



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-002981
EA/14258/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 16 March 2023**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAFIYO MAHAMED

(anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr M Sheik (appellant's husband)

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Interpreter Mr A Nuri interpreted Somali and English languages.

Heard at Field House on 5 December 2022

DECISION AND REASONS

(extempore)

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal to allow the appeal of the respondent, hereinafter "the claimant" against the decision of the Secretary of State refusing an entry clearance under the EU Settlement Scheme.
2. Before me, the claimant was represented by her husband and their young son was also present.

3. I cannot uphold the First-tier Tribunal's decision. The reason for this is that it is clear that evidence was produced before the First-tier Tribunal that seriously undervalued the reliability of DNA evidence. There are two things wrong with the DNA evidence.
4. The first is that the report was not prepared for court use and so the testers were not able to confirm that the samples used came from the alleged sources.
5. Secondly, it is suspected, although the evidence is not so clear on this point, that the report was tampered with in some way so that the explanation that it was not for use in court was not present on the documents that were produced. Given these deficiencies, which were on the face of the documents, I just cannot see how the First-tier Tribunal allowed the appeal and I must and do set aside its decision.
6. However, I am also very concerned that the appellant did not actually know, and certainly did not appreciate the significance of, these deficiencies until after the hearing. There has been a procedural irregularity which disinclines me from trying to determine the appeal finally today.
7. This is a case that should be heard again in the First-tier Tribunal and I so order. The appellant has produced further DNA evidence. It may be that this could be relied on in the new hearing in the First-tier Tribunal. I make no ruling on that, but it is something to investigate.
8. It must also be pointed out that a person who is a child of a family may have rights similar to those of a natural child and it is very much in the appellant's interests that solicitors are instructed and given frank and full instructions. It is a matter for the appellant and her husband but it would be very regrettable if the case failed, not because it was deficient but because it was not presented properly and the order I have made is intended to give a second chance to do that.

Notice of Decision

The First-tier Tribunal erred. I set aside its decision and I direct that the appeal be redetermined in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 13 January 2023