



Refusal of five Somali nationals' application to join their mother in the UK was justified

In its decision in the case of [I.A.A. and Others v. the United Kingdom](#) (application no. 25960/13) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the complaint by five Somali nationals, the applicants, about the UK authorities' refusal to grant them entry into the United Kingdom to be reunited with their mother. The applicants' mother had joined her second husband in the UK in 2004 and the applicants were left in the care of their mother's sister in Somalia. They moved in 2006 to Ethiopia where the applicants have been living ever since.

The Court concluded that, in refusing the application to join their mother, the national courts had struck a fair balance between the applicants' interest in developing a family life in the UK and the State's interest in controlling immigration. While the applicants' situation was certainly unenviable, they were no longer young children (they are currently 21, 20, 19, 14 and 13) and had grown up in the cultural and linguistic environment of their country of origin before living together as a family unit in Ethiopia for the last nine years. Indeed, they had never been to the UK and had not lived together with their mother for more than 11 years. As concerned the applicants' mother, who had apparently made a conscious decision to leave her children in Somalia in order to join her new husband in the UK, there was no evidence to suggest that there would be any insurmountable obstacles to her relocating either to Ethiopia or to Somalia.

Principal facts

The applicants, I.A.A., Z.A.A., B.A.A., A.A.A. and A.M., are five Somali nationals who were born in 1994, 1996, 1995, 2001, and 2002 respectively and currently live in Addis Ababa (Ethiopia).

The applicants' mother, a Somali national, has been married twice. She has 11 children, nine with her first husband, one with her second husband and one adopted niece.

In 2004 the applicants' mother joined her second husband in the United Kingdom after he was granted refugee status there. Three of her children were subsequently granted entry clearance to join her in the UK: they are now 22, 19 and 12 years old. In granting leave to enter to the oldest and youngest child, the immigration courts notably found that the mother could not reasonably relocate to Ethiopia to care for her children as she would have no job and no means of survival there.

The applicants, meanwhile, had been left in the care of their mother's sister in Somalia. In 2006 their mother's sister moved to Ethiopia with the children who had been left in her care, including the applicants. She subsequently left Ethiopia to return to Somalia, leaving the children in the care of the eldest. This eldest child has since disappeared and the remaining children have been cared for in Ethiopia by I.A.A., the first applicant, since 2012.

In 2007 the applicants' mother divorced her second husband. Two years later the applicants applied for entry clearance to join their mother in the UK. In February 2009 the Secretary of State refused their application, finding that they did not meet the requirement of the relevant Immigration Rules.

The applicants appealed to the courts and, in a final decision of January 2012 by the Immigration and Asylum Chamber of the Upper Tribunal, their application for entry was refused. The Tribunal notably found that, although it was in the applicants' best interests to be allowed to join their mother in the

UK and that their exclusion would constitute an interference with their right to private and family life under Article 8 of the European Convention, account had to be taken of the fact that their mother had decided to leave them in Somalia, knowing that the separation was likely to continue for the foreseeable future. Furthermore, she had allowed five years to pass before attempting to bring them to the UK, by which time they had long ceased to live together as a family unit with her.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 April 2013.

Relying on Article 8 (right to respect for private and family life), the applicants complained about the refusal to grant them entry into the UK to be reunited with their mother.

The decision was given by a Chamber of seven, composed as follows:

Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”), *President*,
 Guido **Raimondi** (Italy),
 Kristina **Pardalos** (San Marino),
 Linos-Alexandre **Sicilianos** (Greece),
 Paul **Mahoney** (the United Kingdom),
 Aleš **Pejchal** (the Czech Republic),
 Robert **Spano** (Iceland), *Judges*,

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

First, the Court noted that there was no evidence to suggest that the applicants’ mother had always intended for her children to join her in the UK. Rather, she had apparently made a conscious decision to leave her children in Somalia in order to join her second husband in the UK, knowing that he would not agree to the children joining them. Furthermore, following her separation from her second husband, the applicants’ mother appeared to have waited for two years before attempting to bring the applicants to the UK.

Secondly, in considering whether the applicants’ mother could “reasonably relocate” to Ethiopia, the national courts had applied a lower standard than the test of “insurmountable obstacles” or “major impediments” commonly applied by the European Court. Applying its own test, the Court considered that, while it would undoubtedly be difficult for the applicants’ mother to relocate to Ethiopia, there would be no “insurmountable obstacles” to her doing so. Likewise, it had not been shown that family life between the applicants and their mother could not be resumed in Somalia.

Lastly, while the applicants’ situation was certainly unenviable, as found by the domestic courts, they were no longer young children (they are currently 21, 20, 19, 14 and 13) and had grown up in the cultural and linguistic environment of their country of origin and had lived together as a family unit in Ethiopia for the last nine years. Indeed, they had never been to the UK and had not lived together with their mother for more than 11 years. In any case, the best interests of the child could not be used as a “trump card” requiring the admission of all children who would be better off living in a Contracting State.

The Court therefore concluded that, in refusing the application to join their mother, the national courts had not failed to strike a fair balance between the applicants’ interest in developing a family life in the UK and the State’s interest in controlling immigration.

Accordingly, the Court declared the application inadmissible as manifestly ill-founded.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.