



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

Appeal Numbers: HU/15054/2019
HU/15065/2019
HU/15057/2019

THE IMMIGRATION ACTS

**Heard at Field House via Microsoft Decision & Reasons
Teams Promulgated
On 29 June 2021 On 5 January 2022**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**OPA
CGAN
SLN
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J René, instructed by Eagles Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants were born respectively in 2003, 2005 and 2009. They are nationals of Cameroon and they applied for entry clearance to join their father, Patrice Songmo, who has refugee status in the United Kingdom. They were refused entry clearance by an Entry Clearance Officer on 25

July 2019 and appealed to a Judge of the First-tier Tribunal. The judge dismissed their appeals in a decision promulgated on 23 November 2020. Permission to appeal was granted a Judge of the First-tier Tribunal on 13 January 2021.

2. The relevant provision of HC 395 in this case is paragraph 352D. The two particular issues for determination before the judge were first, that under subparagraph (iii), which requires that the applicant is not leading an independent life, is unmarried and is not a civil partner and has not formed an independent family unit, and also under (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.
3. No more need be said about the requirement of paragraph (iii), since the judge accepted that the appellants were not leading independent lives and therefore that criterion of paragraph 352D was met. The remaining issue is the question of whether the appellants were part of Mr Songmo's family unit at the time when he left Cameroon.
4. In his witness statement, the sponsor, Mr Songmo, stated that he arrived in the United Kingdom on 14 October 2014. He claimed asylum sometime in January 2015 and his asylum claim was subsequently successful. It seems that he was granted refugee status leave to remain on 9 March 2017, valid until 7 March 2022.
5. His claim to be at risk in Cameroon is on account of his homosexuality. He lived with his family in the city in Douala. He was running a pub, and the family and he lived at the back of the pub. This, he said, was their family home and family business. Over time the pub became a meeting place for homosexuals and during this time he was also in a relationship with another man who was married. The police became involved and he was arrested by them and was in prison for five months. He said that while he was in prison his pub was burned down and so was the family home behind the pub and his wife and children went to live in the village with his wife's family.
6. He did not say in his statement when this took place, but he said that at the time he left Cameroon, which, it would appear, would have been shortly before his arrival in the United Kingdom, which he claimed to have been on 14 October 2014, his wife and the four children were living in the village with his wife's family. He had difficulties in contacting them, having tried to do so through his cousin in Cameroon in around May 2015. In July 2015 his cousin told him that Mr Songmo's wife had left the four children with Mr Songmo's mother in his home village and his wife had left.
7. The judge considered the issue of whether or not the children formed a part of the sponsor's family unit at the time of his departure from Cameroon to be problematic. The respondent questioned whether the appellants were living with their grandmother in 2014 as they claimed, on

the basis that when giving evidence to the First-tier Tribunal the sponsor said in a statement filed after 12 June 2015 that he had contacted his wife a year after arriving in the United Kingdom and remained in contact with her and was able to get news of the children. As this statement postdated 2014, the respondent argued that the appellants were not living with their grandmother in 2014, as the sponsor would have known that at the time he filed his statement.

8. The judge also referred to a report of Magloire Vougmo Djua, describing himself as a barrister and the bailiff of justice near the Court of Appeal of the West at Bafoussam, who said that together with the sponsor's representative he went to the city of Dschang in the Mingmeto quarter and found the sponsor's mother lying tired on the sofa with the children playing outside in the courtyard. Neighbours were questioned, one of them said they had noticed the presence of the children with the neighbour about four years ago. The children said that they had been abandoned by their mother and lived with their grandmother.
9. The judge regarded this document as largely self-serving and likewise a guardianship order dated 19 September 2019. He said that what was missing was any information about the children during the 2014 to 2019 period when the sponsor was in the United Kingdom and the children were living in Cameroon. He considered that what was needed were documents in relation to the children's schools and any medical treatment and other evidence showing where they were living from the date that the sponsor left Cameroon to the present time. He said that if the children had gone to live with their mother when the sponsor was in prison, then they were not a part of the family unit as the unit had split when he went to prison. He said there was a lot of missing information in the application and as a consequence, he was unable to find on a balance of probabilities that the children formed part of the same household as the sponsor at the time when he left.
10. The judge also considered the Article 8 claim outside the Immigration Rules and dismissed it.
11. The appellants sought and were granted permission to appeal essentially on the basis that the judge had erred in finding that the appellants were not part of the family unit of the sponsor when he left Cameroon for the United Kingdom in 2014.
12. In his submissions, Mr René relied in particular on paragraphs 5 and 6 of the grounds. He sought permission to rely on an unreported decision of a Judge of the Upper Tribunal in AL and ML. In essence, what had been held in that case was, it was argued, applicable to the instant case, and reliance was placed in particular on paragraphs 5, 25 and 31 of that decision.

