SL & HA (Ethiopia – work permits – restrictions) Ethiopia CG [2009] UKAIT 00052

Asylum and Immigration Tribunal

THE IMMIGRATION ACTS

Heard at Birmingham
On 19 February 2009 and 4 August 2009

Before

SENIOR IMMIGRATION JUDGE ALLEN

Between

SL
HA

Appellants

and

ENTRY CLEARANCE OFFICER – ADDIS ABABA

Respondent

Representation:

For the Appellant: Mr B Bedford instructed by Sultan Lloyd Solicitors
For the Respondent: Mr L Petryszyn, Home Office Presenting Officer (on 19 February)
Mr J Singh, Home Office Presenting Officer (on 4 August)

DETERMINATION AND REASONS

A foreigner who wishes to be employed in Ethiopia will only be able to do so if there is no qualified Ethiopian for the activity in question. A UK-based non-Ethiopian without particular skills is therefore very unlikely to obtain a work permit in Ethiopia, though a short-term visit is unlikely to be problematic.

1. The first appellant is a citizen of Somalia and the second appellant is her younger sister, dependent on her. The first appellant (hereinafter referred to as the appellant) appealed to an Immigration Judge against the Entry Clearance Officer's decision of

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15 December 2008 refusing to grant her and her sister leave to enter the United Kingdom as respectively the spouse and dependent relative of the sponsor Isa Fos Sharif, a person present and settled in the United Kingdom. It seems that the appellants have lived together since 2005 when they lost their parents.

2. The Immigration Judge accepted that the appellant and the sponsor were in a subsisting relationship. She found, however, that the appellant could not satisfy the requirements of the Immigration Rules in respect of maintenance. As regards Article 8, she found that there was family life between the appellant and the sponsor and allowed the appeal under Article 8.

3. The Secretary of State sought reconsideration of this decision, and reconsideration was ordered by a Senior Immigration Judge. On 8 December 2008 it was concluded by a Senior Immigration Judge that there was required to be a reconsideration of the Article 8 issue. The findings on the Immigration Rules were to stand. The decision of the Senior Immigration Judge is attached to this determination.

> "1. This is a reconsideration of the decision of Immigration Judge O'Garro who on 9 July 2008 allowed the appellants' appeals under Article 8 of the ECHR but dismissed their appeals under the Immigration Rules, in respect of the first named appellant paragraph 281 of HC 395.
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> 2. The Immigration Judge concluded on all of the evidence before her that the marriage was genuine and subsisting between the appellant and the sponsor in the United Kingdom, which had been an issue taken by the ECO. No challenge is made to that finding in her determination. However she also concluded on the evidence that the appellant could not meet the requirement to show that she and her spouse (the sponsor) would be able to maintain themselves and any dependants adequately without recourse to public funds. The Immigration Judge carefully considered the evidence of the sponsor's finances in relation to this finding and concluded that his income fell well below the public benefit level which is the yardstick to be used.
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> 3. However, when she came on to consider the appellant's Article 8 ground of appeal, the Immigration Judge having concluded quite properly that there was family life in existence between the appellant and the sponsor, found at paragraph 39 that the appellant could not enjoy family life with her sponsor where she currently lives in Ethiopia because the sponsor had not legal right to enter Ethiopia for settlement. The sponsor had not long been granted refugee status in UK and had begun to form a settled life there. In addition the rest of his family was in the United Kingdom. Neither party could of course return to Somalia, their original country of origin, to enjoy family life.
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> 4. Whilst recognising that the state did not have an obligation to respect an applicant's choice of country of residence, the Immigration Judge found for those reasons that there were clear insurmountable obstacles to the family enjoying family life anywhere other than in the United Kingdom. In reaching this conclusion she also took into account that the appellant herself fled Somalia to seek refuge in Ethiopia and was living under harsh conditions and was a vulnerable single woman with two young children. She also took into account the impact their separation would have on the sponsor who wished to be reunited with his family.

5. In the grounds of the application the respondent submits that the Immigration Judge has given a lack of reasons for finding that there are insurmountable obstacles to the appellant enjoying family life outside of the UK. It was submitted that the reason that the Immigration Judge gave were not adequate and that the statement that the appellant was living under harsh conditions and was a young single woman was not sufficient. The error was further compounded, it was submitted, because it was accepted the sponsor had visited the appellant in Ethiopia which resulted in her becoming pregnant. There was no evidence before the Immigration Judge that the sponsor could not settle legally in Ethiopia.

6. The Senior Immigration Judge who ordered reconsideration also identified the fact that the judge appeared not to have taken any account of her finding that the appellant could not meet the requirements of the Immigration Rules in relation to maintenance and weighed that in the balance between the public interest and the private right.

7. In his submissions Mr Smart said that the Immigration Judge had no evidence at all before her that the sponsor had no legal right to reside in Ethiopia and no evidence as to the circumstances in which the appellant was living in Ethiopia. In addition she appeared to have failed to take into account what the ECO had said about the conditions in which the appellant had to live in Ethiopia in his notice of decision. He submitted that the Immigration Judge had failed to take properly into account the fact that the appellant could not meet the maintenance requirements of the Rules and that as the Deputy President in KA (Adequacy of maintenance) had pointed out, it was extremely undesirable to foster situations where immigrant families might have to exist on money less than social benefits, which in turn would create a much lower standard of living for those persons. In this case the family would be living below the breadline and it was material factor to take into account in deciding the proportionality of the respondent's decision.

8. In response, Mr Pipe who had filed a Rule 30 reply in which he relied said that the sponsor had only visited Ethiopia on one occasion. He also submitted the judge properly directed herself as to the relevant law. The sponsor has refugee status in the United Kingdom and it was relevant that consideration should have been given, as the judge did, to the consequences of the sponsor having to give up his residence and status here to live in a country where his standard of living would not be nearly as good. In addition, the sponsor had extended family in the United Kingdom. The judge had recognised the state has no obligation to respect the applicant's choice of residence but she then identified the circumstances in which the appellant was living in Ethiopia and the fact she had originally had to flee Somalia. She was living with the second appellant, her 6 year old sister, and had recently given birth to the couple's first child. She would therefore be a young woman living in Ethiopia with two very small children, one a babe in arms. The judge had considered the continued separation of the family and indeed the rights of all members of the family in reaching her conclusion. He submitted that the judge had given proper reasons for finding that it was not reasonable to expect the sponsor to join the appellant in Ethiopia.

9. In relation to the adequacy of maintenance point, Mr Pipe submitted that although the judge had made no specific reference to this, she would not have considered Article 8 at all had she found that the provisions of paragraph 281 were met. Although he accepted the shortfall in the maintenance requirements implicitly had to be considered in the balance, it did not outweigh the other considerations that the Immigration Judge had taken into account. He submitted there was no material error of law in her determination.

10. I find the judge has materially erred in law in her approach and for the reasons that follow, there should be a full reconsideration of the Article 8 ground of the appeal.

11. It is not correct, as Mr Pipe submitted, that if the Immigration Judge found that paragraph 281 was met, that she would not have needed to go on to consider Article 8. The appeal on Article 8 grounds is separate and distinct and although an Article 8 balancing exercise will clearly be influenced by an out of country ... .. the appellant's ability to meet the requirements of the Immigration Rules, that is not the end of the matter. However in my view the Immigration Judge in reaching her conclusion on the Article 8 ground of the appeal did fail to take into account a number of material issues, not least of which was that she failed to give any weight at all to the fact that the appellant and her husband cannot show that they have adequate money to live on, bearing in mind that there are now two children to support. That was a material consideration it should have weighed in the balance. However, it is not the sole factor and there are a number of other relevant factors that had to be considered and in my view the Immigration Judge has failed to do so adequately and properly.

12. First of all, the Immigration Judge reached the conclusion that the sponsor would not be able to live in Ethiopia without giving any reasons at all, save that she accepted the appellant's case that that was the position. The Immigration Judge noted that the sponsor had visited Ethiopia on one occasion. There is no indication in the determination for how long he visited or on what basis he was granted admission to the country. The determination does not make it clear how long the sponsor has been living in the United Kingdom; when he was granted refugee status, nor does it make it clear what was the evidence as to the extended family he has in the United Kingdom and what kind of relationship he has with his family members. In short, there is very little detail about the sponsor's life in the United Kingdom save for the details about his work.

13. Consideration should have been given clearly to the fact that this is not a case of removal from the UK but rather an appellant who wishes to come to the United Kingdom to enjoy family life here. In those circumstances the fact that the sponsor has refugee status here and has settled will have less impact than in the case of a British citizen who has lived here all of his or her life – AB (Jamaica) v SSHD [2007] EWCA Civ 1302. There is no indication in the determination of how the appellant and the sponsor came to meet in the first place. There are no reasons given by the Immigration Judge at paragraph 41 for why she concluded the appellant was living under conditions and it is not clear on what evidence she based that conclusion, particularly in the light of the ECO's comments in the notice of decision. The Immigration Judge placed some weight on the fact that the children needed both parents to offer them nurturing and guidance and yet failed to weigh in the balance that this is an application by the appellant to join the sponsor in the United Kingdom and he has to date not spent any significant periods of time with the appellant and her sister.

14. The Tribunal concludes that the Immigration Judge did materially err in law for these reasons and that the proper course now is for a reconsideration of the Article 8 ground of the appeal so that the evidence can be reconsidered in full and the balancing exercise carried out taking account of all the factors identified above. For these reasons the Tribunal directs that none of the findings of Immigration Judge O'Garro in relation to the Article 8 ground of the appeal will stand."

4. The hearing before me took place on 19 February 2009. Mr B Bedford, instructed by Sultan Lloyd Solicitors, appeared on behalf of the appellant. Mr L Petryszyn appeared on behalf of the Entry Clearance Officer.

5. It was accepted by Mr Bedford in light of what had been said by the Court of Appeal in **AS** (Somalia) [2008] EWCA Civ 149 that the effect of Section 85(5) of the Nationality, Immigration and Asylum Act 2002 is that that subsection is applicable not only to Immigration Rules issues but also Article 8 issues and therefore under Section 85(5) any post-decision events which generate or enhance a human rights based claim for entry clearance can be the subject of a fresh claim and if necessary a fresh appeal, and therefore there is no breach of Convention rights in the factual matrix in respect of the Article 8 issue being restricted only to the circumstances appertaining at the time of the decision to refuse.

6. In light of that Mr Bedford argued that the issue was whether there was an insurmountable obstacle to the appellant and her husband enjoying family life if the appellant did not obtain a grant of entry clearance and the issue therefore was whether the sponsor could join her in Ethiopia. It was a question of whether if he could go he would be able to earn a living there but most importantly whether he would be entitled to enter and remain there. On that there was no evidence other than comments in the explanatory statement. There was a concern as to whether the Tribunal was in a position today to deal with the reconsideration in the absence of such evidence.

7. Mr Petryszyn said that he had such evidence in the form of an extract from the January 2008 COIR on Ethiopia at section 32 of that report and, he produced a copy of this and there was a brief adjournment to enable Mr Bedford to consider it.

8. Mr Bedford thereafter argued that it would be necessary for there to be an adjournment in order for the appellant to apply to the Ethiopian Embassy to see if there were insurmountable obstacles to his going to Ethiopia to work.

9. Mr Petryszyn argued that this would be quite inappropriate and on the basis of what was said there there was sufficient evidence before the Tribunal and it was not necessary for him to apply and see what would happen but the matter could and should be determined on the basis of the evidence before the Tribunal.

10. After consideration I concluded that it would not be appropriate to adjourn. There was sufficient evidence in what was said at part 32 of the January 2008 COIR on Ethiopia for the matter to be argued today. However there was a relevant point in respect of Article 11 of the proclamation regulating the issuance of travel documents and visas and registration of foreigners in Ethiopia, no. 271 of 1969, as referred to at (v) on page 168 of the report. That Article was not produced in the COIR. I agreed to delay determining the appeal to enable the representatives to address me on this, and accordingly seven days from the first hearing was allowed for both sides to provide evidence relating to Article 11 and its contents and implications and thereafter a further seven days to make submissions on what they had to say about the evidence they and the other side had produced.

11. Thereafter the sponsor, Isa Fos Sharif, gave evidence. He confirmed that his statement dated 12 February 2009 was true. He had visited Ethiopia in 2007. He had arranged the visit. The appellant had been in Djibouti and from there she had gone to Ethiopia when he had told her to go there. He had approached the Ethiopian Embassy for a visa around the summer of 2007. It had taken about four weeks to get a visa. He could not remember how much it had cost, but it had been affordable. He had not been interviewed. He had had to produce his travel document, by which he meant an ID document and proof of address. He had not been required to show an airline ticket. The visa had been for three months, the maximum. The air fare was £550-600 approximately.

12. He currently worked as a production operator in a food factory. He had had about four day's training on the job. He had arrived in the United Kingdom in 2002 when he was aged 14 or 15, and was now 21. He had obtained an Esol qualification in English literacy at level 3 and also a BTech Intro and a BTech level 1. He spoke English and Somali but no Arabic and no Ethiopian language. When he had been in Ethiopia he had spoken English and Somali. He had had dealings with the Ethiopians at the airport and had some problems with the guards as they did not speak English but then they had got someone who spoke English and after that they had let him go. He did not have concerns about the fact that he had been interviewed. There had been simple questions concerned with why he had come and how long he was staying and he had filled in a form. He had told them he was visiting his wife. He had not been questioned about his wife or about her nationality nor how much money he had with him.

13. When he had been in Ethiopia for nearly four weeks he had lived in a residential area of Addis Ababa. The people who lived there were mainly Ethiopians and there were Somalis also. His wife did not speak Ethiopian. She did not work. She survived on the money he sent to her.

14. In the United Kingdom he had his mother, grandmother, sister and two brothers, an uncle and cousins. He had come to the United Kingdom with his mother and his sister who was aged 18 or 19, and his brothers who were aged 16 and 22. His siblings did not work, they were students. His mother worked as a carer for the elderly. His grandmother did not work. He lived alone. His uncle was about 15 and his mother looked after him and his oldest cousin was about 16 and none were working that he knew of. They were students.

15. He had not taken any money other than his own money with him when he had gone to Ethiopia. None of his relatives sent money to people in Ethiopia. His mother looked after four people, his sister, brother, uncle, cousin and grandmother. He did not really know what his mother earned.

16. On cross-examination the sponsor said that he began to work for Ranstad on 24 November 2006. At the date of refusal therefore he had been working for them for eleven months. He had gone on paid leave when he had visited Ethiopia. He could not remember how much paid annual leave he was entitled to by the year at that time and it was different now anyway. When he had applied for the visa he had told them he was going to see his wife. She was living in rented accommodation and had been there for a few months in October 2007. He had been paying the rent since she

moved to Ethiopia, initially for the hotel she was in and then in the current accommodation. The accommodation was a shared home, like a bungalow. Her part had two bedrooms and a shared bathroom and a shared kitchen. There was electricity. With regards internal plumbing, there was a normal African kitchen with firewood to light and a stove. The house had access to water if the water was running and if it was not running then it was necessary to buy it. He did not know how many rooms there were in the rest of the house, nor who lived there. There were a few families there, he did not know how many. If his wife wished to access her part of the building then she would go through a gate in an open area and then straight through a door to the rooms.

17. There was no re-examination.

18. In his submissions Mr Petryszyn relied on the refusal notice and the explanatory statement. The appeal had failed on maintenance, and **AS** as referred to above was relied on in respect of the Article 8 aspect. The refusal of entry clearance would not be disproportionate. The appellant could re-apply if there were up-to-date evidence that changed the situation. It was a question of the date of decision. The sponsor had visited for a three and a half week period and contact had been maintained. He had gone to Ethiopia on a tourist visa. He had told them the purpose of the application, that he was visiting his, wife and they were not interested in documents beyond the travel document and ID and he had not been interviewed. He had had a short interview on arrival and there was no interest in his earnings or his wife's nationality but just the purpose and duration of the visit. It was therefore possible to get a tourist visa for a short period and he had no problems in arriving or leaving. He could go and extend his visits by entry visa as could be seen at (2) of page 168 of the COIR. He would be able to go and establish himself in business or on some other basis. The issue of what Article 11 said was to be addressed subsequently in written submissions. Family life could be maintained. It was possible to get a visa or a residence permit. The circumstances for the appellant were not unduly harsh on the basis of today's evidence. She had been supported by the sponsor for some time. The appeal should be dismissed.

19. In his submissions Mr Bedford started from the premise that there was a finding of family life that was protected. The denial of entry clearance would be an interference in line with what was said by the Court of Appeal in **AB** (Jamaica). The burden of proving proportionate interference was on the Entry Clearance Officer where there were insurmountable obstacles to the couple enjoying family life other than in the United Kingdom. The Entry Clearance Officer could not satisfy that burden. Mr Bedford referred to the point at paragraph 6 of the first stage reconsideration concerning the order for reconsideration and the issue of failing to take into account the inability to meet the requirements of the Immigration Rules as part of the Article 8 balance. There was a reference by the Senior Immigration Judge to a material factor of the family living below the breadline in the United Kingdom. Counsel's argument, which had been taken into account, and hence the appeal was originally allowed under Article 8 though not under the Rules, was set out at paragraph 8 and paragraph 9. There it had been accepted that the shortfall in the maintenance requirements implicitly had to be considered in the balance but it was argued that it did not outweigh the other considerations. The Senior Immigration Judge had nevertheless found there to be a material error of law and it was necessary to

determine whether the Entry Clearance Officer could justify the interference. It was argued that there were insurmountable obstacles to the sponsor living with the appellant in Ethiopia. The reference in the explanatory statement to the Somali community and the support it could offer was unsourced. It would seem therefore that in the reference to informal job opportunities it was suggested that it was possible to get round the immigration controls and work in the black economy, but it was argued that the Entry Clearance Officer could not rely on a person working illegally in another country in order to maintain family life. It was for the Entry Clearance Officer to prove that Article 7 of the proclamation was current in Ethiopia and not just a theoretical possibility and that there was a real prospect of the sponsor getting a residence permit entitling him to work or set up a business, albeit that he had no job offer or business set up in Ethiopia. The existence of a power to grant residence under (v) at page 168 of the COIR was illusory. There were no inherent discretions in the Ethiopian law and what was set out there did not necessarily set out the legal position. Paragraph (v) appeared to provide a discretion and it was not reasonably foreseeable that the Ethiopian government would allow the sponsor to settle until he had a job or a business and would not let him live with an appellant who lacked residence status.

19. The absence of a provision to extend the residence visa did not mean that there was untrammelled power to do so or it would be less difficult to get a residence permit than a transit visa or a tourist visa. There was a lack of provision for extension of a residence permit which indicated there was no such provision. This could be seen from (v) again. The sponsor's job in the United Kingdom was at a fairly low level and was described as low skilled. It did not support the argument that he could be optimistic about work in Ethiopia. **AB** (Jamaica) was not authority for what it was said to be by the Senior Immigration Judge at paragraph 13 of the stage 1 determination. Such a person was no less entitled to family life than a British person. Article 8 applied to all people who were subject to the authority of the particular high contracting party and there was no differentiation between UK nationals and others. The burden of proof was on the Entry Clearance Officer to show that the decision was proportionate. In that particular case it had been allowed outright. There was no evidence from the Entry Clearance Officer to satisfy the Tribunal that the sponsor in this case could go to Ethiopia lawfully and live there legitimately and get work. There was no evidence that his mother or other relatives could send him money. Visits, contrary to what was argued on behalf of the Entry Clearance Officer, could not properly be an alternative, given the finding of family life and interference. It was unclear how the appellant's living conditions in Ethiopia were relevant to the issue of insurmountable obstacles.

20. I reserved my determination.

21. Subsequent to the hearing I received from Mr Petryszyn details of the Ethiopian Regulations relating to entry, exit, visas, residence permits and deportation. In a covering note Mr Petryszyn stated that the Proclamation № 271 of 1969 referred to in the Country of Origin Information Report for Ethiopia of January 2008 had in fact been repealed on 3 July 2003 when Immigration Proclamation № 354/2003 came into force and there was also an Immigration Council Minister's Regulation № 114/2004 which came into force on 11 September 2004 providing further clarification

of Proclamation № 354/2003. He made brief submissions in respect of the Proclamation and the Regulations.

22. As a consequence of receipt of this communication I caused a direction to be made on 5 May 2009 deeming the reconsideration to be part heard and giving the appellant an opportunity if she so wished to commission an expert report. Subsequently, on 3 August 2009, an expert report was received.

23. The hearing reconvened on 4 August 2009. Mr Bedford again appeared on behalf of the appellant. On this occasion Mr J Singh appeared on behalf of the Entry Clearance Officer.

24. Mr Singh referred to the date of decision as 22 October 2007, and noted that the matter was proceeding under Article 8 only, the appeal under the Immigration Rules having been dismissed. It was a question of whether family life could be enjoyed in Ethiopia by the sponsor relocating. On the sponsor's evidence he had been in Ethiopia between 27 August and 21 September 2007 and had successfully obtained a three month visa for that visit which was valid between 3 August and 3 November 2007. He was either familiar with the application process or had been well-advised. The question was whether he could continue family life in Ethiopia or what obstacles existed. It was argued that he could settle there. He had obtained asylum status in the United Kingdom and work. The COIS had now been updated with respect to what the sponsor would have to do to be able to settle in Ethiopia. The Regulations and Proclamation were the equivalent of the Immigration Rules. Initially the sponsor would get a three month immigrant visa under Article 13(1)(b) of the Proclamation, and once there he would need to register and could application for temporary residence a year at a time. The Ethiopian Regulations said that after three years' stay he could apply for a permanent visa there. The appellant had no status in Ethiopia but there was capacity in the Regulations for her to apply for an alien passport, as could be seen from page 18 of the bundle, so she could get registered and become settled there. The report even showed the levels of fees at page 27. The hardship seemed to be in the United Kingdom where the couple could not meet the requirements of paragraph 281 of HC 395. Article 8 was not absolute, and family life could be enjoyed in Ethiopia by way of visits there as had been done previously.

25. Mr Singh asked that the expert report be treated with caution. From the expert's background it could be seen that he had been barred from entering Ethiopia in the past so he did not have an open mind but had been previously wanted by the Ethiopian authorities. He had never given evidence before a Tribunal in the United Kingdom. The key section was paragraph 114 onwards. He said the sponsor could not live in Ethiopia as he would not satisfy the Ethiopian Regulations, but no source was given for this statement and it was just his opinion and he had not stated any figures and had not interviewed the appellant and did not take into account the previous success of the sponsor in visiting Ethiopia. The second sentence of paragraph 114 displayed a general focus rather than concentrating on the date of decision. It was a question of what the sources were for paragraph 116. It was evidence, but it was limited. He did not advance the case as at date of decision. The appellant had failed under the Immigration Rules. Family life could be continued in Ethiopia. There was nothing to show that the sponsor could not repeat his previous

stay and the situation was akin to the various probationary periods that were required under United Kingdom immigration law. The appeal should be dismissed.

26. In his submissions Mr Bedford referred to the expert report and argued that on the face of the Regulations and the Proclamation they denied the sponsor the possibility of residing in Ethiopia. The question was whether it was reasonable for the appellant to continue family life with the sponsor in Ethiopia and it could not be reasonable if he would not be allowed to go there.

27. Mr Bedford referred to page 20 of the Secretary of State's bundle at paragraph 17 which showed the circumstances in which an immigrant visa would be issued. It could be seen that none of these applied to the sponsor. He needed to be able to work and the Regulations did not allow him to do so. In effect that was an end to the matter. The expert had referred to the Regulations and what they stated. He also considered the alternative of the appellant being a registered refugee and having the sponsor join her under Ethiopian refugee law, but if that happened, paragraph 115 had to be borne in mind. It was far from being a United Kingdom-type family reunion policy. There was also the possibility of the sponsor being allowed to join the appellant despite this but again paragraphs 121 and 122 dealt with that. So even allowing for this possibility, it was not a reasonable option. If the sponsor could not work then it could not be said that the alternative of the appellant joining the sponsor in the United Kingdom was unreasonable. It was necessary in the light of Beoku-Betts for the appellant and the dependants to be considered. The appeal should be allowed.

28. I reserved my determination.

29. It will be appropriate if I set out first of all the relevant provisions of Ethiopian law as provided under cover of Mr Petryszyn's letter of 20 February 2009.

30. First there is the Immigration Proclamation № 354/2003 which came into force on 3 July 2003. I do not propose to set out the whole of the Proclamation but rather to set out the relevant paragraphs. Part 5, paragraph 12 lists the different types of visas that exist:

> "12. Types and issuance of visas
>
> 1) Visas to be issued in accordance with this Proclamation and Regulation issued hereunder shall be the following:
>
> (a) diplomatic visas;
>
> (b) special visas;
>
> (c) business visas;
>
> (d) immigrant visas;
>
> (e) tourist visas;
>
> (f) transit visas;

(g) student visas;

(h) exit visas;

(i) re-entry visas;

(j) other visas to be prescribed by Regulation to be issued hereunder.

2) The visas specified under sub-Articles (1)(a) and (b) of this Article shall be issued by the Ministry.

3) The visas issued under sub-Articles (1)(c) and (j) of this Article shall be issued by the authority.

4) The conditions of issuance of visas shall be prescribed by Regulation to be issued hereunder.

Part Six

Registration of Foreigners and Residence Permit

13. Registration

1) The following persons shall be registered by the authority:

(a) all foreigners residing in Ethiopia;

(b) a foreigner who enters Ethiopia with an immigrant visa, within 30 days of the date of his arrival;

(c) a foreigner who enters Ethiopia with a business or student's visa and intends to stay for more than 90 days, within 30 days of the date of his arrival;

(d) without prejudice to Article 14 of this Proclamation, anybody who enters Ethiopia without a visa pursuant to Article 4 of this Proclamation and intends to stay for more than 90 days, within 30 days from the date of his arrival.

2) The conditions of registration shall be prescribed by Regulation to be issued hereunder.

…

15. Issuance of residence permit

1) A foreigner who is registered in accordance with Article 13 of this Proclamation shall be required to obtain a temporary or permanent residence permit, as the case may be.

2) Minor children shall be recorded in the residence permits of their parents.

3) The conditions of issuance of residence permits shall be prescribed by Regulation to be issued hereunder."

31. Thereafter at Regulation 22 the earlier Proclamation is repealed and this Proclamation is stated at paragraph 24 as coming into force on the third day of July 2003.

32. Next there is a Council of Ministers Regulation № 111/2004. This provides further clarification of the Proclamation. The following provisions of this are of relevance:

> "7. Alien passport
>
> An alien passport shall be issued to a resident foreigner who is unable to obtain his national travel document or who is stateless.
>
> 16. Business Visa
>
> 1) Business visa shall be issued to foreigners who are coming to Ethiopia:
>
> ….
>
> (b) without prejudice to the provision of the relevant law concerning work permits, for employment in any activity;
>
> ….
>
> 17. Immigrant Visa
>
> Immigrant visas shall be issued to the following:
>
> 1) foreigners who have been adopted by Ethiopians or who have valid marriages with Ethiopians and are coming to reside in Ethiopia, and to members of their families;
>
> 2) family members of foreigners holding permanent residence permits in Ethiopia;
>
> 3) foreigners coming to reside in Ethiopia without either being engaged in any gainful activities or becoming a public burden, and to members of their families.
>
> 26. Registration
>
> 1) An application for registration in accordance with Article 13 of the Proclamation shall be made by filling in a form issued for such purpose and the applicant shall have the obligation to attach the following and to answer truthfully to questions presented to him:
>
> (a) a valid travel document when relevant;
>
> (b) an evidence showing his reasons for residing or staying for more than 90 days in Ethiopia;
>
> (c) other information and documents that may be required in accordance with directives issued by the Authority.

2) The applicant shall, in addition to those required under sub-Article (1) of this Article, furnish his photograph.

27. Residence Permit

1) Any foreigner who has been registered in accordance with Article 26 of this Regulation shall, upon payment of the fee chargeable under this Regulation, be issued with either a permanent or temporary residence permit, as the case may be, in accordance with Article 28 or 29 of this Regulation.

2) Any foreigner who has been issued with a residence permit shall have the obligation to notify the authority of the occurrence of any change in the information furnished at the time of registration, particularly a change in his name, nationality, occupation, marital status or address of workplace or residence, within 30 days from the date of such occurrence.

3) Any foreigner shall have the obligation to present his residence permit or the identity card referred to in Article 14(2) of the Proclamation or his travel document with which he entered Ethiopia whenever required by the appropriate authorities.

28. Permanent Residence Permit

1) A permanent residence permit shall be issued to a foreigner who has entered Ethiopia by an immigrant visa as provided for in sub-Article (1) or (2) of Article 17 of this Regulation.

2) Without prejudice to sub-Article (1) of this Article, permanent residence permit may be issued to any foreigner who has:

(a) established his domicile in Ethiopia and lived in Ethiopia for at least three years preceding the submission of his application;

(b) sufficient and lawful source of income to maintain himself and his family; and

(c) good character.

3) Notwithstanding the provisions of sub-Article (2) of this Article, a permanent residence permit may be issued to a foreigner who is married to an Ethiopian national if there is a lapse of at least one year since the conclusion of the marriage.

4) A foreigner engaged in investment or humanitarian activities in Ethiopia or who has made or is expected to make outstanding contributions in the interest of Ethiopia may be issued with a permanent residence permit irrespective of the waiting period provided for in sub-Article (2)(a) of this Article.

5) A foreigner who has obtained a permanent residence permit shall be issued with a work or an investment permit in accordance with the appropriate laws.

29. Temporary Residence Permit

1) A temporary residence permit shall be issued to any foreigner who has been registered in accordance with Article 26 of this Regulation and who is not entitled to a permanent residence permit.

2) A temporary residence permit shall be valid for a period not exceeding one year from the date of issuance and shall be replaced by a new one where it becomes necessary to stay longer."

33. It is relevant at this point to turn to the expert report of Herr Günter Schröder. Herr Schröder describes himself as an historian and social anthropologist by training and has been working for many years as an independent researcher and consultant. He has regular contact with most of the various armed liberation movements fighting in Eritrea and Ethiopia as well as many other political movements from both countries and in 1975 was barred from entering Ethiopia due to critical articles he had published and some seven years later was apparently on a death list as a political opponent of the then regime. Subsequently he was enabled to visit Ethiopia in November 1991 and in June 1992 was a member of the German election observer team sent by the German Foreign Ministry and then between 1993 and 1998 was permanently stationed in Ethiopia as the unofficial country representative for the German Protestant Churches Development Services, having agreed to abide by a condition not to write on political issues. Between 1998 and 2000 he worked on secondment from the Lutheran World Federation and the German Protestant Churches Development Services for the Ethiopian Evangelical Mekane Yesus Church as an advisor on its territorial and administrative reform. In June 2000 however he was given 24 hours' notice to leave Ethiopia by the Ethiopian security services. He has maintained a close interest in Ethiopia and other countries in the region and has written extensively on the region but, it would seem, has not been able to go back to Ethiopia since 2000.

34. Herr Schröder makes the point at the foot of page 2 of his report that in Ethiopia the official law and policy documents do not reflect the real situation and in many areas of governmental action current practice does not really correspond to the letter of the law and there is no real rule of law in Ethiopia and the government often blatantly disregards its own laws and Regulations and acts in open violation of them. He refers to the highly personalised and arbitrary exercise of state power at every level and the need for personal experience of the realities of Ethiopia in order properly to understand and assess the situation in the country.

35. Herr Schröder then goes on to refer to the relevant legal documents which are the two I have mentioned above and in addition Proclamation № 409/2004: Refugee Proclamation (RP), entry into force 15 June 2004. He makes the point that paragraph 12 of the Refugee Proclamation enables family members of asylum seekers and recognised refugees living in Ethiopia to be permitted to enter and remain in Ethiopia, though he notes that neither the Proclamation nor the Regulations deal specifically with this category of immigrant. He says that the Ethiopian policy on business and immigrant visas is in practice very restrictive and there is a high level of mistrust regarding foreigners and the thresholds for granting business and immigrant visas are very high. He notes that there is a relatively small number of foreigners legally residing in Ethiopia, paragraph 8 on page 4 of his report.

