



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/19929/2019

THE IMMIGRATION ACTS

Heard at Field House
On 17 January 2022

Decision & Reasons Promulgated
On 9 February 2022

Before

UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

EDIDIONG PAUL IMEH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr R Solomon, Counsel instructed by A&P Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria, born on 27 August 2001 and resident in South Africa. The Appellant appeals against the decision of Judge C Griffith ('the Judge') of the First-tier Tribunal (FtT) promulgated on the 2 July 2021 refusing the Appellant's appeal against the respondent's decision.

Background

2. The Appellant was born in South Africa. He grew up there and resides lawfully in South Africa with his sister and their mother. His father is a British citizen who lives in the UK and is the sponsor.

3. On 2 August 2019 the Appellant applied for entry clearance. At the time of the application, the Appellant was a few weeks short of his 18th birthday. The application was refused by the Entry Clearance Officer (ECO) on 4 November 2019. That refusal was appealed to the First-tier Tribunal.

The decision of the First-tier Tribunal

4. The Appellant's case was that his mother and father had joint parental responsibility and that his father was the sole financial provider for the family. The family had decided to relocate the Appellant to the UK, and to move the family one by one to the UK. The level of violence in South Africa, specifically attacks on foreigners and their businesses, gave rise to a "dire situation... which is not conducive for young boys".
5. The Judge found against the Appellant, having been asked to consider the Appellant's case under Paragraph 297(l)(f) and Appendix FM Paragraphs GEN 3.1, 3.2 and 3.3 of the Immigration Rules as well as considering (outside the rules) rights under art 8 of the European Convention on Human Rights (ECHR).

The appeal

Permission to appeal

6. Permission to appeal was granted by the FtT on 8 October 2021. There were arguable material errors of law on all grounds in the grounds of appeal (which served as a skeleton argument before us). The grounds can be summarised as:

Ground 1: When assessing the case against Paragraph 297(i)(f) of the Immigration Rules, the Judge

- a. Failed to give the supporting evidence most anxious scrutiny; and
- b. Failed to give adequate account of material factors (detailed in the grounds) in evaluating serious and compelling family or other considerations making the Appellant's exclusion from the UK undesirable;

Ground 2: That the Judge

- c. Made contradictory findings in respect of the financial support provided by the father;
- d. Failed to give adequate reasons for rejecting the sponsor's evidence that he had taken an active role in the Appellant's upbringing.

Submissions

7. Mr Solomon made submissions in line with the grounds of appeal. The Appellant's first ground asserts a material error in assessing that there were no serious and compelling or other considerations that show the Appellant's exclusion from the UK as being undesirable.

8. The Appellant's claim included that there were attacks on his mother's shop on 13 October 2018 (reported by the Appellant's mother to the police by affidavit dated 1 August 2020), 29 December 2018 (also reported on 1 August 2020) and 26 May 2020. The Judge states at [42] that they had not seen any affidavit evidence of the last robbery. There is, in fact, a police affidavit (also dated 1 August 2020) at page 21 of the Appellant's bundle, which gives (hearsay) evidence that a robbery took place for which the Appellant and his mother were not present. The Appellant's mother concludes that "*The fear is real as I assume this to be a targeted attacked (sic) on me and my family*". The Appellant submits that it was an error for the Judge not to have considered this evidence.
9. Further, Mr Solomon submitted in the grounds of appeal, the Judge was wrong to conclude that there was no corroborative evidence about the attacks from the police because there are police case numbers for each of the allegations. Before us, he clarified that this shows that the allegations were reported, rather than offering any independent corroboration.
10. Mr Solomon invited us to find that the Judge failed to take adequate account of the corroborative evidence of the Appellant, his mother and father confirming the robberies. He notes that the father was in fact present at one of the robberies.
11. The father's evidence on this robbery appears in his statement of 29 September 2020. We see that it was also covered in his oral evidence as noted by the Judge at [19]. The Judge also notes that the Appellant's statement covers this [11], as does the Appellant's mother's affidavits [42].
12. Mr Solomon submits that the Judge further erred in not making a finding on the sponsor's credibility or to give sufficient reasons for rejecting the sponsor's evidence on the attacks.
13. The grounds of appeal also outline that the Judge improperly took into account that the entry clearance application of the Appellant's mother made no reference to the robberies. The Appellant states that this was improper because the entry clearance application was not before the FtT (the resulting decision letter was) and the test for the Appellant's mother's application is different to that under para 297(i)(f). We note that the Judge states that "*little weight*" was attached to that evidence.
14. The Judge considered information in the Country Background Note for South Africa version 2.0 dated August 2020, which had been reproduced in the Appellant's skeleton argument before the FtT. Mr Solomon submits that the Judge's findings on these at [43] are contradictory and unclear, on the basis that the Judge's commentary refers to (in our words) multiple peaks in xenophobic violence.
15. The Appellant's second ground revolves around two points with regards to the evidence of the sponsor supporting the Appellant. The Appellant submits that the FtT made unclear and contradictory findings about the financial support from the sponsor. On one hand the Judge found that "*there is no evidence of any financial support before July 2020 and whilst the sponsor may well have sent money, the nature and extent... is not known*" but on the other hand the Judge found that by the time of the hearing (nearly a year later) the family was being supported by the sponsor and that this arrangement could continue.

