



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/01101/2015
HU/01103/2015
HU/01104/2015

THE IMMIGRATION ACTS

Heard at Field House
On 15 December 2017

Decision & Reasons Promulgated
On 29 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

HALIMA MUDEY 1)
RODA MAHAMED MOHAMOUD 2)
SHAAFI MAHAMED MAHAMUD 3)
(NO ANONYMITY DIRECTION MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellants: Mr A Chelliah, Solicitor of Forward & Yussuf Solicitors
For the Respondent: Mr S Walker, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants, nationals of Somalia, dates of birth respectively 10 January 1948, 3 March 2000 and 7 June 2002, sought to join, so far as the second and third Appellants are concerned, their father in the UK. The first Appellant is the grandmother of the second and third Appellants and the mother of the Sponsor in the UK. The ECO refused their applications on 3 June 2015.

2. At their appeals before First-tier Tribunal Judge PJ Robinson (the Judge) the Sponsor, Mr Mahamed Mahamud Mahamed, provided evidence and a witness statement which was before the Judge and a supporting statement from a Mr Abukar Hussein Mahamood, particularly addressing his willingness to be a second Sponsor. The Judge dismissed the appeal of the first appellant, as a dependant relative and both child Appellants with reference to paragraph 352D(iv) of the Immigration Rules HC 395 (as amended) but also for all the Appellants with reference to Article 8 ECHR grounds. The judge's decision on 23 February 2017 led to an application to appeal which was granted on 14 September 2017 by First-tier Tribunal Judge Landes. The Respondent made a Rule 24 response on 30 October 2017.
3. It is of note that the Appellants did not through the process of their appeals against the ECO's decision seemingly file any evidence whatsoever as to their personal circumstances, their relationship with the Sponsor, their relationship with the first Appellant and the role they played in her life. Plainly, that was a limitation on the Judge's ability to assess the implications in Article 8 terms of the effects of separation, the effects of possibly the second and third Appellants leaving their grandmother behind in Somalia and also the impact on her of them removing to the UK, leaving her on her own. Why that evidence was not adduced is not clear but it is no criticism of Mr Chelliah for he did not appear before the First-tier Tribunal Judge to argue the case.
4. Ultimately Mr Chelliah now argues that in effect the Judge failed to address as a matter of approach the best interests of the second and third Appellants or properly the relationship which they have with their grandmother and the impact of their removal upon her and vice versa. The significance of those points is that, on the way the case was presented, they were not the principal issues. Looking at the bundle provided to the Judge and noting the arguments that were raised the case had not proceeded on that basis. Rather, the Appellants' Sponsor was essentially saying he had the money to support, a second Sponsor would also help if need be, the Sponsor was related to his mother and the second and third Appellants were his children.

5. It is trite law that decisions should be read as a whole having regard not least to the way in which the case was advanced. I do not find from reading the decision and from the material advanced in support of the appeal that the case concentrated on the best interests of the children so much as a plain argument that they should be entitled to join their father in the UK.
6. On a fair reading of the grounds of appeal before the First-tier Tribunal Judge the case was simply not advanced by reference to their best interests. Even, as Mr Chelliah rightly says, the fact that they are out of the UK does not ignore their best interests as a consideration that may need to be addressed. However, the Judge had a complete dearth of information about the impact upon the relationships between the second and third Appellants and the first Appellant and indeed any relationship or contact they actually have in a meaningful way with the Sponsor. Thus it is perhaps hard to criticise the Judge for failing to embark upon an exercise of considering best interest when it was not apparently a matter being raised.
7. No evidence was being provided from the UK or indeed from the Appellants as to those matters and I conclude that that is not a sustainable criticism in the light of the way the case was presented. Even though, whilst in principle a Judge should have in mind the best interests in respect of out of country Appellants who are children, the fact that the Judge did not do so on the evidence before him does not suggest any other Tribunal properly addressing the evidence before it could have reached a different decision. Mr Chelliah further criticised that the Judge's reasoning because he did not sufficiently explain his view as to the considerations that bear on the second and third Appellants.
8. Mr Walker argued that in the light of the way the Judge dealt with it, at paragraphs 30 to 32 of the decision, was sufficient to show that the Judge must have had in mind the interests of the children in the Article 8 context and the fact was that on the Sponsor's own case he had ceased to have direct contact with his family at some time in 2002, bearing in mind the second Appellant was born in March 2000 and the third Appellant in June 2002. As the Judge noted and concluded:

“In cross-examination, he confirmed that his mother had been caring for his children since 2011. He said he had last lived with his children in 2002 and he last with his mother in 1998. He confirmed that his [I think that should be he] was legally divorced from the children’s mother. He said he could go to live in Kenya because of his work in the UK and the fact that he supports the children from his income. He sent them between £200 and £300 per month.”

There is therefore no real evidence to help a Judge as to the nature of the present relationship and the effects of continued separation between the second and third Appellants with their Sponsor father.

9. In the circumstances, whilst it is brief, it seems to me that on the evidence the Judge had there was little more to be said other than to comment on the absence of evidence. I concluded therefore that the reasoning was adequate and sufficient to properly address the case as presented. How this case might have proceeded on any other basis with greater evidence I do not speculate but it does not seem to me fair to criticise the Judge on the limited material that was actually before him.

10. Accordingly I conclude that the original Tribunal’s decision discloses no material error of law. The original Tribunal’s decision stands.

NOTICE OF DECISION

The appeal is dismissed.

No anonymity direction was sought nor is one required.

Signed

Date 20 January 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

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

Signed

Date 20 January 2018

Deputy Upper Tribunal Judge Davey