



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case Nos: UI-2022-005365**  
**UI-2022-005364, UI-2022-005363**  
**UI-2022-005367, UI-2022-005366**  
**First-tier Tribunal Nos:**  
**HU/05036/2020**  
**HU/03067/2020, HU/03065/2020**  
**HU/00891/2020, HU/03059/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 27 November 2023**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**FAISA ABDULLAHI HASSAN (MISS) (A1)**  
**FARTUN ABDULLAHI HASSAN (MISS) (A2)**  
**AISHA ABDULLAHI HASSAN (MISS) (A3)**  
**MOHAMED ABDULLAHI HASSAN (MASTER) (A4)**  
**FADUMO ABDULLAHI HASSAN (MISS) (A5)**  
**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr R Jesurum, Counsel instructed by Lawrence & Co Solicitors LLP

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**Heard at Field House on 6 November 2023**

**DECISION AND REASONS**

1. The appellants are citizens of Somalia. The first three appellants are the children of Ms Sadia Mohd Khayne ("Sadia"). The fourth and fifth appellants each have a different mother. It was conceded in the First-tier Tribunal that the mothers of the fourth and fifth appellant are deceased and Ms Cunha maintained that concession before me. All five appellants are the children of Mr A K Hassan ("the sponsor").
2. The appellants applied for entry to the UK to join the sponsor. They were all under 18 when the application was made. They submitted that refusing them entry would be contrary to paragraphs 297(i)(e) and (f) of the Immigration Rules.

Their applications were refused. They then appealed to the First-tier Tribunal where their appeal came before Judge of the First-tier Tribunal Lingam (“the judge”). In a decision dated 24 June 2022, the judge dismissed their appeals. She found that neither subparagraph (e) or (f) of paragraph 297(i) applied to any of the appellants and that refusing them entry would not be disproportionate under Article 8 ECHR.

3. The grounds of appeal are identical in respect of all five appellants, and relate to the judge’s consideration and application of subparagraphs (e) and (f) of paragraph 297(i) of the Immigration Rules.

### **Relevant Law**

4. Paragraph 297(i) provides:

297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

(i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:

- (a) both parents are present and settled in the United Kingdom; or
- (b) both parents are being admitted on the same occasion for settlement; or
- (c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or
- (d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or
- (e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child’s upbringing; or
- (f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child’s care; and

(ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and

(v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and

(vi) holds a valid United Kingdom entry clearance for entry in this capacity; and

(vii) does not fall for refusal under the general grounds for refusal.

### **Fourth and Fifth Appellants**

5. At the outset of the hearing I asked Mr Jesurum why it had not been argued in the First-tier Tribunal that subparagraph (d) of paragraph 297(i) was satisfied in respect of the fourth and fifth appellants. His response was that he must have lost sight of and overlooked this issue. He drew my attention to his skeleton argument before the First-tier Tribunal where reference was made to an issue being whether the mothers of the fourth and fifth appellant were deceased, but he recognised that he had not raised, either in his skeleton argument or orally before the judge, the question of whether paragraph 297(i)(d) applied. He submitted that I should nonetheless address this issue because the law is so clear.
6. Ms Cunha accepted that in the light of the respondent's concession that the mothers of appellants 4 and 5 are deceased paragraph 297(i)(d) is satisfied.
7. There appears to have been an oversight by everyone involved in the First-tier Tribunal (and in drafting the grounds of appeal), which was to not appreciate the applicability of paragraph 297(i)(d) to the fourth and fifth appellants. Given how obvious this point is, and the injustice that may result from not addressing it now (given, in particular, that the fourth and fifth appellants are now over 18 and therefore would not meet the requirement of paragraph 297(ii) if another application is made) I have decided to consider the applicability of paragraph 297(i)(d) despite this not being raised before the First-tier Tribunal or in the grounds of appeal.
8. As the respondent has conceded that the mothers of the fourth and fifth appellants are dead, the fourth and fifth appellants meet the conditions of paragraph 297(i)(d). The judge erred by failing to consider this. In the light of this condition being met, and it not being argued that any condition in paragraph 297 other than subparagraph (i) was not satisfied, it follows that there can only be one outcome to the remaking of the fourth and fifth appellants appeal, which is for it to be allowed.

### **Appellants 1 - 3**

9. The central argument advanced by the appellants in the First-tier Tribunal was that Sadia disappeared in March 2019 leaving the sponsor with sole responsibility for their upbringing from that time onwards, and therefore the condition in paragraph 297(i)(e) was met.
10. At the First-tier Tribunal hearing, oral evidence was given by three friends of the sponsor: Mr Hassan Aden, Mr Mohd Barre and Mr Dahir Ahmed.
11. Mr Aden's evidence was, inter alia, that the sponsor told him about Sadia disappearing and "appeared very sad".
12. Mr Barre's evidence was, inter alia, that the sponsor "sounded panicky" when he told him about Sadia's disappearance.
13. Mr Ahmed's evidence was, inter alia, that when the sponsor told him about Sadia disappearing "he was crying".

14. The judge did not attach weight to the evidence given by the aforementioned three witnesses. The judge did not make any adverse credibility findings about their evidence but stated (in paragraph 73) that the main purpose of their evidence was to verify the sponsor's evidence about his family and "their evidence stands and falls with the sponsor's account".
15. One of the submissions in the grounds of appeal (and the central argument advanced by Mr Jesurum at the hearing) is that the evidence of the three witnesses did not "stand and fall" with that of the sponsor and the judge erred in so finding. I am persuaded by this argument for the following reason.
16. Each of the three witnesses described how the sponsor appeared or sounded when he told him about Sadia's disappearance. The witnesses describe the sponsor as appearing sad, sounding panicky, and crying. No adverse credibility finding was made in respect of this evidence and, although it is not entirely clear, it appears that the judge accepted that the witnesses were being truthful when they described how the appellant appeared or sounded when he told them about Sadia. The implication of this is that if, as the judge found, the sponsor fabricated his account of Sadia disappearing, he must have lied to his three friends about what occurred and pretended to them that he was sad, panicky and/or tearful. No finding was made about the sponsor lying to the three witnesses (or pretending to them that he was upset) and the judge appears to have not appreciated that it follows from accepting that the three witnesses were being truthful that the sponsor would have to have done this. In these circumstances, it was not open to the judge (and legally erroneous) to not attach weight to the witness evidence on the basis that it merely stood and fell with the sponsor's evidence.
17. Ms Cunha and Mr Jesurum were both of the view that, if I found that the judge erred in the way described above in paragraph 16, the case should be remitted to the First-tier Tribunal to be made afresh. I agree. Five witnesses gave oral evidence in the First-tier Tribunal and it is likely that they will all give evidence again when the decision is remade. The extent of the fact finding required for the remaking of the decision is therefore likely to be substantial. In these circumstances, it is in accordance with paragraph 7(2)(b) of the Practice Direction to remit the case to the First-tier Tribunal.

### **Notice of Decision**

18. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
19. I remake the decision in respect of the fourth and fifth appellants by allowing their appeal.
20. With respect to the first, second and third appellants, the case will be remitted to the First-tier Tribunal to be decided afresh by different judge, with no findings preserved.

***D. Sheridan***

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Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**17.11.2023**