his findings in his determination.” I am not persuaded that those comments represent a sufficient engagement with the previous determination which, under the principles of *Devaseelan [2002] UKIAT 00702 (Starred)* should have formed the starting point for the judge’s own analysis.
7. Mr Yeo also submitted that the judge’s conclusion (in effect, that the appellant and sponsor had deliberately told untruths regarding the appellant’s date of birth) were never put to the witnesses in cross-examination. I am not persuaded that that submission taken alone is capable of undermining the judge’s decision but, taken together with the other observations which I have made above, leads me to conclude that the judge’s analysis is flawed by legal error.
8. I have decided to set aside the judge’s decision. In a case such as this, I consider that an appellant is entitled to a thorough analysis of all the evidence for and against her claimed date of birth. She comes from a country where it is impossible to obtain objective documentary records which might support her claimed age and, if the analysis of the evidence

of her date of birth is not scrupulous and thorough, she may suffer a significant injustice which she would be entirely incapable of remedying. That is not to say, of course, that a Tribunal should necessarily accept that she was born in 1995. It will be necessary for the next Tribunal to consider all the evidence very carefully and to weigh it accordingly. That is a task which it is appropriate for the First-tier Tribunal to undertake and I therefore remit the appeal to the First-tier Tribunal. The only issue in the appeal which remains outstanding is that of the appellant's date of birth; the findings of Judge Horvath as regards accommodation and maintenance shall stand.

### **Notice of Decision**

The determination of the First-tier Tribunal promulgated on 3 December 2014 is set aside. The appeal will be remitted to the First-tier Tribunal (not Judge Horvath) for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date 15 May 2015

Upper Tribunal Judge Clive Lane