



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03714/2015

THE IMMIGRATION ACTS

Heard at HMCTS Employment Tribunals Liverpool
On 22 February 2018

Decision & Reasons Promulgated
On 25 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

OAA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr AR, Sponsor, in person

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1 The appellant appeals against the decision of Judge of the First-tier Tribunal Brookfield dated 25 July 2017, following a hearing on 17 July 2017. The appellant, a national of Ethiopia, and currently residing there, had applied as a minor in 2015 for

entry clearance to join his father, AR, in the UK ('the sponsor'). AR is an Ethiopian national and has been recognised as a refugee.

- 2 The application was made under paragraph 352D of the immigration rules which provides as follows:

"Requirements for leave to enter or remain as the child of a refugee 352D. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with the parent who currently has refugee status are that the applicant:

- (i) is the child of a parent who currently has refugee status granted under the Immigration Rules in the United Kingdom; and
- (ii) is under the age of 18; and
- (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
- (iv) was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of their habitual residence in order to seek asylum; and**
- (v) the applicant would not be excluded from protection by virtue of paragraph 334(iii) or (iv) of these Rules or Article 1F of the Refugee Convention if they were to seek asylum in their own right; and
- (vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity."

- 3 Also relevant to the present appeal is the authority of BM and AL (352D(iv); meaning of "family unit") Colombia [2007] UKAIT 00055 (13 June 2006), the head note of which provides:

"What is a 'family unit' for the purposes of para 352D(iv) Immigration Rules is a question of fact. It is not limited to children who lived in the same household as the refugee. But if the child belonged to another family unit in the country of the refugee's habitual residence it will be hard to establish that the child was then part of two different 'family units' and should properly be separated from the 'family unit' that remains in the country of origin."

and paragraph 27 of which provides:

"We regard the issue as to what is a "family unit" for the purposes of para 352D(iv) as a question of fact. In many cases it will be clear that a child was part of a family unit with an asylum seeker in his country of habitual residence. The child will have lived with the asylum seeker and perhaps another partner. Alternatively if there has been separation the reason for that separation may well be associated with the claim of persecution and a child might still remain part of the family unit from which the potential refugee had been temporarily separated. Here no such claim is made."

- 4 The respondent refused the application in a decision dated 23 July 2015 on the grounds that the appellant had not provided satisfactory evidence that he had formed part of the pre-fight family of the sponsor.
- 5 The judge, determining the appeal, agreed.
- 6 The appellant, with legal assistance from Rochdale Legal Enterprise, applied for permission to appeal to the Upper Tribunal in an application dated 22 August 2017, arguing, in summary, that the judge had erred in law in failing to direct herself appropriately in law as to the meaning of 'family unit', as per *BM and AL*; had failed to take properly into account the reasons why the appellant and sponsor had not been able to live in the same household as one another, particularly in 2002; had failed to take into account evidence given by the sponsor in a Gateway Protection Program interview on 5 July 2010, in which, at question 41, the sponsor indicated that if he were to be resettled in the United Kingdom, he would want the appellant to be with him; further, in determining the appeal under Article 8 ECHR, the judge had failed to take into account the appellant's own wishes to join his father in the United Kingdom, and had failed to consider that it would not be possible for family life to continue in Ethiopia, as the sponsor was a refugee Ethiopia.
- 7 Before me, the sponsor appeared in person. He was no longer represented by Rochdale Legal Enterprise, having been told that the relevant solicitor, Mr Khristian Wood, no longer worked there, and the organisation no longer had capacity to continue to represent the sponsor. The sponsor informed me that he had attempted to obtain separate representation, to no avail, but did not apply for any adjournment of the appeal in order to obtain legal representation.
- 8 Being unrepresented, I therefore explained the procedure to the sponsor, summarised to him the grounds of appeal that had been argued on the appellant's behalf, and invited him to make any further representations that he wished. He was of some assistance in confirming to me that I had understood the relevant chronology of events correctly, as set out by the judge. The sponsor had no other representations to make.
- 9 I also heard from Mr Harrison. He resisted the appeal, and adopted the Rule 24 response dated 19 October 2017.
- 10 I reserved my decision.

Discussion

- 11 The sequence of events leading to the sponsor and the appellant no longer residing with one another is important in this appeal. I therefore set out the chronology of events as follows, taken principally from the sponsor's witness statement, and reciting within it, relevant findings of fact made by the judge (numbers in square brackets representing paragraphs of the judge's decision).

- 1995 Sponsor is involved in the OLF in Ethiopia.
- 1995 Sponsor leaves Ethiopia for Djibouti and is registered there as a refugee in 1995 [9(ii)]
- Appellant (born in Djibouti only on 13.12.98) is therefore clearly not part of Sponsor's pre flight family unit when Sponsor leaves Ethiopia for the first time [9(ii)].
- 1997 Sponsor meets Appellant's mother, HI in Djibouti
- 13.12.98 Appellant born, Djibouti; Appellant's father is AR, an Ethiopian national; Appellant's mother is HI, an Ethiopian national**
- Sponsor and HI separate within three weeks of Appellant's birth [2]. Sponsor and Appellant therefore only lived together in Djibouti for a period of 3 weeks, from Appellant's birth on 13.12.98, to the end of December 1998 [9(iii)].
- Sponsor continues to visit appellant who lived with HI in Djibouti [2], [9(iii)], until HI returns to Ethiopia in 1999, and leaves Appellant with his paternal aunt [2], [9(iii)]. Appellant has remained living in Ethiopia with that aunt since 1999 [2].
- The Sponsor had therefore not left Djibouti to seek asylum during the three weeks that the Sponsor and the Appellant lives with each other in Djibouti in December 1998 [9(iii)]
- Jan 1999 Sponsor and Hi are divorced
- 1999 Sponsor meets current wife in Djibouti
- 23.7.02 Sponsor is deported from Djibouti to Ethiopia
- Sponsor is detained in Ethiopia
- The Appellant was therefore not part of the Sponsor's family unit at the time that the Sponsor was returned from Djibouti to Ethiopia in July 2002 [9(iii)]
- 4.1.03 Sponsor released from detention
- Sponsor remains in Ethiopia for a couple of months [2].

The Appellant and Sponsor did not live together as a family in Ethiopia at this time [9(iv)]

Sponsor felt under surveillance and could not find his family in Kombolcha, (in Ethiopia)

March 2003 Sponsor leaves Ethiopia again in fear of his life [9(iv)]
Appellant was not part of Sponsor' pre flight family unit when the Sponsor left Ethiopia for a second time [9(iv)]

Sponsor returns to Djibouti. Lives in a refugee camp

8.6.04 Sponsor leave Djibouti for Somalia.

7.1.05 Sponsor decides to leave Somalia

1.3.05 Sponsor arrives in Kenya

18.8.05 Sponsor registers with UNHCR in Kenya

Appellant continues to live in Dire Dowa City, Ethiopia

22.10.10 Sponsor arrives in UK

Dec 2010 Sponsor re-establishes contact with current wife

April 2011 Sponsor re-establishes telephone contact with Appellant

18.9.11 Sponsor's current wife and their two children enter UK under Refugee family reunion

13 Setting out the relevant events and the judge's findings of fact in that way makes the determination of the present appeal relatively straightforward.

14 It would no doubt have been preferable for the judge to have made reference within her decision to the decision of *BM and AL*, but I find that there was no error in law in her not doing so. Accepting, as per paragraph of the 27 of *BM and AL*, that it is important to consider the reasons for the separation between parent and child, and to determine whether such separation may be associated with the claim of persecution, I find myself in agreement with the representations made in the respondent's rule 24 notice, which argue as follows at paragraph 4:

“The judge having assessed the nature of the appellant's family unit, was entitled to find that the appellant did not did not form part of the appellant's family unit given his limited three weeks residence with the appellant and a

separation due to reasons unconnected with his asylum claim. There was nothing in the appellant's evidence to suggest he had contact with his son during the period of three years after the appellant's mother left for Ethiopia and before the sponsor's refoulement to Ethiopia. The evidence at question 41 of the Gateway Protection Program does not advance the appellant's case or detract from the findings of judge."

- 15 It appears, on the sponsor's own evidence, and the judge's findings of fact, that the reason why the appellant ceased to reside with the sponsor as part of his family unit was because of a breakdown in the relationship between the sponsor and the appellant's mother. The appellant and his mother remained living in Djibouti for a period of time after the breakdown of that relationship, and the sponsor continued to see the appellant in Djibouti until some point in 1999, when the appellant's mother took the appellant to Ethiopia, where eventually, the appellant commenced residing with his paternal aunt. There is nothing within the evidence before the judge which indicated that these events were caused by anything other than the breakdown of the relationship between the parents, and a consensual agreement that the mother would take the appellant to Ethiopia to reside. The reason for the appellant ceasing to be part of the sponsor's family unit was indeed therefore unconnected with any risk of persecution feared by the sponsor.
- 16 The unfortunate events which unfolded for the sponsor in 2002, whereby he was refouled to Ethiopia, detained for a period of time, and leaving Ethiopia again in 2003 to seek protection elsewhere, do not affect the reason for the appellant ceasing to be a member of the sponsor's family unit, which was through family breakdown. At the time that the sponsor left Ethiopia again in March 2003, the judge's finding that the appellant had not at that time been part of the sponsors family unit was entirely sustainable.
- 17 The sponsor's expression of desire in his Gateway Protection Program interview in 2010 that if he were permitted to be resettled in the United Kingdom, he would wish the appellant to join him here, is not determinative of the question of whether or not the appellant was in fact part of the sponsors family unit at the time the sponsor left Ethiopia on the first or second occasions.
- 18 The judge's decision was entirely sustainable, irrespective of her not referring to *BM and AL*.
- 19 As regards the appellant's second ground, regarding the judge's decision regarding Article 8 ECHR, I agree with First tier Tribunal Judge Mahmood in his permission decision of 6 October 2017, but this ground has little merit. The judge properly directed herself in law, and took all relevant considerations into account in her decision at paragraphs 9(vi) to 9(xvii) of the decision, and I do not find there is any error of law in the way that she determined the appeal.

Decision

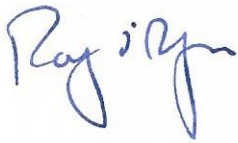
20 The judge's decision did not involve the making of any material error of law.

I do not set aside the decision.

The appellant's appeal is dismissed

Signed:

Date: 21.6.18

A handwritten signature in blue ink, appearing to read 'Ray O'Ryan', is written over a faint circular stamp.

Deputy Upper Tribunal Judge O’Ryan

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

This appeal involves a minor. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their families. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.