



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/24835/2016

THE IMMIGRATION ACTS

Heard at Liverpool
On July 11, 2018

Decision & Reasons Promulgated
On July 16, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

[A A]
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Karnik, Counsel, instructed by Greater Manchester
Immigration Aid Unit
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity direction is made.
2. The appellant is a national of Sudan. The appellant applied for entry clearance pursuant to paragraph 352 HC 395 on the basis that he was the sponsor's sibling. The respondent refused the application in a decision dated October 13, 2016 on the basis that he was not entitled to be granted entry clearance under the Immigration Rules as

paragraph 352 HC 395 only applied to a spouse or minor child of the sponsor. The application was also refused under article 8 ECHR.

3. The appellant lodged grounds of appeal on November 2, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Shimmin (hereinafter called "the Judge") on November 8, 2017 and in a decision promulgated on November 21, 2017 the Judge dismissed the appellant's appeal on human rights grounds.
4. The appellant appealed this decision on December 18, 2017. The appellant's grounds included that the Judge had erred in rejecting the appellant's claim date of birth (October 28, 2001 and it was further submitted that the Judge placed too much weight on the sponsor's screening interview and attached too little weight to a photograph of the appellant and sponsor, taken together when the appellant was 17, in Egypt. The grounds further argued that insufficient weight had been placed on a UNHCR report which had accepted the appellant was aged as claimed by him.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Parker on May 2, 2018 who found a number of arguable errors contained within the decision.
6. The respondent lodged a Rule 24 letter dated May 25, 2018 submitting that the grounds amounted to no more than a disagreement and that the Judge had looked at all the evidence and concluded the appellant had not demonstrated he was a child. The Judge considered his circumstances and even if he had demonstrated he was a minor the respondent submitted this would have made little difference to the outcome of the case especially as he claimed to have an outstanding application under the Vulnerable Child Resettlement Scheme
7. When the matter came before me on the above date Mr McVeety indicated that he would not be relying on the Rule 24 letter. He had had an opportunity to review the decision and accepted that the grounds demonstrated a clear error in law. In particular, he noted that there was a pending settlement application under the Refugee Convention and his office had accepted that the appellant was aged 17 years of age and having looked at the photographic evidence, that had been submitted, together with the other evidence contained in the appellant's bundle he concluded that the Judge had reached findings that were not open to her.
8. The Judge had accepted the screening interview could not be relied on as it contained inaccuracies and all the other evidence that had been submitted, whilst not complete, pointed to the fact that the appellant was the sponsor's brother and that he was under the age of 18.
9. Mr Karnik accepted the appellant could not have satisfied paragraph 352 HC 395 but he submitted that the evidence pointed to the fact the appellant was living in dire conditions and prior to the sponsor seeking asylum in the United Kingdom the sponsor had been living with the appellant and looking after him.

10. In light of Mr McVeety's concession, I agreed that the evidence supported the appellant's claim that he was under the age of 18 and not 25/26 as the Judge had concluded. The fact there was a pending application was not a matter that caused me any trouble at this time because that application was of a different nature (this being a human rights application and the other being an application under the Immigration Rules) and it would be a matter for the appellant's representative to deal with this issue by liaising with the respondent's office.
11. Mr McVeety accepted that contrary to the Judge's finding that article 8 ECHR would not be engaged he accepted that as the appellant was a minor and had been part of the sponsor's family and continued to be supported by the sponsor then article 8 ECHR would be engaged.
12. Having established there was an error in law for the reason set out above I then considered whether the appeal should be allowed outright under article 8 ECHR.
13. I accept that the refusal of entry clearance would be an interference with the appellant's right to family life and that such interference engaged article 8 ECHR. The decision was in accordance with the law and on the face of it was to maintain immigration control but refusing entry to a minor, against the background set out in the papers, would be disproportionate.
14. I therefore indicated to the representatives that I proposed to remake this decision and allowed the appeal under article 8 ECHR.
15. Neither representative suggested an alternative course of action. This is ultimately a family reunion case and in granting leave the respondent should bear this factor in mind.

DECISION

16. There is an error in law and the original decision is set aside.
17. I remake the decision and allow the appeal under article 8 ECHR.

Signed

Date 11/07/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as no fee was payable.

Signed

Date 11/07/2018

A handwritten signature in black ink, appearing to read "SPAR" with a flourish underneath.

Deputy Upper Tribunal Judge Alis