



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/23127/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 10 January 2020**

**Decision & Reasons Promulgated
On 29 January 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SUHAYB ABDIRIZAK OSMAN
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chakmakjian, Counsel instructed by Reiss Edwards Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal dismissing the appeal brought on human rights grounds by the appellant against the decision of the Secretary of State (by an Entry Clearance Officer) refusing him entry clearance to the United Kingdom as the child of a person whose solely responsible parent lived in the United Kingdom.
2. The appellant was born in August 2001. It follows that he is now 18 years old. In August 2018, when he was still 17 years old, he applied to join his father in the United Kingdom. In outline, it was his case that he is his

mother's first child and he was born at a time when his mother and father were married but that marriage did not last very long. After his parents parted and divorced they made sensible arrangements for the appellant. The appellant lived with his mother but his father made financial provision for him and was involved in his life. His father was always a responsible parent and it was his case that he was now the *sole* responsible parent. Whether the father was the sole responsible parent for a long period of time is immaterial. It was his case that his mother disappeared on 2 December 2017 and since then his father in the United Kingdom has been the sole responsible parent. The appellant's paternal grandmother is an elderly and not particularly fit woman who provided day-to-day care but the appellant's father made all the decisions that had to be made that were important in the son's life. In particular he was involved with the son's school and wanted him to come to the United Kingdom.

3. The Entry Clearance Officer was doubtful and disbelieved parts of the claim particularly because it was the appellant's case that he was from a family of eight children and no proper explanation had been given for their whereabouts. An explanation was given at the appeal hearing. The appellant explained that he was the oldest child and the remaining children were from another relationship. His half siblings were not the concern of his paternal grandmother but appropriate arrangements had been made for them. This clearly could be true and clearly undermines the main reason given by the Entry Clearance Officer for not believing the evidence.
4. The First-tier Tribunal gave several reasons for disbelieving the claim that the appellant's father was the solely responsible parent but none of them are reasons that individually are clearly compelling.
5. A particular difficulty in the decision is that the appellant produced evidence tending to show that his mother had disappeared. This evidence was regarded as unpersuasive by the First-tier Tribunal Judge and a major reason for it being unpersuasive is that the judge did not accept that the original evidence had ever been disclosed. There were translations in an apparently appropriate form but they referred to accompanying documents in which Latin script was used. The judge decided on his own and for no discernible reason that the Latin script would not have been used and the documents were in his words "transliterations" of a different document. As the original document had not been produced for inspection the judge found that the translations of the transliteration were of little value.
6. This point had never been taken by the Entry Clearance Officer and on it seems to be plainly wrong. Evidence was produced with the grounds of appeal to show that the Latin script is commonly used in Somalia. I was not able to find that evidence in the hearing room although that just might be attributable to my inability to see things that are there to be seen but Mr Tufan saved a lot of time by conceding formally that the Latin script is commonly used in Somaliland and the point taken by the First-tier Tribunal

Judge was just wrong. It was clearly an error of law. It was a finding of fact based on no disclosed evidence whatsoever contrary to the appellant's interests on a point that he did not realise was in issue.

7. I cannot say that the findings on the other points would have been resolved in the way they were if this evidence had been accepted and it has not been rejected for any proper reason.
8. It follows that I have to conclude that the Decision and Reasons as a whole is unsatisfactory.
9. I have considered very carefully if there is a way forward that does not involve a further hearing. I have concluded that there is not.
10. A possible (I put it no higher than that) explanation here is that the appellant's mother's alleged departure is a convenient deception rather than a description of something that has actually happened and the appellant is not to be believed when he maintains that his mother has disappeared. This is something which will be difficult to resolve because the appellant is unlikely to give evidence and his father's knowledge of exactly what happened might genuinely be limited. However, I have to be fair to both parties and I find that the Home Office must be given an opportunity of testing the evidence by cross-examination and allowing submissions to be made that will not be tainted by a wholly erroneous approach.
11. The first ground of appeal complains that the judge's approach to the test of sole responsibility is erroneous. There is some merit in this but the point has to be considered against the unsatisfactory findings of fact and it is not helpful to say any more about it.
12. I set aside the decision of the First-tier Tribunal.
13. This is not a case where everything is in issue. It is suggested that the appeal could succeed on an alternative basis of it being in the child's best interests to come to the United Kingdom outside the Rules. However, if the appellant can establish that he satisfies the requirements of the Rules then on human rights grounds the appeal should probably be allowed because there would be no reason to find the obvious interference in his private and family life proportionate to any proper purpose. It has been established that the appellant's father has made visits to Somaliland and on occasions has visited the appellant. That finding clearly stands it has also been accepted that he pays or has paid for the appellant's education. That finding stands.
14. Nevertheless, I have concluded that there is sufficient work here to warrant a rehearing in the First-tier Tribunal. It may be that the appellant will want to serve further evidence to deal with points taken in the decision and reasons. Mr Chakmakjian indicated to me that the appellant may be able to give good evidence to explain the appellant's absence in

Ethiopia and that is not properly indicative of some furtive act that was inconsistent with his mother having disappeared. That is a matter for the appellant to sort out with a proper application for permission to rely on further evidence.

Notice of Decision

15. The First-tier Tribunal erred in law. I allow the appeal to the extent that I set aside its decision and I have decided after careful reflection the better approach is for it to be determined again in the First-tier Tribunal and that is my decision.



Signed

Jonathan Perkins

Judge of the Upper Tribunal

Dated 24 January 2020