13. The sponsor had come to the United Kingdom on 14 May 2014. While he was in prison his wife and children went to live in the village. He had been living with his wife and children before he was arrested, as set out in his witness statement. Essentially, after he had come out of prison he had come to the United Kingdom. The judge had misled himself, in particular at paragraphs 29 and 30 where he appeared to be applying a sole responsibility test in considering where the children were living after the sponsor had left Cameroon and that was not part of the equation. He had not questioned whether the sponsor was living with his wife and children before going to prison. There was therefore a material error of law.
14. In her submissions, Ms Isherwood made the point that she had not seen a copy of AL and ML though it had been summarised to her. It appeared to be a decision on its own facts. In the instant case, there were inconsistencies in the evidence. It had not been addressed by the appellant that when he claimed asylum in 2015 he had said that the children were with their mother in the village. The grounds were silent on that point. Paragraph 25 addressed the independent life issue, but reference needed to be had to paragraph 9 and also paragraph 15 of the refusal letter and the reference to contact with the wife a year after coming to the United Kingdom. The judge had looked at the evidence of the appellants and it was contradictory to what the sponsor had said in his asylum claim. It was a question of his credibility. The judge said it was not clear when the sponsor had left Cameroon. He had considered the evidence as a whole and had concerns about the documentary evidence as could be seen at paragraphs 28 and 29 in particular. As the judge observed at paragraph 31, there was a lot of missing information.
15. By way of reply, Mr René argued that the Secretary of State did not claim that the children were not the sponsor's and the judge had missed the point and the question was when the sponsor was in Cameroon, not when he came to the United Kingdom in October 2014. The situation between 2014 and 2019 was irrelevant under this paragraph of the Immigration Rules and the judge had been on the wrong lines. The decision in AL and ML had been put in as an illustration for fairness and consistency and the relevant point was what was required by the Rules as to the situation before the sponsor was arrested in May 2014.
16. I reserved my decision.
17. I agree with Mr René that the key point here is the question as set out at paragraph 352D(iv) whether the appellants were part of the family unit of the sponsor at the time when he left Cameroon. Part of Ms Isherwood's argument, however, is that the judge was unclear as to when it was that the appellant left Cameroon. Issue does not appear to have been taken in the decision letters as to the time when the sponsor said he came to the United Kingdom. It is said in the decision letter: "... Taking into consideration your sponsor arrived in the United Kingdom on 13 October 2013", however, the sponsor said in his statement that he arrived in

the United Kingdom on 14 October 2014. The judge did not make any point with regard to this apparent contradiction in the evidence. The sponsor in his witness statement took issue with the refusal decision stating that he arrived in the United Kingdom on 13 October 2013, saying that he arrived on 14 October 2014. This point is not without relevance, since the decision-maker took it that since in his or her view the sponsor arrived in the United Kingdom in October 2013 he must have resumed contact with his wife in approximately October 2014, whereas on his account of arriving in 2014 the contact with her would have been in 2015 and therefore might be of further relevance to this.

18. I agree with Mr René that the judge strayed away from an evaluation of the situation at the time when the sponsor left Cameroon, in particular at paragraphs 29 to 30 concerning the 2014 to 2019 period. It is right that the judge said that it was not clear when the sponsor left Cameroon, and I agree with the judge's conclusion that there is a lot of missing information in this application. But it does not seem to me that the judge gave proper consideration to the discrepancies that I have referred to above over the sponsor's evidence as to when it was that he left Cameroon, bearing in mind that he said he arrived in the United Kingdom on 14 October 2014 but he did not state when he left the country. I consider also that the judge erred in stating as he did at paragraph 30 that if the children had gone to live with their mother when the sponsor was in prison they were not a part of the family unit as the unit had split when he went to prison. That is a point which required much more careful consideration in my view. It cannot be said as a matter of generality that a family unit splits when one parent goes to prison, and the matter required more detailed analysis. I consider as a consequence that the judge erred in law and therefore the matter will have to be reheard. I consider that, given the degree of fact-finding that requires to be made, this would be best done in the First-tier Tribunal.

Notice of Decision

The appeal is allowed to the extent set out above.

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

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



Signed

Date 7 July 2021

Upper Tribunal Judge Allen