



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003459

First-tier Tribunal No: HU/57441/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of January 2025

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

HODO MOHAMOUD DIRIR

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Amna Ali, Counsel instructed by Riaz Khan & Co,
Solicitors

For the Respondent: Ms Zoe Young, Senior Home Office Presenting Officer

Heard at Bradford on the 10th January 2025

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Somalia. The respondent refused her application for entry clearance to the United Kingdom on the 7th June 2023 and her appeal against that refusal, based on human rights grounds, was dismissed by First-tier Tribunal Judge Curtis on the 10th April 2024. The appellant was granted permission to appeal against Judge Curtis' decision and thus the matter came before me.

Background

2. The essence of the appellant's claims before the First-tier Tribunal can be summarized as follows. She was born on the 20th January 2007 and was thus aged 16 when she made her application, on the 15th February 2023, to join her aunt, Mrs Farah Yusuf ('the sponsor') in the UK. The whereabouts of the appellant's father are "unknown", and her mother (Koos Ahmed Yusuf) died on the 2nd July 2021. Following her mother's death, the appellant was cared for by a neighbour, Mrs Halimo Jama Hassan, with whom she continues to reside in Somalia. The sponsor was appointed the appellant's legal guardian by a Somali court on the 19th September 2022.

Findings of the First-tier Tribunal

3. In summary, the First-tier Tribunal Judge found that (1) little weight attached to documents tendered as proof of the key events (as summarised in the previous paragraph) given (a) the significant delay in registering them with the Somali authorities, and (b) background country information suggesting that fraud is "highly prevalent" in Somalia [21 to 28]; (2) further, and in any event, the appellant's case (taken at its highest) does not establish that it would be in the appellant's best interests to be uprooted from Somalia, where she has lived all her life, in order to live with a relative whom she barely knows in an unfamiliar country [29 to 32].

The grounds of appeal.

4. The grounds of appeal can be conveniently summarized as follows:
 - (1)The judge acted unfairly in not "properly" putting to the sponsor a possible anomaly concerning (a) the date of the guardianship order that appears on the face of Mrs Hassan's affidavit, and (b) the fact that the guardianship order repeatedly refers to Mrs Hassan having "handed over" the appellant to the sponsor on the 3rd October 2021 notwithstanding that the sponsor was in the United Kingdom at that time.
 - (2)The judge failed "to engage", whether properly or at all, with the "plausible and cogent" explanations given by the sponsor for other supposed anomalies in the evidence.

In granting permission to appeal, Upper Tribunal Judge Loughran considered that the first ground was arguable. Whilst the second ground was "difficult to follow", and appeared "to be a disagreement with the

judge's findings", Judge Loughran nevertheless did not seek to limit the grounds on which permission to appeal was granted.

Analysis

5. Mr Ali focussed his submissions upon the first ground, as summarised at paragraph 4(1), above; namely, the alleged failure of the judge to provide the relevant witness with an opportunity to address matters that he subsequently relied upon as evidence of that witness' unreliability. I shall therefore consider this ground first.
6. It is of course a principle of general fairness that any witness who gives oral testimony, be they a party to the proceedings or otherwise, should be given an opportunity to explain any anomaly or inconsistency in their evidence that may potentially be held against them. Mr Ali argued that the judge failed to observe that principle in two discrete respects, which I shall consider in turn.
7. The first complaint concerns the judge's observation at paragraph 16 -

There is an affidavit from Mrs Hassan, dated 29 December 2021, in which she swears that she previously held the guardianship for the Appellant following her mother's death on 2 July 2021 but that, following her own ill health, she could not continue with that responsibility and so contacted the sponsor. She then, claims that the guardianship process (switching it to the sponsor) was completed on 4 June 2021 which, I note, curiously pre-dates the Appellant's mother's asserted death.
8. It is unclear whether the judge was thereby intending to go beyond mere observation of this undoubted 'curiosity' in the evidence with a view to explaining why he attached less weight than otherwise to its reliability. However, assuming that he was, the fact remains that the deponent did not give oral evidence at the hearing. It was accordingly impossible for the matter to be put to her with a view to affording her an opportunity of addressing it. Acknowledging this reality, Mr Ali suggested that the judge ought instead to have drawn the matter to the attention of the appellant's representative and then to have granted them an adjournment to allow them to seek further instructions. However, I agree with Ms Young that the duty of fairness does not extend to assisting a party to the proceedings in addressing weaknesses in the evidence upon which they have chosen to rely when seeking to discharge the burden of proof. To the contrary, such judicial assistance would amount to bias in favour of the party receiving it.
9. The second complaint concerning an alleged failure to put matters to a witness is one that arises from the judge's observation at paragraph 17 concerning the Guardianship Order -

