



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/08490/2017

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre  
On 6 November 2018**

**Decision & Reasons  
Promulgated  
On 14 November 2018**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**HABIB BISSENTO BAZABOKO  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr A McVeety, Senior Home Office Presenting Officer  
For the Respondent: Not present or represented

**DECISION AND REASONS**

1. I will refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Habib Bissentto Bazaboko, was born on 9 December 1974 and is a citizen of the Democratic Republic of Congo (DRC). The appellant

claimed to have entered the United Kingdom in 1992 but there was no evidence before the Tribunal that he had arrived in that year. The appellant had been granted indefinite leave to remain on 24 August 1999 having claimed asylum as a dependant of his sister (Ms Boko Baza). On 11 November 2002, the appellant was convicted at Wood Green Crown Court of two counts of wounding and he was sentenced to 6 years' imprisonment. On appeal, his sentence was varied to 4.5 years' imprisonment. The appellant claimed that he became a British citizen in 1997 but there was no evidence at all to show that this was the case. On 10 May 2004, the appellant was served with a decision to make a deportation order. The appellant appealed against that decision and it appears that the appeal lapsed. On 1 April 2005, the appellant was released from prison. On 12 August 2010 at Stratford Magistrates' Court the appellant was convicted of common assault, two counts of destroying or damaging property, two counts of failing to surrender to custody at an appointed time and also disorderly behaviour. He was sentenced to 12 weeks' imprisonment. In the light of his latter convictions, a decision was made to deport the appellant on the basis that his presence was not conducive to the public good.

2. There followed a series of communications between the appellant and the Secretary of State, the details of which are set out in the First-tier Tribunal decision [6-10]. Ultimately, by a decision dated 20 March 2014, the Secretary of State rejected the appellant's claim for international protection. The appellant appealed to the First-tier Tribunal. Notice of appeal was not lodged until 29 August 2017. The First-tier Tribunal noted that "the appeal was received out of time however further to consideration of the reasons for this it was accepted there were good reasons for the late lodging of the appeal". The delay seems to have been very serious indeed but the "good reasons" referred to by the judge are not particularised. In any event, the appeal came before Judge Raikes on 26 June 2018 in Manchester. The judge heard evidence from the appellant in English and also from the appellant's sister (Ms Baza) in Lingala with the assistance of an interpreter.
3. The judge rejected the appellant's appeal on asylum and Article 3 ECHR grounds and upheld the decision under Section 72 of the Nationality, Immigration and Asylum Act 2002. However, he allowed the appeal on Article 8 ECHR grounds. It is against that decision that the Secretary of State now appeals, with permission.
4. The initial hearing was listed before me at Manchester Civil Justice Centre on 6 November 2018. Mr McVeety, a Senior Home Office Presenting Officer, appeared for the Secretary of State. The appellant did not appear, nor was he represented. The court file indicates that the appellant was served "by hand" on 5 October 2018. There was nothing on the file to indicate that the appellant has provided any/satisfactory reason for his failure to attend before the Upper Tribunal. In the circumstances, I proceeded with the hearing in the appellant's absence.

5. I find that the judge's analysis is confused. The judge appears to have applied a number of different tests in respect of Article 8 outside the Rules and also in respect of Section 117 of the 2002 Act and as regards compelling circumstances. Ultimately, he concluded that the appellant would suffer a disproportionate breach to his family life rights if he were to be deported. The appellant's family life appears to rest solely upon his relationship with his sister. Otherwise, the judge noted [30] that the appellant represents a moderate risk of violent reoffending. The judge did not have the judge's sentencing remarks [29] though he does appear to have had regard to expert psychological evidence. At [33] the judge considered that the appellant did "constitute a danger to the community". In the light of those findings, he upheld the Section 72 decision of the Secretary of State.

6. Turning to the appellant's relationship with his sister, the judge wrote at [65]:

Whilst I do not accept the appellant cannot speak any Lingala at all his sister gave her evidence in the language and indicates she spoke poor English, I accept that he would have difficulties in respect of this and accept that his sister is a British citizen upon whom the appellant is wholly reliant as his family member. Whilst he has another sister and brother, I accept that it is his sister, who gave evidence today and albeit an adult, who forms the whole basis of his private and family life and has done so for many years.

7. That paragraph represents, in my opinion, a series of assertions unsupported by reference to any of the evidence. At [64] the judge wrote:

This [the judge's acceptance that the appellant has a relationship with his sister which can attract the protection of Article 8 ECHR] is because I am satisfied having heard evidence from both him and his sister today that whilst he does not live with her in a family now and again despite the fact she is an adult relative he has a close and interdependent relationship with her which began in the UK when he was a young child. I note that having arrived in the UK in either 1991 1992 when he states he was around 10 years, although the respondent given his date of birth states he was around 11 years old, that was nearly 26 years ago. Whilst he was added as a dependant on his sister's asylum claim in 1992 in the UK and she was granted leave to remain outside the Rules under exceptional grounds in what appears to be as a result of the time taken to consider her case, the fact remains that when he entered the UK as a child he was wholly reliant on her and her circumstances. I note he was then granted indefinite leave to remain in the UK on 24 August 1999 nearly twenty years ago. I am therefore satisfied particularly when taking into account very compelling circumstances, that the appellant's length of stay in the UK is significant and indeed has been the majority of his life.

