



IAC-FH-AR-V2

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

Appeal Number: OA/05098/2014

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**Decision &  
Promulgated**

**Reasons**

**On 15 April 2016**

**On 28 April 2016**

**Prepared 15 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**M A A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**ECO - NAIROBI**

Respondent

**Representation:**

For the Appellant: Mr T Muman, Counsel, instructed by P A Todd & Co Solicitors

For the Respondent: Mr D Mills, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Somalia, date of birth [ ] 2007, appealed against the ECO's decision to refuse entry clearance with reference to

paragraphs 297(i)(e)(f) and 297(iv)(v) of the Immigration Rules and with reference to Article 8 ECHR.

2. For reasons given in my decision promulgated about 27 February 2016 I concluded that the Original Tribunal, First-tier Tribunal Judge Dickinson, decision of 3 December 2014, could not stand and the matter would have to be remade.
3. From my decision it is clear as could be on the evidence that the judge's adverse conclusions on credibility and the reliability of the Sponsor's ([AI]) account simply could not stand because not only were they unreasoned but also disclosed a lack of proper reasons for rejecting her credibility. It was also clear that the judge misunderstood other matters which tainted the assessment of the evidence concerning the circumstances in which the Appellant, a child, was living in Uganda.
4. Accordingly, it was clear that on the evidence which was unchallenged that the Sponsor had sole responsibility for the purposes of paragraph 297(i)(e) of the immigration rules, which applied, because the evidence provided and produced to me showed that the Sponsor, his mother, had complete hands on control having sole responsibility within the sense contemplated in **TD (Yemen: paragraph 397(i)(i): sole responsibility) Yemen [2006] UKAIT 00049**.
5. The Appellant's Sponsor adduced evidence of the contact she maintains with the current daily care for the Appellant. The evidence showed she was paying the school fees, paying a regular allowance for his care and upkeep and was with three or four times a week she had contact with the Appellant by telephone. Her evidence was credible and reliable of her control of any decisions affecting the Appellant child.
6. In addition the Appellant produced evidence to show the clear termination of contact between the father of the Appellant, who had left him behind in

Ethiopia with third parties, confirming that he no longer wished to have contact with the Appellant. The evidence being a letter from the father of the Appellant together with identity documents was not substantively challenged. Thus there was no evidence to suggest there was any sharing of responsibility between the parents of the Appellant in any meaningful way since about 2013.

7. I was wholly satisfied on the evidence produced to me in remaking this matter the Appellant had discharged the burden of proof upon a balance of probabilities that he met the requirements of paragraph 297(i)(e) of the immigration rules; the requirement of sub-paragraph (ii) that the Appellant was under the age of 18 ; and sub-paragraph (iii) he was not leading an independent life, was unmarried and not a civil partner and had not formed an independent family unit. I find the evidence previously provided showed that the Appellant could and would be accommodated adequately by the Sponsor without recourse to public funds in accommodation occupied exclusively by him and his mother (sub-paragraph (iv)) and he would be maintained adequately by the Sponsor without recourse to public funds( sub-paragraph(v)).
8. In the circumstances therefore Mr Mills properly accepted that the evidence in relation to maintenance and contact addressed the issues of sole responsibility and the requirements of the Rules with reference to paragraph 297 had been established as required upon a balance of probabilities at the material time as well as subsequently. In the light of those circumstances no issue arose with reference to Article 8 of the ECHR.

### **Notice of Decision**

9. The Original Tribunal's decision did not stand. The following decision is substituted. The appeal of the Appellant is allowed.

**Anonymity Order**

10. An anonymity order was required given the age of the Appellant and his personal circumstances.

**Fee Award**

11. No fee award is made because this appeal has essentially succeeded on a clarification of the evidence and the production of further information which directly addressed the points in issue raised originally by the ECO.

**DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 24 April 2016

Deputy Upper Tribunal Judge Davey