



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

Appeal Numbers: HU/09253/2015
HU/09256/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 24 January 2018**

**Decision & Reasons
Promulgated
On 26 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

ENTRY CLEARANCE OFFICER - PRETORIA

and

**ISSA [M]
ZAKARIA [I]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondents

Representation:

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer
For the Respondents: Ms G Loughran, Counsel instructed by Wilson Solicitors
LLP

DECISION AND REASONS

1. In this appeal the Appellant is referred to as the ECO and the Respondents are referred to as the Claimants.

2. The Claimants appealed against the ECO's refusal of entry dated 18 September 2015. Their appeals came before First-tier Tribunal Judge Majid who, on 13 June 2017, allowed their appeals. The ECO sought permission to appeal which was granted on 8 December 2017. The Claimants are nationals of Somalia whose dates of birth are respectively 5 June 2000 and 1 June 2001. Their mother is Sofia [D] who is in the United Kingdom with leave to remain as a refugee. She sought to bring the Claimants to the United Kingdom and in consideration of the appeals of the Claimants, First-tier Tribunal Judge Majid (the judge) made no reference whatsoever to the decision of First-tier Tribunal Judge Blake dated 23 March 2015. In that decision Judge Blake accepted the evidence of Mrs [D] about her journey to the UK. Her account of having left behind her children, with a distant relative who was a clan member, was accepted, as was her general credibility.

3. The issue that Ms Loughran correctly identified, notwithstanding the terms of the actual refusal, was the consideration of paragraph 352D(iv) of the Immigration Rules which stated:

“The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with the parent who is currently a refugee granted status as such under the Immigration Rules in the United Kingdom are that...

(iv) was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of his habitual residence in order to seek asylum.”...

4. Essentially this was the sole issue raised by the ECO and its importance cannot be understated, it is extremely unfortunate that the Judge made no express finding as to whether or not the Claimants met paragraph 352D(vi). Ms Loughran was drawn to argue that by the terms of paragraph 16 of the Judge's decision it is evident that the Judge must have accepted that the Claimants met the requirements of the Rules and that is also by reference to evidence contained in the Sponsor's statement (AB,

page 7, paragraph 4) in which the Sponsor sought to explain why she had not declared the existence of the Claimants at the material time. In paragraph 16 of the decision the Judge said this:

“I found the Appellants’ and their supporters’ evidence to be credible and this persuades me to allow this appeal. I must indicate to the Presenting Officer that (as I have said before) it is open to me to take a particular view of the evidence adduced before me; otherwise the appeal rights are not given for any meaningful purpose. These Appellants should be helped and I am happy to allow the appeal.”

5. The drawback is that this reasoning was really the full extent of the analysis of the evidence. Ms Loughran’s understandable desire to support the Judge’s decision cannot ignore the fact is the Judge simply did not give adequate or sufficient reasons as to why he was satisfied that at the material time the Claimants had been part of the relevant family unit as required under the Rules. Ms Loughran was essentially drawn, as I pointed out, to the positive credibility finding made by First-tier Tribunal Judge Blake about the Sponsor’s general credibility. It seemed to me most unfortunate that this should have happened but I was satisfied the Judge failed to give adequate and sufficient reasons. The Original Tribunal’s decision cannot stand on that matter.
6. Part of the problem is that other than that issue the Judge made absolutely no other findings that are material. Therefore, it seemed to me the necessary step was for the Upper Tribunal to remake this matter and deal with the issue bearing in mind the credibility findings that had been made by First-tier Tribunal Judge Blake and the evidence which was not challenged, given the absence of the Respondent’s representative at the hearing of the appeal. So the matter can be addressed by submissions, bearing in mind an issue has been ultimately that of credibility. In the circumstances I set aside the Original Tribunal’s decision and considered this further in the light of submissions made.

7. The Sponsor on behalf of the Claimants has established on a balance of probabilities that she has refugee status, she is the mother of the Claimants when she left Somalia to seek asylum. Those material facts were established in her appeal in March 2015 (Ref. AA/10247/2014) by the findings of FtT Judge Blake. The Secretary of State has not and does not challenge that Judge's findings on those issues. The concerns of the ECO about the Claimants meeting the requirements of Section 352S(iv) and (iii) were addressed by the FtT Judge in 2015. That Judge's decision was of FtT Judge Majid.
8. The earlier failure by the Sponsor to mention the Claimants was a point taken by the ECO but given the DNA evidence of the relationship was not now in dispute. Equally, Judge Blake accepted the Sponsor as an honest and credible witness who had fled Somalia in seeking protection and was at risk on return and accepted the Sponsor's account of her circumstances before leaving Somalia, her need for protection and that she could not return. In that appeal the Secretary of State had challenged the Sponsor's account but the Sponsor's credibility was accepted.
9. I find there were no further matters of substance raised by the ECO which, applying *Devaseelan* [2004] UKIAT 282 and Judge Blake's decision as a starting point, raised no meaningful doubts about why the positive findings on the Sponsor's credibility should not stand.
10. No other grounds of challenge to the refusal under paragraph 352D of the Rules were raised.
11. I find the Claimants have shown they did meet the requirements of the Rules at the relevant date. I apply the general approach taken by *Mostafa* [2015] UKUT 46 and take this into account in considering the Article 8 ECHR issue of proportionality. I apply s.117A and s.117B of the NIAA 2002. I find the Claimants will be maintained and supported by the Sponsor. The likelihood is that they will learn English and assimilate into

the UK. Given their ages there is nothing to suggest beyond their education, to which they would be entitled, that they would be a burden on the British taxpayer. I conclude that joining the Sponsor engages with Article 8 family/private life right. The ECO's decision is a significant interference with those rights which cannot be exercised from abroad. The ECO's decision, whilst lawful, does not serve objectives of immigration control, given the Sponsor is a refugee and is to be reunited with her children. I find the evidence shows the ECO's decision is disproportionate because of its impact in the continued separation of family members and the public interest in family re-union.

NOTICE OF DECISION

The Original Tribunal's decision cannot stand and the following decision is substituted:

The appeal is allowed.

No anonymity direction is made.

Signed:

Date: 20 March 2018

Deputy Upper Tribunal Judge Davey

P.S. I regret the delay in promulgation which is due to the file being miss-located.