The court order itself is dated 19 September 2022 and refers repeatedly to a form of handover; that Mrs Hassan has "handed over" the Appellant to the

sponsor and that two witnesses confirmed that the "handover" took place on 3 October 2021. It is difficult to understand what could be meant by a "handover". As far as the Appellant's case is concerned, she has been living with Mrs Hassan since her mother's passing, The sponsor, save a trip to Hargeisa in August 2023, has remained living in the UK, I cannot fathom what type of "handover" might have occurred in October 2021,

10. As with the first complaint, it is not entirely clear whether the judge was simply expressing his lack of comprehension of the evidence or whether he was thereby explaining his reasons for attaching reduced weight to it. Be that as it may, this is again a matter that would need to have been put (if at all) to Mrs Hassan. I say this because it is clear from the terms of the order that the court's declaration of the facts was based upon evidence that had been given to it by Mrs Hassan and two named witnesses, rather than by the sponsor. The only people who could thus have explained this apparent anomaly were the three people who had claimed to the court that they had witnessed the 'handover' of the appellant to the sponsor in Somalia at a time when the sponsor herself claimed to have been in the United Kingdom. Mr Ali's alternative submission, also raised within the written grounds of appeal, was that the judge ought to have interpreted the reference to a 'handover' as being a transfer of parental responsibility, rather than a physical transfer of the appellant's daily care. However, this interpretation is at odds with the act in question that was purportedly 'witnessed' by two named individuals. The judge's interpretation of the document was thus eminently within the bounds of that which was reasonably open to him.
11. Mr Ali did not seek to develop the remaining written grounds in his oral submissions, and I shall accordingly deal with them briefly. So far as the judge's factual findings are concerned, those grounds can be summarised by saying that he failed "to engage" with the sponsor's explanation for other anomalies in the evidence. However, this is far from the case. To the contrary, the judge at paragraph 20 fully engaged with the sponsor's "attempts to deal with" the anomalies arising from the dates of the appellant's birth certificate and her mother's death certificate before explaining why her explanation, "does not stand up to scrutiny". It is also suggested in the grounds [paragraph 9] that the judge failed to engage with the evidence of the sponsor's money transfers to Mrs Hassan as providing evidence that, "the appellant's mother had died etc (sic)". The judge in fact set out in very considerable detail each and every money transfer of which there was documentary evidence and thus acknowledged that the sponsor had, "provided regular financial support ... between September 2021 and March 2023". However, it does not follow from this finding that the judge was bound to conclude that the appellant's exclusion from the UK was (in the words of the relevant immigration rule) "undesirable", or that her best interests were served by her moving from Somalia to live with her aunt in the United Kingdom. Indeed, as the judge observed at paragraph 30, there was no evidence to suggest that the sponsor would cease such financial support in the event of the appellant being compelled to remain in Somalia.

12. As I have previously noted, the judge also considered the appellant's position on the alternative basis that the asserted facts had been proved. He nevertheless concluded that, even on this basis, it would be in her best interests to remain in Somalia. It is asserted at paragraph 11 of the grounds that the judge applied "the wrong test" in this regard. I however find the pleaded reasons for this assertion to be incomprehensible, appearing as they do to relate to a renewed quarrel with the judge's factual findings concerning the date of the death certificate of the appellant's mother. It thus remains the case that even if I had found there was an error of law in the reasoning behind the judge's factual findings, which I do not, I would nevertheless have declined to exercise my discretion in favour of setting his decision aside.

Notice of Decision

13. The appeal is dismissed, and the decision of the First-tier Tribunal therefore stands

David Kelly

Date: 26th September 2024

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber