



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

Appeal Numbers: HU/04193/2016
HU/04208/2016

THE IMMIGRATION ACTS

Heard at Field House

On 15 March 2018

**Determination
Promulgated**

On 8 May 2018

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MISS RUWEIDA ABDIRIZAK ABDULLE
MR ABDINASIR ABDULLE
(NO ANONYMITY ORDERS MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER, PRETORIA

Respondent

Representation:

For the Appellant: Mr Chelliah

For the Respondent: Mr Nath

DECISION AND REASONS

1. The appellants are Somali nationals, a sister and brother both born on 20 January 1998. They appeal against decisions of the Entry Clearance Officer made on 13 January 2016 refusing their applications for entry clearance as the children of a person present and settled in the UK under paragraph 297 of the Immigration Rules.

2. The ECO noted that in 2004 their father was issued family reunion as a spouse. At that time he was using a different name. Interviewed in connection with that application he said he did not have any children. In 2006 the appellants, their claimed step-mother and siblings applied for family reunion to join their claimed father in the UK. It was stated that their father had changed his name to Abdirisaq Abdulle Hassan. The applications were refused in 2007.
3. For the current application it was stated that they had been traced in 2015 to a camp in Somalia and their father, the sponsor, had subsequently relocated them to Uganda. The whereabouts of their mother and other siblings were not known.
4. DNA results had been submitted but the ECO was not satisfied that the samples were taken from them and their sponsor. As such the ECO was not satisfied that they are related to the sponsor.
5. Even if they are, the ECO was not satisfied that their father has had sole responsibility for their upbringing (paragraph 297 (i)(e)). There was no evidence in support of that claim. There was also no evidence that they have been living in a camp in Somalia, or of their circumstances in Uganda. Further, no evidence had been given as to how their father was able to locate them in Somalia. Moreover, there was a lack of evidence as to contact and of financial support.
6. The ECO, in addition, was not satisfied that there are serious and compelling family or other considerations which make exclusion undesirable (paragraph 297 (i)(f)).
7. Finally, inadequate evidence had been provided to show the sponsor's financial circumstances. As such the maintenance requirement was not satisfied (paragraph 297 (v)).
8. They appealed.

First tier hearing

9. Following a hearing at Hatton Cross on 9 June 2017 Judge of the First-Tier Greasley dismissed the appeals which were on human rights grounds.
10. His findings are at paragraph 24ff. He found that the appellants are related to the sponsor and that accordingly "they may have established a limited right to family life with their sponsor."
11. However, he was not satisfied that sole responsibility had been shown or that there were serious and compelling family or other considerations which would make exclusion undesirable.

12. In considering these matters he found that there was no evidence from the appellants as to their circumstances in Mogadishu or in Kampala. Nor had the sponsor made any effort to travel with them from Mogadishu to Kampala [25].
13. There was no evidence as to the previous and current circumstances of the appellants [26].
14. Further, there was no evidence confirming that they have lived in a camp in Somalia and that they had relocated to Uganda, nor how he was able to locate them in Somalia [27].
15. There was no documentary evidence supporting the claim of ongoing contact between the appellants and the sponsor [27].
16. The judge did not believe the sponsor's explanation as to why he had changed his name, namely that he had disliked his original name.
17. The judge did not make specific findings in respect of paragraphs 297 (v). He noted that no reliance was made on Article 8 outside the Rules.
18. In concluding, the judge stated that the lack of evidence as to the circumstances in which they are living meant he could not be satisfied that they are in Somalia or Uganda [30]. Such, together with the lack of evidence as to regular contact, meant that the decision to refuse the application was not disproportionate to the legitimate end of immigration control.

Error of law hearing

19. The appellants sought permission to appeal which was granted on 18 December 2017.
20. At the error of law hearing before me Mr Chelliah confined his submission to the claim that the judge had dealt inadequately with sole responsibility. He had failed to give consideration to evidence of money transfers between the sponsor and the appellants which gave support to the claim that the sponsor has had sole responsibility.
21. It was accepted that there was no documentary evidence of contact. However, they had only been in contact since 2017. The appellants were almost adults. It was understandable that there would be less contact than had they been younger. The judge had not taken that into account.
22. Further, the judge had failed to take into account that the sponsor had been found to be a credible witness in previous appeals in respect of others of his children.

