Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10539/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 2 July 2018	**On 02 October 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

GUNIC KALONGI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:
For the Appellant: Mr Medley-Daley, Immigration Legal Advice Centre
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Gunic Kalongi, was born on 15 April 1998 and is a male citizen of the Democratic Republic of Congo (DRC). By a decision dated 21 September 2015, the Entry Clearance Officer (ECO) refused the application of the appellant, claiming to be the dependent child of Pitshonna Mafuta, a British citizen (hereafter referred to as the sponsor) on the grounds that the claimed relationship and sole responsibility had not been established and that there were no serious or compelling family or other considerations which made the appellant's exclusion undesirable. The appellant appealed to the First-tier Tribunal (Judge Rosemary Bradshaw)

which, in a decision promulgated on 1 June 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Before the First-tier Tribunal, the Entry Clearance Officer (represented by a Presenting Officer, Ms Hopkinson) accepted that DNA evidence had established that the sponsor and the appellant were related as child and mother as claimed. The only issue before the First-tier Tribunal was, therefore, whether the appellant had established that sole responsibility rested with his mother (the sponsor) or whether there were serious and compelling family or other considerations rendering his exclusion from the United Kingdom undesirable. The sole ground of appeal, under the 2002 Act (as amended), is on the basis that the decision of the ECO had led a breach of Article 8 ECHR.

3. The appellant lives with his sister in DRC. On appeal to the Upper Tribunal, the appellant complains that the judge had overlooked the fact that the appellant lives with another minor, his sister. The judge found that paragraph 297(1)(f) of HC 395 (as amended) was not satisfied in this instance:

> (f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care;

4. The appellant argues that, although he has somewhere to live in DRC and a "small level of financial support from the sponsor", he does not have the "necessary care of an adult". In the United Kingdom, pursuant to her own policy, the Secretary of State would not allow a child to remain in such a situation; for the same reasons, the respondent should not be permitted to leave a child abroad in these conditions where there is an application for settlement. The grounds also point out that the judge acknowledged that the sponsor and her husband would not be able to go and live in South Africa nor would it be reasonable for them to return to the DRC.

5. It is clear from the decision that the judge has looked first at whether or not the appellant met the requirements of HC 395. She was correct to take that approach. Having found that the appellant did not meet the requirements of the Immigration Rules, this was considered as a relevant factor by the judge in her Article 8 analysis.

6. I find that the judge was well aware that the appellant, although aged 19 at the date of the hearing before her, should be considered a minor because he was under the age of 18 when he made the application which is the subject of this appeal. That much is clear from [12], where the judge reminds herself of the need to consider Section 55 of the Borders, Citizenship and Immigration Act 2009. The judge also noted [15] that the appellant was "fully able to be independent if he chooses to be". In particular, she recorded the fact that the appellant lives with his grandparents and that there was no obvious reason why he had left their home; the sponsor in her evidence was unable to explain this move. At

[43], the judge took the view that the sponsor would be able to visit the appellant in DRC where he had living nearby his grandmother and also the company of his sister with whom he resided. The fact that the sister was also a minor does not appear to have been submitted to the judge at the hearing. Instead, the judge found that the appellant is "receiving adequate physical and emotional care as I have no cogent evidence to the contrary". She was satisfied that the current *status quo* "can continue". She was also satisfied that the appellant was "living with a close family relative (and has always done) and has been provided for by his grandmother in the past certainly with financial assistance from the sponsor". She was not satisfied that there were "unmet needs that should be catered for".

7. As I have noted above, the argument that the appellant should not be allowed to remain living with his minor sister does not appear to have been raised with Judge Bradshaw. Indeed, before the Upper Tribunal, Mr Medley-Daley, who appeared before both Tribunals on behalf of the appellant, concentrated his submission on the assertion that the judge had not paid proper attention to the fact that the appellant himself had been a minor for the purposes of the appeal. As I have indicated above, that submission cannot stand. So far as the sister is concerned, I do not accept the submission that the appellant must be granted entry clearance because he is not under the supervision of an adult in the DRC. That is plainly not true; it is apparent from the judge's findings that, although the appellant does not live in the same property as his grandmother, she continues to have a close involvement with him and a supervisory role. I agree with Judge Bradshaw that it is significant that the appellant (for reasons which are not clear) himself chose to leave his grandmother's home to live with his sister. That appears to have been a change in the arrangements with which all parties were content, including the sponsor and the grandmother, the clear implication being that the grandmother maintained a supervisory role. It is my view that Judge Bradshaw has considered the evidence carefully and has taken into account all relevant circumstances. She has reached a decision on the evidence which was available to her. She was entitled to find [44] that there was nothing compelling or exceptional in the circumstances of the appellant and his family which would lead the Tribunal to allowing the appeal on Article 8 ECHR grounds.

Notice of Decision

8. This appeal is dismissed.

9. No anonymity direction is made.

Signed Date 26 September 2018

Upper Tribunal Judge Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 26 September 2018

Upper Tribunal Judge Lane