



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

Appeal Number: HU/18156/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC (via Microsoft teams)  
On 12 August 2021**

**Decision promulgated  
On 14 September  
2021**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SULEMAN ABDI HIRSI**  
(Anonymity direction not made)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Brown instructed by Knightbridge Solicitors

For the Respondent: Mr S Walker a Senior Home Office Presenting Officer

**DECISION AND REASONS**

- 1.** On 25 January 2021 First-tier Tribunal Judge Gould dismissed the appellant's appeal, said by the Judge to be against the respondent's decision of 02 October 2019 at [2] of the determination, which refused his application for leave to enter the United Kingdom on the basis of his family life with his mother.

## **Background**

2. The appellant is a citizen of Somalia born on 1 February 2005.
3. The Judge sets out findings of fact from [16] of the decision under challenge which can be summarised in the following terms:
  - i. That the Sponsor, who has been granted refugee status in the United Kingdom, is the Appellant's mother [17(a)].
  - ii. The Judge could not be satisfied the appellant is under the age of 18, for the reasons set out at [17(c)], although was not satisfied the appellant could meet the requirements of the Immigration Rules in any event.
  - iii. The appellant has had no meaningful relationship with the sponsor since the age of two. The sponsor's explanation for the delay in applying for the appellant to join the sponsor was found to be inconsistent with her own evidence that she had successfully applied for her daughter to join her on the resettlement scheme. The delay is consistent with the overall chronology that the appellant has lived and continues to live an independent life. The sponsors UNHCR bio data information referred to in the refusal letter fails to record the appellant as one of the sponsors children. The inference is that the sponsor regarded her son as the responsibility of others and was content not to interfere with his care [17(d)].
  - iv. The Judge was not satisfied money sent by the sponsor was sent for the benefit of the appellant or the use to which such monies were put. Evidence of money transfers are limited in duration and amount and are not consistent with the claim of continual support from 2018 [17(e)].
  - v. Taking the appellant's case at its highest and applying section 55 Borders, Citizenship and Immigration Act 2009, the Judge noted the appellant had spent almost 16 years living in either Somalia or Kenya, he has no relationship with his siblings, has not seen his mother for approximately 13 years. Evidence of contact is extremely limited. The appellant has long established ties to Somalia and Kenya. The respondent's decision does not amount to unlawful interference with the rights protected by article 8, any such interference being proportionate and lawful [17(f)].
  - vi. Having considered the Razgar questions, the appellant had not shown the respondent's decision was an unlawful interference with a protected right [18].
  - vii. Having considered the public interest set out in section 117 B Nationality, Immigration, Asylum Act 2002 Judge was persuaded that the decision is consistent with the public interest considerations and proportionate in all the circumstances [19].
4. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:

3. The grounds asserts that the judge has erred in law as the appellant (sic) had erroneously concluded that the appellant was over the age of 18 and in his finding that the appellant was leading an independent life; and he had failed to give clear reasons for rejecting the sponsors oral evidence and the documentary evidence.
4. At [17 (a)] the judge accepted that the appellant was the son of the UK sponsor and that she had been granted refugee status in the UK.
5. At [17 (b)] he rejected the respondent's assertion that the appellant looked significantly older than his claimed date of birth in a photograph as this was no more than an invitation to speculate. However, at [17 (c)] the judge rejected the documentary evidence of the birth certificate as it was not contemporaneous and dental records, whilst they were consistent with the appellant's claimed age, there were also consistent with the appellant being significantly older than his claimed age. No further reasons were given for these findings.
6. The judge found at [17 (d)] that the appellant had been cared for so long by members of his family in Kenya and that the sponsor had accepted that the appellant was the responsibility of others and that he was leading an independent life.
7. It is considered that the judge has arguably taken irrelevant matters into account and has overall failed to give adequate reasons for rejecting the birth certificate and dental records and had failed to give sufficient reasons for finding that the appellant was leading an independent life.
8. Permission is granted.

### **Error of law**

5. Mr Brown brought to the Tribunal's attention the fact that within the Secretary of State's bundle there appeared to be two decisions made by the ECO, the first dated 2 October 2019 and a second decision dated 22 October 2019.
6. Both decisions refer to the application for entry clearance made on 2 August 2019, but an important aspect of the 22 October 2019 decision is reference to a birth certificate having been submitted, registered three years after the appellant's birth. There is no copy of this certificate in the papers submitted to the Judge.
7. The appeal submitted by the appellant on 1 November 2019 referred to the date of the ECO decision as 22 October 2019. It cannot be established that the reference in the determination to the 2 October 2019 is a typographical error, with the other 2 having been omitted, as the date of the decision being considered by the Judge is specifically written as being 02 October 2019.
8. It appears on the face of it, therefore, that the Judge determined an appeal against the earlier decision which was never appealed and is not referred to in the notice of appeal, rather than the appeal against the decision of the 22 October 2019. In that case, the appeal against the decision of 22 October 2019 technically remains outstanding even though there is an overlap in some of the text of both decisions.
9. It was agreed the appropriate way forward is for the decision of the Judge to be set aside and for the case to be remitted to the First-tier Tribunal sitting at Manchester to be heard afresh by a judge other

than Judge Gould who can determine the merits of the appeal against the decision of 22 October 2019.

- 10.** As there is a dispute in relation to the age of the appellant the birth certificate referred to by the ECO in the later decision may be of some importance. Mr Brown indicated that those instructing him will do all they can to obtain a copy of that document and serve it for the purposes of the next appeal hearing.

**Decision**

- 11. The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Manchester to be heard afresh by a judge other than Judge Gould.**

Anonymity.

- 12.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 12 August 2021