36. He deals in some detail with the position of refugees in Ethiopia and general country conditions. Herr Schröder states at paragraph 114 of his report that it seems from the information available to him that the appellant is living as an undocumented and unregistered refugee in Addis Ababa as she apparently did not register within the period prescribed by the Refugee Proclamation with the Ethiopian authorities as a refugee and she therefore, he says, cannot benefit from the family unity clause of the Refugee Proclamation. He considers that if she were now to register with the authorities as a refugee and apply for refugee status she would most likely be sent to one of the camps for Somali refugees. As a registered asylum seeker she would be entitled to benefit from the family unity clause but he considers that the wording of the Refugee Proclamation as well as Ethiopian practice strongly suggests that this clause is meant to benefit family members of refugees having arrived in Ethiopia together with the applicant for refugee status or joining the applicant later from the country of origin. He says at paragraph 116 that there are no cases known at all of the Ethiopian government authorising family reunification for recognised refugees living within Ethiopia with family members living in third countries through resettlement of the latter to Ethiopia.

37. Herr Schröder considers that the sponsor is not entitled to an immigrant visa as he does not fall within the categories of persons entitled to such a visa. In this regard he makes the point that the sponsor is not married to an Ethiopian citizen, his wife is not a legal resident in Ethiopia and he does not have the means to live in Ethiopia without seeking employment or engaging in business activities or becoming a public burden. Herr Schröder says at paragraph 5 of his report that business visas are accorded for various short-term and long-term business activities including employment activities. For the latter, visas are only issued if the relevant Ethiopian authorities have ascertained that there is no qualified Ethiopian for the activity in question. After arrival, holders of a business visa who entered Ethiopia for employment put roses have to obtain a work permit and a temporary residence permit.

38. It is clear if one looks at Regulation 17 that the sponsor cannot satisfy either sub-paragraph (1) or sub-paragraph (2). Whether or not he can satisfy Regulation 17 sub-paragraph (3) depends upon the interpretation of the phrase "without either being engaged in any gainful activities or becoming a public burden". Herr Schröder clearly interprets this as meaning that the sponsor cannot satisfy the requirement of having the means to live in Ethiopia without seeking employment or engaging in business activities or becoming a public burden. Though the matter is not entirely free from doubt, I consider that his interpretation is a proper reading of sub-paragraph (3). In other words to satisfy this requirement a person must be engaged in gainful activity and not become a public burden. It would hardly make sense for a person to be granted a visa enabling him to reside in Ethiopia on the basis of showing that he was not going to be engaged in any gainful activities. It is possible to interpret it as referring to somebody who is entirely self-sufficient, and even if that were the case, it is very difficult to see how the sponsor could satisfy that requirement since he has been unable to assist his wife in showing that she can be maintained without recourse to public funds in the United Kingdom. He might be able to travel to Ethiopia with sufficient funds to enable him to show he would not be a charge on public funds in the short term, but an inability to work would fairly soon mean that he would become a charge on public funds, and on my interpretation of

the relevant provisions, he would certainly be unable to obtain a permanent residence permit, as the implication from sub-paragraph (2) of paragraph 27 of the Regulations is that a foreigner who has been registered with a residence permit, since he has to notify such matters as change of the address of his work place, implies that he is a person who has employment or some other form of lawful income.

39. Herr Schröder goes on to state that theoretically the sponsor will be entitled to reunite with his family under the family unity clause of the Refugee Proclamation, but then refers back in effect to his paragraph 116 concerning the absence of any cases of this being done. Even if that were not the case and he were allowed to reunite with his family he would not acquire a permanent residence right but only a registration as a recognised refugee with limited legal security and would only be restricted under paragraph 21(3) of the Refugee Proclamation which would restrict his freedom of movement and work such as, as set out at paragraph 122 of the report, he would not be able to open a business legally or legally seek salaried employment to maintain his family but at best would only be able to work illegally. Herr Schröder makes the point that Ethiopian authorities in Addis Ababa currently tolerate such violations of the letter of the law for their own political reasons, but there is no guarantee whatever that they would continue to do so and this would expose the appellant, the sponsor and their family to a considerable risk of economic insecurity and harassment by the Ethiopian authorities. Lacking legal status and the financial means to rent lawfully adequate accommodation for the sponsor and his family would force them to live in low quality, overpaid and overcrowded accommodation or even in a refugee camp.

40. I am satisfied from reading Herr Schröder’s report that he is properly to be regarded as an expert with a good deal of knowledge of and insight into Ethiopian affairs and the relevant legal provisions that I have set out. The fact that he does not always source his information is beside the point: as an expert who has displayed significant knowledge of Ethiopia, he is entitled to express views and comment upon matters without having to provide sources on every occasion, though it is clearly very helpful where an expert is able to do that. For example, when he states at paragraph 116 that there are no cases known at all where the Ethiopian government has authorised family reunification for recognised refugees in Ethiopia for resettlement with a family member living in a third country, a matter with which Mr Singh took issue, I consider that Herr Schröder is entitled to state this on the basis of his knowledge of the situation in Ethiopia and his regular monitoring of developments in Ethiopia as he sets out at paragraph 2 of his report where he refers to the various ways in which he keeps up to date on developments in Ethiopia and other countries in the Horn of Africa.

