IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: UI-2022-004858 UI-2022-004857
First-tier Tribunal No: IA/15316/2021; HU/56475/2021, IA/15315/2021; HU/56474/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26 May 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

SAT

First Appellant

And

SAT

Second Appellant

v

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr M Mcgarvey (Counsel, instructed by Crowley & CO, Solicitors).
For the Respondent: Mr P Lawson (Home Office Presenting Officer)

Heard at Birmingham on 4th May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellants applied for entry clearance to the UK on the 30 March 2021. The applications were refused by an Entry Clearance Officer ('ECO') for the reasons given in the decision of the 17th September 2021. The Appellants appeals against that decision were heard by First-tier Tribunal Judge Blackwell ('the Judge') who dismissed the appeals in the decision of the 15th July 2022. An application for permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal and granted on renewal by the Upper Tribunal.

2. The Appellants are the younger brothers of the Sponsor, all are Eritrean citizens. The Sponsor was living in the UK with leave as a refugee but was subsequently granted indefinite leave to remain (ILR). The Appellants apparently had intended to apply for entry clearance under paragraph 297 of the Immigration Rules but in fact applied under paragraph 319X of the Immigration Rules paying a lower application fee as a result.

3. The applications were considered by the ECO under paragraph 319X rather than paragraph 297 on the basis that the correct higher fee had not been paid. The application was refused as the Sponsor did not have limited leave to remain as a refugee as required by the terms of paragraph 319X.

4. In the decision of Judge Blackwell the Judge declined to consider the appeal under paragraph 297 taking the view that it was a new matter that required the consent of the Secretary of State which was not forthcoming. In paragraphs 34 to 39 the Judge considered that paragraph in the context of the best interests of the Appellants. The Judge found that there was no evidence to show the Appellant's welfare, including their emotional welfare, was suffering in their living arrangements. There was no evidence of neglect or abuse of unstable arrangements for the Appellants' care, there was no evidence of unmet needs.

5. On renewal to the Upper Tribunal permission to appeal was granted by Upper Tribunal Judge Jackson on the 5th of November 2022. In the grant of permission she noted that paragraph 297 is materially identical to paragraph 319X of the Immigration Rules albeit that the Tribunal had found that the requirements of paragraph 319X were not met (beyond the Sponsor's leave) and materiality would have to be addressed. There was no reference to the background country evidence regarding the situation in Ethiopia.

6. At the hearing Mr Mcgarvey relied on his skeleton and focussed on whether there were serious and compelling family or other considerations making the Appellant's exclusion from the UK undesirable. The objective material referred to was not in the stitched bundle prepared for the First-tier Tribunal but at section D of his skeleton argument of the 30th June 2022. It was submitted that that evidence showed there were circumstances that met the serious and compelling test. For the Respondent, Mr Lawson argued that the evidence related to the position regarding the camps in Ethiopia and did not affect the position regarding the Appellants' actual circumstances.

7. The evidence relied on by Mr McGarvey is set out in full at paragraph 21, in section D, of the Skeleton Argument of the 30th of June 2022. From the United States State Department Human Rights Report on Ethiopia 2021 it sets out in full section F on the Protection of Refugees.

8. In summary the government of Ethiopia stopped recognising refugees from Eritrea in 2020 affecting later arrivals' access to a status determination. The report goes on to refer to the closing of 2 camps and the inability of the UNHCR to account for over 6,000 refugees. The UNHCR was working to establish a camp in other areas but was experiencing difficulties with the ongoing conflict in the intended area. There was nothing in the evidence presented from the US State Department report that had any bearing on the situation of the Appellants, it related solely to new arrivals and the position in the camps.

9. The Appellants have status in Ethiopia and the evidence that was available indicated that their living arrangements were stable. In paragraph 34 the Judge directed himself that their best interests were a primary consideration, in line with guidance, the evidence of the Appellant's actual circumstances was very limited, there was no evidence that their living arrangements were not adequate and there was nothing at all about their education.

10. We note the guidance that it is preferable that individuals be brought up by their parents or other relatives, but in our view it made no material difference whether the Judge had addressed the evidence under paragraph 297 or 319X. The evidence relating to the Appellants' circumstances was limited and did not show that there were serious and compelling family, or other considerations, that made their exclusion undesirable. Their contact with the Sponsor had been limited and it was not clear why direct evidence from the person charged with their care had not been provided. In the circumstances there was no basis for allowing the appeals outside the Immigration Rules under article 8.

11. In summary it made no difference which of the Immigration Rules had been considered, the material parts of the rules were the same. When focussing on the substantive aspects the Judge's observations on the evidence were founded on an appropriate assessment of the totality of the evidence. There are no material errors of law. The appeals are dismissed.

Notice of Decision

12. For the reasons given these appeals are dismissed. The determination shall stand.

Judge Parkes

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

9th May 2023