



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore

Case No: UI-2023-005241

First-tier Tribunal Nos:
EU/50954/2023 & LE/00614/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 6th of February 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

MHA
(ANONYMITY ORDER MADE)

Appellant

Representation:

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Mr Abdirahman, Sponsor

Heard at Field House on 11 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Suffield-Thompson promulgated on 15 October

2023 in which she allowed the appeal of Mrs DMM (EA/51572/2023) and MHA (EA/50954/2023) against decisions of the Secretary of State to refuse them EU family permits under Appendix EU (FP) to the Immigration Rules.

2. For convenience only, I refer to MHA as the appellant which he was before the First tier Tribunal.
3. The first point to be made is that the Secretary of State is only challenging the decision to allow the appeal of MHA. He is not challenging the appeal of Mrs DMM. Mrs DMM is the mother of Mr Abdirahman whom I refer to as the sponsor. The sponsor is an EEA national resident in the United Kingdom and who has now been granting settlement under Appendix EU. The judge in respect of the second appellant, that is MHA, said this:

“The Appellant is the nephew of the Sponsor and I accept this. He told the Tribunal that his half-sister died, and that he has been the person responsible for the second Appellant ever since as his father left and they do not know where he is. He explained that there are no such things as formal death certificates in Somalia. This is evidence that the Tribunal has heard in many appeals from Somalians, and I accept that this is the case. Birth and death certificates are not dealt with in the same way that they are in the United Kingdom, and I find that the Sponsor is honest in saying that he has no documentation to prove that his sister passed away”.

4. The judge then directed herself saying that under the Family Permit Rules, a nephew is not a category of relative that falls within those Rules, and then that the appellant has to show that his sponsor is his de facto parent. The judge then refers to the refusal letter stating that the Rules did not require the production of a legal document to prove the relationship and said this:

“I heard evidence from the Sponsor which I find is credible and he has submitted a second, very detailed statement, setting out his relationship to Appellant 2. When Appellant 2 was born his sister moved in with her mother taking her baby too and they raised him together. The Sponsor was the person who provided the financial support from when he was born. He has paid for his school, his food, clothes, medical needs and keep and he has visited them regularly over the years. On the evidence before me I do find that the Sponsor has been the de facto father of Appellant 2 and the appeal is allowed”.

5. The Secretary of State sought permission to appeal that on the basis that the judge had erred in that she had ignored the definitions set out at Annex 1 of Appendix EU, particularly the definitions of adopted child and reference to a child adopted in accordance with the relevant adoption decision. Permission to appeal to the Upper Tribunal was granted and it was on that basis that it came before me. Mr Abdirahman attended remotely via Teams, there were no difficulties with hearing him and as far as we could tell he heard everything that was said in court. In court Mr Lindsay was present as was the judge.

6. In broad terms, in order to obtain a family permit under the Appendix EU (FP) an applicant has to show three things: first that they have made a valid application, second that they meet the suitability requirements, and third that they meet the eligibility requirements. It is not said in this case that the application was not valid or that the appellant was not suitable.
7. MHA needed to show that he comes within the definition of family member of a relevant EEA national. It is not disputed that Mr Abdirahman, the sponsor, is a relevant EEA national but the issue is whether the appellant is a *family member* as defined in Appendix EU-FP of the Immigration Rules.
8. In the definition section family member of a relevant EEA national is defined in different ways. There are several possibilities under it. The one that we are concerned with here is subparagraph (e), that is the child of the spouse or civil partner of a relevant EEA citizen, as described above, or (d) the child or dependent parent of a relevant EEA citizen, and the family relationship.
9. There is no question that the appellant is a child given his age but “child” for these purposes is defined as “the direct descendant under the age of 21”. It may include a adopted child but only one who has been adopted in accordance with a “relevant adoption decision”. That is also defined.
10. A relevant adoption decision means an adoption decision taken either by (a) the administrative authority or court in the United Kingdom; or (b) by the competent administrative authority or court in a country whose adoption orders are recognised by the United Kingdom or the Islands; or (c) in a particular case in which that decision in another country has been recognised in the UK or the Islands as an adoption.
11. None of these apply in this case. There is no decision from a court in the United Kingdom or Islands, nor has there been a decision made by any court in Somalia nor evidence of that, nor for that matter, as a matter of general law, are adoption orders of the Republic of Somalia recognised by the United Kingdom. I fully accept that this is a difficult situation and I fully accept that there is no functioning system of adoption in Somalia.
12. It follows from the law as set out that the judge did err in that she looked at whether a de facto parental relationship which she found to exist between the sponsor and MHA is sufficient for the appellant in this case to fall within the definition of child. For the reasons I have given that is not so.
13. Accordingly I am satisfied that the decision did involve the making of an error of law and that the judge misdirected herself as to the law. I then must re-make the decision. In doing so I expressly retain all the findings of fact made by the judge, in particular those as to the nature of the relationship between Mr Abdirahman and the child, the extent to which he

has supported the child through all of the child's life. I then proceed to re-make the decision.

14. For the reasons I have already given on the facts as found the appellant simply cannot fall within the definition of child and therefore family member of a relevant EEA national and I therefore dismiss the appeal. I do however record first that the Tribunal in the First-tier and the Upper-tier was not able to consider whether other provisions of the Immigration Rules such as paragraph 297 might apply, nor is it possible to consider any human rights aspects. It is open to the appellant and the sponsor to make an application preferably after getting proper legal advice under the Immigration Rules for the child to join the family in the United Kingdom.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remake the appeal by dismissing it on all grounds.

Signed

Date: 2 February 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal