



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

Case No: UI-2024-001521

First-tier Tribunal No:  
HU/56326/2023  
LH/04579/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 1 October 2024**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**Ahmed Khair Isse  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**REPRESENTATION**

For the Appellant: Ms A Weston KC, instructed by Safe Passage  
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**Heard at Field House on 19 June 2024**

**DECISION AND REASONS**

**INTRODUCTION**

1. The appellant is a national of Somalia. On 4 April 2023 he made an application for entry clearance under paragraph 297 of the immigration rules (“the rules”) for indefinite leave to enter as the child of a relative present and settled in the United Kingdom. The applicant wishes to join his sister, Miski Mohamed Isse, who is a British Citizen (“the sponsor”).

2. In summary, the appellant claims his parents were killed in 2021 and that he then lived with his aunt and was subjected to physical and verbal abuse. He claims that his aunt made arrangements and on 23 March 2023 he fled Somalia alone. He is currently living in a centre for unaccompanied boys in Cyprus. He has a physical disability and cannot care for himself. In particular, he has difficulty dressing and preparing food. He claims he is also experiencing difficulties with this mental health.
3. The application was refused by the respondent on 25 April 2023. The appellant's appeal against that decision was dismissed by First-tier Tribunal ("FtT") Judge Shand KC ("the judge") for reasons set out in a decision dated 1 December 2023.
4. The appellant claims the decision of the FtT is vitiated by material errors of law. In summary, the appellant claims the judge:
  - a. Made findings that are unsupported by evidence;
  - b. Failed to make findings on material parts of the evidence and rejected the evidence on credibility grounds before considering corroborative and objective material: *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367;
  - c. Irrationally failed to consider material matters and took into account immaterial matters thereby failing to correctly apply the law to the material facts;
  - d. Proceeds in a manner that is procedurally unfair;
  - e. Failed to apply the Joint Presidential Guidance No 2 of 2010 paras 11- 15;
  - f. Misdirected himself in law as to whether the requirements of para 297 HC 395 immigration rules (as amended) are met;
  - g. Misdirected himself as to whether the refusal of entry clearance breached Article 8, taken with s 55 BCIA 2009 and Articles 3 and 23 (rights of disabled children to dignity and security) of the UNCRC.
5. Permission to appeal was refused by FtT Judge Chohan on 27 February 2024. The application for permission to appeal was renewed to the Upper Tribunal and permission was granted by Upper Tribunal Judge Keith on 8 May 2024. Judge Keith said:
  2. The grounds argue that the Judge erred in failing to engage with, and explain her rejection of evidence said to relate to the death of the appellant's and sponsor's parents; erred in rejecting the sponsor's credibility and her account of her knowledge the appellant's asylum claim and circumstances, particularly when she had never been accused of being untruthful; and thereby failed to analyse adequately whether the appellant met the Immigration Rules or had family life with the sponsor, the interference with which was said to be disproportionate.
  3. On the one hand, I am conscious of the risk of "island-hopping" between the evidence. On the other hand, it is at least arguable that the Judge erred at paras [58] to [59] in explaining why she rejected the

evidence said to relate to the deaths of the appellant's parents and whether he has family in Somalia who will assist him, other than just the evidence of the sponsor. That in turn is arguably relevant to the assessment of the appellant's relationship with his sister; whether the appellant meets the Immigration Rules; and whether the decision to refuse leave to enter was disproportionate.

4. I grant permission on all grounds."

### **THE HEARING OF THE APPEAL BEFORE ME**

6. On behalf of the appellant, Ms Weston KC accepts that there is a considerable overlap in the grounds of appeal. She submits the judge erred in her approach to the evidence so that the conclusions reached are unsustainable. The judge referred, at [57] and [58] to the appellant's claim that his parents were killed. In considering the appellant's claim Ms Weston KC submits the judge failed to have any regard to the guidance relevant to vulnerable witnesses and children, and other evidence that potentially corroborated the appellant's claim.
7. The evidence of the appellant and his sister was that their father had served in the army. He was sufficiently senior to have been sent to the US to study. In *MOJ & Ors (Return to Mogadishu) (CG)* [2014] UKUT 00442 (IAC) there was evidence that government and army officials in Mogadishu were the main targets of assassinations and bomb attacks, even occasional shoot-outs. The Upper Tribunal held that an ordinary citizen returning to Mogadishu after a period of absence will face no real risk of persecution. The appellant's father was not however 'an ordinary citizen'. He was in the army and therefore would have been at risk, and, to the lower standard, the background material and country guidance corroborated the appellant's account. The judge failed to consider that background material when assessing the appellant's account of events.
8. Ms Weston KC submits the judge simply said at paragraph [57] that the only evidence regarding the death of his parents is that set out in a witness statement by the appellant and the evidence of the sponsor. The judge said she was not satisfied that the sponsor was being frank in all of her evidence. The judge said that the sponsor was inconsistent in her evidence as to whether the appellant had an outstanding claim for asylum in Cyprus. There was however a document issued by the 'Asylum Service' of the 'Republic of Cyprus' confirming the appellant had submitted an application for international protection on 13 April 2022 (*page 144 of the consolidated bundle*). It was not put to the sponsor that she had lied about the claim for international protection. The evidence before the FtT, as set out in the report of Jill Alindayu, a qualified Social Worker at 'Children and Families Across Borders' ("CFAB"), dated 9 August 2023 was that according to the appellant's Cypriot Social Worker, Ms Angelika Theofilou, the decision maker in Cyprus is aware of the 'family reunification application' made by the appellant. As such, a decision is unlikely upon the claim for international protection until that application has been determined. Ms Weston KC accepts there was no direct evidence from the Cypriot authorities to confirm whether the international protection claim

has been determined or is delayed pending the outcome of the application made by the appellant for entry clearance to the UK.

9. Ms Weston KC submits that even if it were open to the judge to find that the evidence of the sponsor regarding the international protection claim made by the appellant in Cyprus is unreliable, it does not follow that her evidence of the death of their parents is equally unreliable. Furthermore, in paragraph [58], the judge substitutes her own views as to whether it is plausible that the appellant's aunt, would pay the costs of having an agent take the appellant out of Somalia to Cyprus.
10. Ms Weston KC submits the judge's approach to the evidence was procedurally unfair because the judge summarily rejected the appellant's claim without having proper regard to his disability and the impact that has upon the appellant's needs. There was, she submits, evidence before the Tribunal of a close relationship between the appellant and sponsor, and the support that she provides but the judge failed to consider the nuances in the evidence. The careful consideration of the evidence that was required is not apparent from the decision with there being instead, a focus upon the credibility of the sponsor and peripheral matters.
11. In reply, Mr Avery submits that put in context, the claim made by the appellant and sponsor that their parents were killed, is based entirely upon what the appellant claims he was told by his aunt. Neither the appellant nor sponsor have any direct knowledge of the death of their parents, the circumstances in which they were killed, and they have taken no steps to find out for themselves what has happened to their parents. At paragraph [5] of the decision, the judge recorded the submission made by the Presenting Officer that the only evidence that the appellant's parents were killed by Al Shabab is what is said by the appellant and sponsor in their witness statements. Although the background material may support the claim that government and army officials are the main targets of assassinations and bomb attacks, the judge was not bound to accept the appellant's parents had been killed. The judge was required to consider the evidence in the round and did so. The Judge rejected the claim that the appellant's parents have been killed and had regard to the circumstances the appellant finds himself in, in Cyprus. The judge referred to the evidence before the Tribunal regarding the appellant's disability and the support that is available to him in Cyprus. The Judge gave proper self directions as to the test that applied and reached a decision that the relevant threshold is not met, taking into account all the evidence, including the evidence of the social worker. The appellant and sponsor have not met in person and the evidence of the contact between them is recent. Although the judge did not accept the appellant and sponsor enjoy a 'family life' for the purposes of Article 8 she nevertheless considered whether the refusal of entry clearance is disproportionate. The Judge, Mr Avery submits, reached a decision that was open to her and the grounds of appeal simply amount to a disagreement with the outcome.

**DECISION**

12. In the respondent's decision dated 25 April 2023 the respondent set out the requirements in paragraph 297 of the Immigration Rules. The respondent summarised the claim made by the appellant as follows:

"You state that your parents were killed in 2021 and that you fled Somalia alone on 23/03/2023. No evidence has been provided to demonstrate that your parents are deceased. You state that you are currently living in a centre for unaccompanied boys in Cyprus. You state that you have a sister in the UK – your sponsor. You state that you also have an Aunt in Somalia who physically and verbally abused you. However, no evidence of this has been provided."
13. The appellant was therefore plainly aware that the respondent rejected the core of the appellant's claim that his parents were killed in 2021. The respondent had referred to the lack of evidence to support the claim made by the appellant.
14. On appeal, where there is a question as to whether the appellant's account is to be believed, judges adopt a variety of different, non-exhaustive evaluative techniques to assess the evidence. In an appeal such as this, the judge will for instance consider: (i) the consistency (or otherwise) of accounts given to investigators at different points in time; (ii) the extent to which the account is supported by other evidence, including background material, (iii) the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the appellant should be able to adduce in order to support his or her case; and (iv), the overall plausibility of an appellant's account.
15. In his witness statement dated 28 March 2023 that was before the FtT, the appellant claimed, at paragraph [10], that he 'lost' his family in 2021. He claims he was collected from the Madrassah by his maternal aunt and that he went to stay with her. He describes in his witness statement how he was treated by his maternal aunt and her two children. He claims in paragraph [3] of that statement that he fled Somalia in March 2022.
16. What is required by way of reasons will depend on the nature of the issue. Here, the issue was whether the appellant has established that his parents were killed as he claims. Ms Weston KC accepts, as the judge correctly noted at [57], the only evidence before the FtT regarding that was that set out in the witness statements of the appellant and sponsor. The judge addressed the appellant's claim at paragraphs [58] and [59] of the decision. On a careful reading of paragraph [58], the judge sets out two reasons for rejecting the claim.
17. First, the judge concluded that the sponsor was not being frank in all her evidence. In addressing the weight to be attached to the evidence of the sponsor, the judge was entitled to conclude that it is not credible that the sponsor had no knowledge of how the appellant's claim for international protection was progressing in Cyprus. However, that was not the only concern the judge had about the sponsor's evidence. The judge also referred to the evidence of the sponsor that she had maintained

contact with the 'aunt' whilst the appellant was living with her, but that she had had no contact with the aunt after she received the unexpected call from the appellant that he was in Cyprus. The judge was entitled to conclude that it is not credible that the sponsor did not contact her aunt for an explanation about how the appellant came to be in Cyprus.

18. Second, the judge concluded that it is not credible that the appellant's aunt, who the appellant claims was abusive towards him, would pay the costs of having an agent take him out of Somalia to Cyprus.
19. They were on the face of it perfectly valid concerns for the judge to have about the evidence. In effect, the judge found the appellant's account of events to be surprising, or the kind of thing that she would not normally expect to happen. The more unlikely an account, such as here, a claim on the one hand that the appellant's aunt ill-treated him, but on the other, was prepared to meet the cost of the appellant's journey from Somalia to Cyprus, the more confident the decision-maker can be that the account is incredible.
20. However, in paragraph [10] of the appellant's skeleton argument dated 21 September 2023, it was said:

"...News reports widely available from 2021 (see eg <https://www.bbc.co.uk/news/world-africa-55879679>) make it clear that Al Shabab attacks against government associated targets were frequent in Mogadishu throughout that year.
21. There was therefore at least some background material before the FtT that was capable of supporting the appellant's claim that the judge does not refer to in the decision. The only news report referred to in the skeleton argument is from the BBC Website, dated 1 February 2021 and refers to a gun battle between militant Islamists and Somali security forces at a hotel in the capital, Mogadishu. Despite the paucity of evidence before the FtT regarding the death of the appellant's parents, I accept the judge erred in her appraisal of the evidence, by failing to have regard to background material that was at least capable of providing some corroboration for the appellant's claim. The judge may well have concluded that the background material relied upon does not take matters much further, but if that was the case, it was incumbent on the judge to explain even in brief terms, her reasons for reaching that conclusion. In the end, I cannot be satisfied that the judge would have inevitably reached the same conclusion if the claim made by the appellant had been considered in the context of the background material.
22. The availability of family in Somalia was at the heart of the decision of the FtT and the error will have impacted on the assessment of the appellant's relationship with his sister; whether the appellant meets the Immigration Rules; and whether the decision to refuse leave to enter was disproportionate, that followed. I am satisfied that the decision of the FtT is therefore tainted by a material error of law and must be set aside.

## **DISPOSAL**

23. As to disposal, I have considered whether the proper course is to remit the appeal or to order that the decision be remade in the Upper Tribunal. In doing so, I have considered what was said in Begum (remaking or remittal) [2023] UKUT 46 (IAC). The appellant should have a proper opportunity to have all aspects of his claim considered by the FtT. Given that the decision on the appeal needs to be taken afresh and given the nature of the error into which the FtT fell, I have concluded that the just and proper course is to remit the appeal to the FtT for rehearing with no findings preserved.

## **NOTICE OF DECISION**

24. The decision of First-tier Tribunal Judge Shand KC is set aside with no findings preserved.
25. The parties will be informed of a further hearing before the First-tier Tribunal in due course.

**V. Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**6 September 2024**