



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

**Appeal Number: UI-2023-001223
UI-2023-001224
UI-2023-001225
on appeal from HU/57407/2021
HU/57408/2021
HU/57410/2021
IA/16714/2021 & Others**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 21 May 2023**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**MOHAMED MAHAMUD AHMED
HAMDA MAHAMUD AHMED (A MINOR)
MUSTAFE MAHAMUD AHMED (A MINOR)**

Appellants

and

**THE ENTRY CLEARANCE OFFICER
UK HUB, SHEFFIELD**

Respondent

Heard at Field House on 18 May 2023

DECISION OF THE UPPER TRIBUNAL

**PURSUANT TO RULE 40(3)(a) OF
THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellants appeal with permission from the decision of First-tier Judge Cohen dismissing their appeal against the respondent's decision to refuse them entry clearance as the dependent children of their father, a British citizen of Somali origin.

EA/14088/2016

2. All three appellants are siblings, and are Somali citizens. They are currently living in Ethiopia, pending the outcome of these proceedings. Their family relationship to their sponsor father has been proved by DNA testing and is not in dispute.
3. Permission to appeal was granted by First-tier Tribunal Bulpitt on three grounds: that the First-tier Judge applied the wrong burden and standard of proof when considering the respondent's assertion that the appellant's application fell for refusal on the General Grounds for Refusal in Part 9 of the Immigration Rules HC 395 (as amended); that he failed to consider material evidence; and that he gave inadequate reasons for rejecting the appellants' case.
4. By a Rule 24 Reply, the respondent conceded that 'it does not appear that the judge appreciated that the burden of proving that the documents [relied upon] were false rested on the respondent and not the appellants'. The respondent further accepted that this error had infected the First-tier Judge's alternative findings on sole responsibility, which took into account his prior findings on whether paragraph 9.7.1 of the Immigration Rules HC 395 (as amended) was met.
5. It is thus common ground that the First-tier Tribunal did materially err in law in its decision, and both parties agree that this is a case where the decision of the First-tier Tribunal must be set aside and remade.
6. I am satisfied that the decision of the First-tier Tribunal can properly be set aside without a reasoned decision notice.
7. Pursuant to rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008, no reasons (or further reasons) will be provided unless, within 7 days of the sending out of this decision, either party indicates in writing that they do not consent to the appeal being disposed of in the manner set out at (5) above.
8. If in consequence an oral hearing is required, but the outcome is the same, the Upper Tribunal will consider making an order for wasted costs.

Decision

9. I set aside the decision of the First-tier Tribunal, with no findings of fact or credibility preserved. The appeals are remitted to the First-tier Tribunal for remaking afresh by another First-tier Judge.

Signed: [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 18 May 2023