



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-003229
UI-2022-003230
UI-2022-003231

First-tier Tribunal Nos:
EA/52393/2021
EA/52495/2021
EA/52496/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 August 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MOHAMMED NUR ABDULLAHI HIRSI
ABDIFITAH ABDULLAHI HIRSI
AHMED ABDULLAHI HIRSI
(NO ANONYMITY ORDER MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr A Pipe of Counsel, instructed by One Immigration Ltd
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard by remote video at Field House on 8 August 2023

DECISION AND REASONS

1. By the decision of Upper Tribunal Judge S Smith, dated 20.9.22, the three sibling appellants, nationals of Somalia, have been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Thapar) promulgated 7.4.22 dismissing their linked appeals against the respondent's decision of 25.5.21 to refuse their applications for EEA Family Permits to join their sponsoring aunt, a Norwegian national exercising Treaty rights in the UK, pursuant to the Immigration (EEA) Regulations 2016. The Sponsor was granted pre-settled status under the EU Settlement Scheme in 2019.

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2. The applications were refused by the respondent on the basis that appellants failed to provide details of their circumstances so as to establish that they would be unable to meet their essential living needs without the financial support from the Sponsor. Neither was it accepted that the sponsor, in receipt of Universal Credit, would be able to maintain the appellants in the UK without them becoming a burden on the public purse. At the First-tier Tribunal appeal hearing, however, the respondent's representative conceding the second point, accepting that it did not need to be shown that the sponsor was not in receipt of state benefit.
3. The appellants' case was that since 2018 they have lived with the sponsor's mother, their grandmother, ZN, a refugee in Kenya, to whom the sponsor sent regular transfers of monies from the UK said to be for the appellants' maintenance. The familial relationship between the sponsor and ZH, and between the appellants and the sponsor has been confirmed by DNA evidence and is not in issue.
4. The First-tier Tribunal accepted the evidence that sponsor has sent monies to ZH, but found no reliable evidence that the appellants live with one another or with ZH. Neither was the judge satisfied that the monies sent to ZH were used to meet the appellants' essential living needs. In the circumstances, it was not accepted that appellants are dependent upon the sponsor and in consequence the appeal was dismissed.
5. The grounds argue that: (i) the judge erred by taking into account irrelevant matters, namely the appellants' parentage, and took an issue not raised by the respondent, namely whether the appellants lived with each other and ZH; and (ii) failed to address the breakdown of the appellants' living expenses in order to make a proper assessment of dependency.
6. After receiving to the helpful submissions of both representatives, I reserved my decision to be given in writing, which I now do.
7. I note that in granting permission, Upper Tribunal Judge Smith considered it arguable that the judge failed properly to engage with the core issue before the Tribunal, namely whether the appellants were dependent upon the sponsor. It was not clear why the claimed parentage of the appellant was relevant to that core issue. Judge Smith also considered it an arguable error for the judge's analysis to focus on whether the appellants resided with ZN in her household, rather than expressly addressing their claimed dependency upon the sponsor.
8. I am satisfied that the judge was entitled to address the documentation provided by the appellants, which included their parentage. However, why the judge felt the need to address this issue when the relationship between appellants, sponsor, and grandmother was accepted to be as claimed, is not clear. As Mr Pipe submitted, the judge "went off track". However, the judge appears to make no adverse findings against the appellants on this issue. Neither are the observations as to parentage material the core issue in the appeal. However, it does suggest that the judge lost sight of the key issue of dependency.
9. The second issue of concern was the finding at [21] that there was no evidence that the appellants lived with each other or their grandmother. As Judge Smith observed when granting permission, the claimed dependency may stand or falls

with the appellants' claims to reside with ZN, "since she was the conduit for the financial support from the sponsor, so the materiality of any omissions or irrelevancies in the judge's reasoning will have to be explored at the hearing."

10. However, as Mr Pipe pointed out, this was not an issue raised in the refusal decision, or the respondent's pre-hearing review. Mr Mullen conceded that the 'schedule of issues' drafted by the respondent made no reference to place of residence and said that he would struggle to defend the decision on this point. It was not raised at the hearing, as far as can be determined. In the circumstances, I am satisfied that it was procedurally unfair to raise this as an issue without notice to the appellants' representative.
11. More significantly perhaps, is what is not in the decision of the First-tier Tribunal. Namely, an analysis of the appellants' expenditure to demonstrate that the monthly payments, which the judge accepted at [21] were sent to the grandmother, met their essential needs. The respondent's review had suggested that there needed to be further evidence to demonstrate that the remittances were used to meet essential needs, in consequence of which further evidence of expenditure was provided to the First-tier Tribunal. The judge did not address this evidence and made no findings in respect of it. If one eliminates the findings as to parentage and whether the appellants lived with their grandmother, the decision is devoid of any material findings on the key issue to be resolved.
12. In all the circumstances, and for the reasons explained above, I am satisfied that the making of the decision of the First-tier Tribunal is flawed for material error of law and must be set aside in its entirety.
13. Both representatives submitted that as there are no surviving primary findings of fact and because there will need to be a full assessment of dependency, including the expenditure and other financial circumstances of the appellants, this is a case that meets the Practice Direction for remittal to the First-tier Tribunal. I agree.

Notice of Decision

The appeal of each appellant to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside.

The remaking of the decision in the linked appeals is remitted to the First-tier Tribunal to be made afresh with no findings preserved.

I make no order as to costs.

DMW Pickup

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Judge of the Upper Tribunal
Immigration and Asylum Chamber

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