



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14427/2016

THE IMMIGRATION ACTS

Heard at Field House
On 30 April 2018

Decision & Reasons Promulgated
On 24 May 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR MOHAMOUD ISMAIL MOHAMOUD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S A Salam, Solicitor, Salam & Co Solicitors
For the Respondent: Mr P Durm, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Somalia, seeking entry clearance as a partner under the Immigration Rules. Entry clearance was refused in a decision of 6 May 2016. The refusal was based on two matters, the first matter being that the sponsor narrowly

missed out on meeting the financial requirements. Secondly, the appellant did not pass the requisite English language test to meet the Rules. There being no exceptional circumstances outside the Rules, entry clearance was refused.

2. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Sweet on 2 November 2017. Although the appellant had now obtained the English language certificate the refusal was upheld on the basis that at the time of application or refusal he had not. Similarly, the concerns as to finances were also upheld.
3. Challenge was made to the decision on the basis that the judge had fundamentally misunderstood the nature of the appeal that was lodged. It was an appeal in respect of Article 8. The appellant worked as a junior doctor in Somalia, having obtained a medical degree from the Hargeisa University which was conducted in the English language. The appellant's spouse was born in Kuwait and married the applicant in Somalia on 5 August 2013. She earns about £15,000 as a special needs teacher for the London Borough of Hillingdon and has savings of £5,500. She also has a young child born on 19 June 2017. She also has an older child aged 12 by a previous relationship. She was married to the father of that child but has since divorced. The child is a British citizen.
4. Leave to appeal to the Upper Tribunal was granted by Deputy Upper Tribunal Judge Taylor on 13 March 2018 on the basis that the judge did not engage with the fact that it was a human rights appeal nor did the judge take into account all the evidence and submissions made. Under the Rules the earnings of the sponsor were clearly relevant. In terms of human rights little account was taken of the fact that the appellant was also a skilled professional able to engage in earning once he had come to the United Kingdom. There was also a suggestion of third party support. It was contended that in matters of human rights the language certificate was not required but in the event that had now been obtained. The evidence of the appellant's wife was that she was unable to live in Somalia and accordingly family life could not be enjoyed there but needed to be enjoyed in the United Kingdom.
5. Mr Durm conceded that the Judge had fallen into error in not looking at the wider context in terms of human rights rather than narrowly focusing upon the requirements under the Immigration Rules. In particular that the judge had failed to take into account the matters set out in the judgment of **MM (Lebanon) [2017] UKSC 10** which had been promulgated on 10 August 2017.
6. It is noted that there was a change to the regime, particularly in terms of financial support and that third party support and/or a job offer could be taken into account in meeting the financial requirements. The appellant as a doctor would clearly be able to command a substantial salary were he able to come to the United Kingdom and documents were presented at the hearing to show significant third party support from the sponsor's sister and her husband. There was a letter in particular from Mrs Jama, who is the sister of the sponsor, indicating that she would also provide third

party support. She works as a primary school teacher with an earned income of around £33,000 per annum on a permanent job. She lives with her husband and four children. He also works as a chauffeur and his annual salary is £30,000 per annum. There are family savings of £15,000 and ownership of the house. Financial support in the region of £300 per month would be made available and Mr Durm confirmed that such support would indeed meet the requirements of the Rules. Mr Durm however was concerned that there needed to be some confirmation from the husband that he was willing for those monies to be used in that way and that he would be lending support to it.

7. In this case there is clearly also the element of the British born child, who cannot reasonably be expected to relocate to Somalia, also the best interests of two children need to be considered. Applying the principles of 117B it is clear that the appellant would be of no burden to the state were he to come, indeed his qualifications would be no doubt much sought after.
8. It is perhaps unnecessary to dwell over much on the merits of the matter as Mr Durm fairly conceded that, subject to the conformation from the sister's husband, he would concede that the appeal should be allowed. Responsibility is upon the appellant's solicitors to submit the appropriate evidence but subject to that this appeal stands allowed on the basis of human rights and Article 8 in particular.

Notice of Decision

The appellant's appeal is allowed before the Upper Tribunal. The decision of the First tier Tribunal is set aside to be remade by the Upper Tribunal. This I now do in the light of the concessions made.

The appeal is allowed in respect of human Rights and Article 8 ECHR.

No anonymity direction is made.



Signed

Date 14 May 2018

Upper Tribunal Judge King TD