23. In reply Mr Nath submitted that the judge's decision was sustainable for the reasons he gave. There was little information in support of the claim of sole responsibility. It was speculation to suggest that other decisions in different appeals could assist in this appeal.

Consideration

24. In considering this matter I do not find merit in Mr Chelliah's submissions. In **TD (Paragraph 297(i)(e): "sole responsibility") Yemen** [2006] UKAIT 49 the Tribunal said that "sole responsibility" is a factual matter to be decided upon all the evidence. The test is whether the parent has continuing control and direction over the child's upbringing, including making all the important decisions in the child's life. Such evidence is likely to include financial support and continuing interest and affection.
25. It does not seem to me that the judge (at [30]) was correct in saying that there was no evidence that the appellants are in Kampala, because the DNA records indicate that their samples were taken there. However, the judge was entitled to conclude that, despite there being ample opportunity to produce such, there was no documentary evidence in respect of their circumstances there, it being claimed in the applications that they are alone, or of their previous history, namely, living in a camp for the displaced in Somalia. Nor was there any evidence as to how the sponsor was able to locate them.
26. On the issue of financial support the judge noted the claim that the sponsor sent the appellants \$200-300 every month. There was no documentary evidence in support of that assertion in the appellants' bundles before the judge. Mr Chelliah, having been given time to make enquiries, said he understood that while such was so, copies of money transfers had been shown to the judge on the day of the hearing. He did not say what period it covered. Having checked the file there is no indication of such nor is it referred to in the decision, nor indeed in the judge's record of proceedings. In the circumstances I do not accept it. On the evidence before the judge there was no evidence of the continuing monthly financial support claimed.
27. As for contact, Mr Chelliah accepted there was no documentary evidence of contact. His argument that as they were "almost adults" such was understandable does not assist the appellants' claim of sole responsibility by the sponsor. Indeed it indicates a level of independence. A further difficulty is that Mr Chelliah said that the sponsor had only been in touch since 2017. The fact that the applications were made in September 2015 thus well over a year before he was in contact is another factor against the claim that he had continuing control and direction over the appellants' upbringing.
28. I also see no merit in the claim of support to the sponsor's credibility that he had been believed in other appeals in relation to others of his children.

The judge made no findings on that matter. I find that to be immaterial. Mr Chelliah could not help as to what, if anything, was produced at the First-Tier Hearing in that regard. The other determinations apparently referred to are not on file and Mr Chelliah did not have them. Reference is said to have been made by the solicitor who appeared before the First tier Tribunal (not Mr Chelliah) to a determination promulgated in February 2014 which itself made reference to an even earlier determination. Again, I find it not to be established that these documents were lodged. In the circumstances, in the absence of any clarity on the matter, a matter apparently concerning other children in different circumstances and at different times such does not assist these appellants.

29. The judge did not deal with best interests of the children in his decision. Although mentioned in the grounds Mr Chelliah did not raise the issue of best interests in his oral submissions. In any event I did not find the judge's failure to deal with it to be material. As well as the lack of evidence as to the sponsor's involvement with the appellants, I note from the DNA papers that the person giving consent to the taking of samples gives her relationship as "aunt" and gives an address in Kampala. It is reasonable to infer that any adult involvement with the appellants is with her and that it is in their best interests that such continues. There is no reason why the sponsor cannot have involvement with the appellants in adulthood as he and they may wish by visits and other means of contact.
30. The crux of the judge's decision is the dearth of documentary evidence in support of the claim of sole responsibility. Whilst the decision could have benefitted from being somewhat fuller in dealing with all the issues raised by the respondent, it is legally sustainable for the reasons he gave, reasons which were open to him on the evidence (or lack of it) before him.

Notice of Decision

The making of the decision of the First-Tier Tribunal shows no material error of law and the decision dismissing the appeals shall stand.

No anonymity order made.

Signed

Date 3 May 2018

Upper Tribunal Judge Conway