



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

Appeal Numbers: OA/21349/2013
OA/21351/2013
OA/21355/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 2 July 2015
Prepared 2 July 2015**

**Decision & Reasons
Promulgated
On 7 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

ECO - NAIROBI

Appellant

and

**A A A
D A S A
M S A M**

(ANONYMITY DIRECTION CONTINUED)

Respondents

Representation:

For the Appellant: Mr T Melvin, Senior Presenting Officer
For the Respondent: Miss N Brissett, Counsel, instructed by Aden & Co
Solicitors

DECISION AND REASONS

1. In this decision the Respondents are referred to as the Claimants and ECO Nairobi is referred to as the ECO.

2. The Claimants, nationals of Somalia, dates of birth 25 February 1997, 10 August 1998 and 2 October 1996, appealed against decisions of the ECO to refuse entry clearance on or about 19 November 2007 as children of a relative with limited leave to enter or remain in the United Kingdom as a refugee. The applications were refused with reference to paragraph 319X of the Immigration Rules HC 395 as amended.
3. Their appeals came before First-tier Tribunal Judge Metzger (the judge) who dismissed their appeals under the Immigration Rules but allowed them under Article 8 of the ECHR. Permission to appeal that decision was given by First-tier Tribunal Judge Kelly in January 2015. In a decision promulgated on 20 March 2015 I found that the judge had made an error of law in that he had failed to address the public interest and also had failed to address the provisions of Section 117A and 117B of the Immigration Act 2014 as amending the NIAA 2002.
4. Accordingly I gave directions that the matter be remade on the Article 8 issue in the Upper Tribunal on the assessment of proportionality. I had assumed the exceptional circumstances of the separated siblings justified consideration outside the rules
5. In this appeal it was argued that although at the date of the ECO's decision, it being an out of country appeal and Article 8 being considered at that date, nevertheless it fell to the judge to consider the later provisions and requirements of Section 11A and 11B of the Immigration Act 2014, particularly in connection with the assessment of public interest issues. I was satisfied given the terms of Section 117A and 117B that although that legislation did not exist at the date of the ECO's decision, the considerations arising under them fell to be considered nonetheless by the judge when he heard the appeal.

6. If I was wrong in that view nevertheless the public interest and the considerations, ultimately reflected in sections 117A and 117B of the 2014 Act, were the very same considerations that would have fallen under Article 8 in an out of country appeal as at the date of the ECO's decision when assessing proportionality.

7. Having heard the submissions, the following points seemed clear beyond doubt. First, if the Claimants came to the United Kingdom they would undoubtedly have to learn English in order to be properly educated and to develop their lives in the United Kingdom. Secondly, teaching them English would be a cost as would schooling which would be met by the UK tax payer. Thirdly, as illustrated by their siblings already in the United Kingdom, they would be a burden upon the tax payer since there would inevitably be some uplift in the working tax credits or its equivalent or substitute to which the Claimants' father would become entitled. There would also be, it is arguable, an increase in the total child benefit to be paid. Fifthly, there would inevitably be some call over time on the National Health Service through either a GP surgery or a hospital. Sixth, there was no immediate requirement for the Claimants to leave their carers or home and they were not being removed.

8. Miss Brissett produced a range of post-decision evidence which went to show the greater prosperity of the Sponsor and how with his work, together with working tax credits and any other allowances, he would be in a position to financially support the Claimants. Mr Melvin made the fair point that the current level of earnings which the Sponsor was obtaining had increased in a manner which really could not have been predicted from the date of decision and therefore current levels of earnings which are high are not demonstrably applicable to the date of the respondent's decision and nor were they in contemplation at that time. In addition, although it related to the same premises the acceptability of the Claimants residing there.

9. I find that the public interest in terms of burdens upon the UK taxpayer must be given substantial weight. Similarly the public interest in the maintenance of immigration controls. I also take into account the uncertainty of their status as Somali nationals in Ethiopia but to date I do not understand removal steps being taken against them. I take into account the financial support that the Sponsor has provided them whilst they have been in the care of others in Ethiopia.
10. It seemed to me that the accommodation that the Claimants have was on the face of it suitable for the Claimants and thus, although I do not have the information as to the mix of ages of the children it would seem that they could be accommodated for a period of time.
11. Looking at the Sponsor's bank balance, bearing in mind his income, whilst at the end of a month he may have funds which would meet some of running costs of children, nevertheless the likelihood is that for Claimants of this age they were going to be a significant cost to the Sponsor.
12. I do not have the Sponsor's income/outgoings relevant to the Sponsor's earnings at the date of the ECO's decision. I am therefore not in a position to reach any conclusions as to whether at that date those costs could have been met by the Sponsor.
13. In the circumstances I find, weighing the considerations as supported by the evidence at the date of the ECO's decision, show that the public interest was not outweighed by the considerations of the children's needs to be in the UK in more settled circumstances than they currently have. The ECO's decisions were not disproportionate.

Anonymity Order

14. Given the ages of the Claimants I find an anonymity order being continued is appropriate.

NOTICE OF DECISION

The appeal is dismissed on Article 8 ECHR grounds.

**DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL
PROCEDURE (UPPER TRIBUNAL) RULES 2008**

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

Signed

Date 2 August 2015

Deputy Upper Tribunal Judge Davey

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 2 August 2015

Deputy Upper Tribunal Judge Davey