16. Finally, the Appellant claims that the Judge took inadequate account of (or gave inadequate reasons for rejecting) the sponsor's evidence on how he has supported the Appellant financially and by taking an active role in his upbringing. It is said, effectively, that the determination of the FtT does not properly reflect the evidence.

Analysis

Error of law

17. The Judge considered the allegations of attacks on the sponsor's mother's shop at [42-44]. Given the explicit wording at [42] that the Judge had not seen the affidavit which dealt with the last robbery, we find that the Judge did not take into account the affidavit, within the Appellant's bundle, regarding the final attack.
18. We do not accept that a police reference number, obtained on reporting a matter to the police, is corroborative evidence of the reported crime in itself. This might be different if a police report number is accompanied by, say, a police investigation report outlining that the allegation was investigated and supporting evidence had been obtained. However that is not the case here.
19. We agree that the Judge did not make a finding on the credibility of the sponsor's evidence about the attacks, nor does the FtT decision contain a full analysis of how the evidence of the Appellant and his parents corroborate each other. However, whilst the Judge did not collect together the summary of the corroborative evidence in one place, the Judge did take account of it. Decisively the Judge, at [43-44], analysis the relevance of the attacks and whether they are motivated by hostility to migrants on the basis that the attacks did happen. The Judge effectively accepts the evidence as credible when assessing whether the allegations of xenophobic attacks are made out, including the evidence of the sponsor.
20. With regards to the entry clearance application of the sponsor's mother, it was not suggested by Mr Solomon that it was incorrect of the FtT to understand that no reference was made to the attacks in the mother's application. Whilst it might have been preferable if the Judge had been provided with a copy of that document by the parties, it is open to the Judge to consider hearsay evidence of what the application contained as long as the Judge is careful in what weight to accord that hearsay evidence. The Judge explicitly states that they attach little weight to the evidence about the entry clearance application.
21. Having read the relevant parts of the Country Background Note (section 18.1) it appears to us that the Judge's commentary is a faithful representation of the evidence. We find no contradiction in the Judge finding a number of peaks in violence. At 18.1.1 the Country Background Note references a BBC report that "Violent attacks peaked in 2008 and again in 2015. Data for 2019... already shows that the number of attacks is approaching the level of 2015". Peaks and troughs are suggested by the Country Background Note.
22. The Appellant asserts that the Judge found the Appellant's mother no longer has the business she reported crimes against, that there are no reports of attacks on the Appellant and his mother, and that this forms part of the reasoning against the Appellant. Mr Solomon submits that this is insufficient reasoning because the threat

to migrants in South Africa remains and the Appellant's mother has lost her livelihood. With respect to Mr Solomon, this ignores the findings of the FtT that there was no xenophobic motivation for the attacks, that these were random attacks, and that the sponsor provides the family with an income from the UK. The reasoning of the FtT is more balanced and has more depth than the Appellant submits.

23. Having considered the Judge's findings that there was insufficient evidence of financial support before July 2020 but that the evidence is by June 2021 the sponsor was supporting the Appellant financially, we find that this is not inherently contradictory. It is a proper reflection of the evidence available.
24. The final of the Appellant's arguments is that the Judge fails to give reasons for rejecting the evidence of the father's involvement in his upbringing. The Judge does cover at [45] the evidence of WhatsApp messages between the Appellant and his father in October and November 2020 and what these discuss. The Judge notes at [18] that the sponsor gave evidence to the effect that he has taken an active role in bringing up his son since birth. At [50] the Judge analyses further evidence relevant to the father's involvement in the Appellant's upbringing. The Judge accepts that there is evidence of visits, but not of communication beyond WhatsApp messages at p27-56 of the Appellant's supplementary bundle. We see the messages are dated from 5 October 2020 onwards.
25. The Judge's conclusion on this point at [50] is that "*there has been no evidence of the nature and extent of the sponsor's involvement in the Appellant's life when he was growing up*". The Judge does not reject the evidence of the sponsor's involvement as the Appellant pleads. The Judge is explaining that the evidence doesn't show the nature and extent of the sponsor's involvement. Correctly, the Judge therefore concludes that "*Any family life is therefore limited*". The Judge's conclusion reflects the weight of the evidence and we find that they have not taken inadequate account of it. It is difficult to see how the Judge could have analysed the limited evidence further than they did. The Judge's reasoning is clear and sufficiently reasoned.
26. Considering the arguments in the round, we find that the Judge erred in law by not considering the affidavit regarding the robbery of 26 May 2020. This is relevant to the assessment of whether the Appellant meets the requirements of Paragraph 297(i)(f).
27. We find that there are no other errors of law.