41. Bringing these matters together, I consider that the sponsor has shown that he would not be able to work legally in Ethiopia. He would be able to visit for a period of time as he did previously and be self-sufficient during that period, but he would not be able to remain for any longer period without having a work permit, and there is no indication that there is any opportunity for work available to him in Ethiopia; in particular, it seems unlikely that there is no qualified Ethiopian available given the sponsor's lack of particular skills and if he were forced to work illegally in circumstances described by the expert, I consider that that would not be reasonable for the reasons Herr Schröder gives.

42. This is of course not the end of the matter. It is necessary to evaluate the Article 8 claim on the proper structured basis as set out in particular by the House of Lords in Razgar and further explained in subsequent decisions. The first point is whether or not there is family life between the appellants and the sponsor. I have referred generally to the appellant but of course it must be borne in mind that there are two appellants, the second appellant being the first appellant's young sister, who has lived with her since 2005, and who was born in April 2002, and there is also now of course the child of the appellant and the sponsor. The sponsor's evidence, as set out in his witness statement, is that he married the first appellant in July 2006 in Djibouti, they having known each other prior to their marriage as they lived close to each other in Mogadishu in Somalia. It seems that the sponsor came to the United Kingdom in 2002. He said that the appellant fled Somalia and went to Djibouti in 2005 and while she was living there they made contact with each other and he flew there from the United Kingdom and they married there. She went on to Ethiopia and he came back to the United Kingdom and visited her for three and a half weeks in August and September 2007, during which time she became pregnant with their child, who was born on 19 June 2008. The sponsor also said in his statement that the couple had kept in touch by email, letters, photographs and telephone calls.

43. On the basis of this evidence I accept that there is family life between the appellant and the sponsor, albeit that it is family life that has only been enjoyed to the extent of their being in each other's company for very limited periods. It is not clear from the sponsor's evidence how long he was with the appellant at the time of the marriage, and as has been set out above, they have spent some three and a half weeks in each other's company after the marriage.

44. It must be accepted that refusal of entry clearance has a significant effect on their family life. The next question is whether there is such interference as potentially to engage the operation of Article 8. In this regard, clearly the extent of family life enjoyed by the couple when physically together cannot be enjoyed by being kept apart, but the family life that has very largely existed during the time of their relationship could continue to be enjoyed since they could still remain in contact by means of letters, photographs and telephone calls. It is relevant also to note the sponsor's evidence that the appellant is now unable to send him regular emails as she finds it hard to leave the house with the baby. However, if one goes on to assume that there will be such interference as potentially to engage the operation of Article 8, which I think on balance is a reasonable conclusion to come to, then it is clear that such interference is in accordance with the law, and the issue then arises as to whether it is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. In this regard I find such interference to be necessary in the interests of the maintenance of effective immigration control as well as to the economic wellbeing of the country, and in this regard it is particularly important to note that the couple have been unable to satisfy the requirements of the Immigration Rules concerning maintenance, and therefore there would be a clear charge on public funds were the two appellants and the first appellant's child to join the sponsor in the United Kingdom.

45. The final issue then, as so often in Article 8 cases, is whether such interference is proportionate to the legitimate public end sought to be achieved, and in this regard the burden is on the Secretary of State.

46. In this regard I bear in mind the conclusions I have come to concerning the reasonableness of the sponsor going to live with the appellants in Ethiopia. Though the appellants' living conditions there on the evidence do not appear to be particularly onerous, I am satisfied on the evidence that the sponsor would not be able to work legally and do not consider it can be said to be reasonable for him to work illegally or for the appellants to make a belated application for registration with the Ethiopian authorities as refugees and for the couple together with the two children then to go and live in a refugee camp. It is clear therefore that family life between the sponsor and his family in terms of living together cannot be carried on in Ethiopia and the resulting question is therefore whether any lack of respect for family life that would obtain as a result of the couple being kept apart, indeed the family being kept apart, by the appellants' non-admittance to the United Kingdom is proportionate to the legitimate public end which is sought to be achieved. Clearly the sponsor can visit the appellants as he did before when he obtained a visa for up to three months and was apparently able to obtain leave from work for the period of nearly a month during which he visited Ethiopia. Communication by letters and photographs and telephone calls would appear to be able to be maintained, I note the difficulty being experienced by the first appellant in sending emails given the problems of leaving the house with the baby. It is also not an irrelevant matter to bear in mind that the sponsor, who is clearly an enterprising young man, may in the future earn at a level allowing the requirements of the Immigration Rules to be met; hence restricting the duration of the period of limited cohabitation. It is also relevant to bear in mind, as I have noted above, that, even bearing in mind the constraints caused by living in different countries, the couple have spent relatively little time together. The sponsor has been in the United Kingdom since 2002, and since then when the first appellant went to Djibouti in 2005 they made contact and he flew there from the United Kingdom and they married there and were together for an unspecified but relatively brief period of time. Since then, as I have set out, they have spent some three and a half weeks in each other's company. In my view, having considered the evidence set out above, it has been shown on behalf of the Entry Clearance Officer that the interference is proportionate to the legitimate public end sought to be achieved. Such family life as the couple have can be maintained in the way in which it has existed for nearly all of their married life, bearing in mind the legitimate public end which is sought to be achieved, the economic wellbeing of the country and the maintenance of effective control of immigration, a relevant aspect of which in this case is the inability of the appellant to satisfy the requirements of the Immigration Rules on maintenance. I therefore conclude that the appeal under Article 8 is dismissed.

Signed

Senior Immigration Judge Allen