8. The reasoning is confused. Earlier in the decision, the judge has recorded the fact that the appellant had not produced any evidence to show when he arrived in the United Kingdom. However, in this paragraph, he appears to accept the appellant's claim to have entered the country in 1991/1992. Secondly, whilst the judge does not suggest that the appellant is able to

satisfy the Rules as to long residence, he appears to be applying here a “near miss” principle on the basis that the appellant has been in the United Kingdom for nearly 20 years. That observation, in turn, is not supported by any evidence, nor does the Secretary of State accept that the appellant has been resident in the United Kingdom for as long as he claims. Further, the judge asserts that the appellant has a “close and interdependent relationship” with his sister but fails completely to particularise the nature of that relationship and why, given that it is between adults, it should attract the protection of Article 8 ECHR (see *Kugathas [2003] EWCA Civ 31*). The judge leaves begging the question of the appellant’s relationship with his other sister and brother and does not explain why the relationship with Ms Baza differs from his relationship with those other siblings. The judge appears to have concluded that (i) the appellant has been in the United Kingdom for a long time, and (ii) must be close to his adult sister because they came to the United Kingdom as children and the appellant was a dependant on her asylum claim. Frankly, I find that that is inadequate reasoning to support the judge’s decision. There has been no proper examination of any psychological problems which the appellant may have and, very significantly, as Mr McVeety pointed out, Ms Baza (upon whom the appellant was found by the judge to be wholly dependent) does not even live in the same house as the appellant. No findings have been made regarding the frequency of contact between the appellant and Ms Baza.

9. The judge does not provide any reasons to address these rather obvious concerns but offers only a number of further assertions. At [69] the judge asserts that “the effect of [deportation] on the appellant’s sister and her family would be significant and ... unduly harsh and give rise to very compelling circumstances”. At [81] it is asserted by the judge that “[the appellant] has formed a strong family life beyond normal emotional ties with another adult an individual who he relied upon in the absence of his parents at a young age and a private life once granted ILR in 1999 (*sic*)”. Here, the judge appears to have found that, in 2018, there existed exceptional emotional ties between the appellant and his sister simply because, in the past, the appellant, as a child, may have relied upon Ms Baza in the absence of his parents. The fact that Ms Baza and the appellant may have had a very close relationship as children does not mean that they must enjoy a similar relationship now that they are both adults.
10. I am not satisfied that the reasoning of the judge may stand. In the circumstances, I set aside the decision. I have re-made the decision. First, I note that the burden rested upon the appellant to prove that he had been living in the United Kingdom continuously for the period which he claims. Having considered very carefully the documentary evidence on the file, and also the record of the oral evidence which was before the First-tier Tribunal judge, I am not satisfied that he has discharged that burden. Secondly, even if I were to accept that the appellant entered the United Kingdom in 1991 or 1992, he has not been here long enough to satisfy the requirements of HC 395. Unlike Judge Raikes, I am unable to

find any evidence before me to show that the appellant is “wholly reliant” upon Ms Baza. He is plainly not reliant upon her for his daily requirements at least in part because they do not live in the same household. Whilst I am aware that the appellant and Ms Baza may have been in the United Kingdom together when children, I am now concerned with identifying the nature of their relationship in 2018. I have very little evidence at all which would indicate that the relationship is so strong that it exceeds the normal emotional ties one would expect to exist between adult siblings.

11. I do not disturb the judge’s findings in respect of Section 72 and on asylum and Article 3 ECHR grounds. I set aside the judge’s findings in respect of Article 8. I find that the evidence does not show, as the appellant appears to claim in the papers, that his relationship with Ms Baza is so strong that his removal would breach Article 8 ECHR. In the circumstances, his Article 8 ECHR appeal is dismissed.

**Notice of Decision**

12. The decision of the First-tier Tribunal which was promulgated on 10 July 2018 is set aside. None of the findings of fact shall stand. I have re-made the decision. The appellant’s appeal on asylum and Article 3 ECHR grounds is dismissed. The appeal is dismissed on Article 8 ECHR grounds.
13. No anonymity direction is made.

Signed

Date 8 November 2018

Upper Tribunal Judge Lane

**TO THE RESPONDENT**  
**FEE AWARD**

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

Signed

Date 8 November 2018

Upper Tribunal Judge Lane