Materiality of error

28. We therefore analyse the significance of the Judge's error of law and whether there is a realistic possibility that the Judge would have a different overall conclusion, had they not erred.
29. The qualifying requirement under Paragraph 297(i)(f) that remained in issue for the Judge was whether there were serious and compelling family or other considerations which make exclusion of the Appellant undesirable.

30. The Judge reminded themselves of the duty under Article 3 of the United Nations Convention on the Rights of Children to have the best interests of the child as a primary consideration in reaching a decision.
31. The Paragraph 297(i)(f) test was considered in Mundeba (s55 and para 297(i)(f)) [2013] UKUT 00088 (IAC). That case provides a helpful analysis of the requirement under Paragraph 297(i)(f). It is convenient to reproduce here part of the headnote:
- iv) Family considerations require an evaluation of the child's welfare including emotional needs. 'Other considerations' come in to play where there are other aspects of a child's life that are serious and compelling for example where an applicant is living in an unacceptable social and economic environment. The focus needs to be on the circumstances of the child in the light of his or her age, social backgrounds and developmental history and will involve inquiry as to whether:-*
- a there is evidence of neglect or abuse;*
- b. there are unmet needs that should be catered for;*
- c. there are stable arrangements for the child's physical care;*
- The assessment involves consideration as to whether the combination of circumstances are sufficiently serious and compelling to require admission.*
32. Further, at [34] the Tribunal in Mundeba found that 'serious' means that there needs to be more than the parties simply desiring a state of affairs to obtain. 'Compelling' in the context of paragraph 297(i)(f) indicates that considerations that are persuasive and powerful. 'Serious' read with 'compelling' together indicate that the family or other considerations render the exclusion of the child from the United Kingdom undesirable. The analysis is one of degree and kind. Such an interpretation sets a high threshold that excludes cases where, without more, it is simply the wish of parties to be together however natural that ambition that may be.
33. The relevance of the affidavit on the final robbery is that it goes towards proving the robberies happened. As we have noted above, although the FtT erred in not considering the evidence of the final robbery, the Judge analysed whether the test in Paragraph 297(i)(f) was passed on the basis that the robberies had happened. The FtT applied the test in Paragraph 297(i)(f) in line with Mundeba and concluded that the test was not satisfied.
34. We have reviewed the evidence relevant to family or other considerations which might make exclusion of the Appellant undesirable.
35. The Sponsor supports the Appellant and his family in South Africa and gave evidence to the FtT that this would continue. The Appellant, at the time of the application, had completed his exams and remained living with his mother. He was a child on the verge of his majority who was educated and was provided for and cared for. We conclude that his welfare and emotional needs were being met.
36. The Country Background Note provides evidence at section 18 that in August and September 2019 there was a spate of looting and violence in Johannesburg and Pretoria targeting foreign nationals, principally Nigerians and refugees. This

resulted in four deaths. At least 27 suspects were arrested and charged with a range of offences. The NGO Xenowatch reported 569 incidents of xenophobic violence from January to August 2019. Amnesty International reported that in August 2019 xenophobic violence against refugees, asylum seeker and migrants resulted in the killing of 12 people. Businesses belonging to Nigerians and other foreign nationals were targeted in Johannesburg and Pretoria. This is within a context of 3.6 million migrants in South Africa.

37. The security situation in parts of South Africa is undoubtedly very different to the UK. The evidence of the Country Background Note is that the xenophobic incidents are investigated by the police.
38. Without belittling the crimes that occur, the level of prevalence of xenophobic incidents, combined with the support and care provided to the Appellant in South Africa by his family, do not amount to an unacceptable social and economic environment for the Appellant.
39. We conclude that, even taking the Appellant's case at its highest, there is a significant gap between the family and other aspects of the Appellant's life and the high threshold that has to be met to qualify under Paragraph 297(i)(f).
40. Even if the Judge had taken into account the affidavit regarding the final robbery, the Appellant's case would not have been sufficiently persuasive and powerful to satisfy the test. There is no realistic possibility that the Judge would have come to a different overall conclusion.

Conclusion

41. The Judge erred in law in not taking into consideration one of the affidavits in evidence.
42. That error of law was not material.

Anonymity Order

43. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders we do not consider it appropriate to make an anonymity order

Decisions and Directions

1. The appeal is dismissed.
2. There is no order for anonymity.

Signed D Cotton

Date: 27 January 2022

Deputy Upper Tribunal Judge