



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-003392

First-tier Tribunal No: HU/04505/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

25<sup>th</sup> October 2023

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**ABDULLATIF HUSSEIN RIAAN HUSSEIN**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER**  
**SHEFFIELD**

Respondent

**Representation:**

For the Appellant: Mr Shashi Jaisri of Counsel, appearing by Direct Access

For the Respondent: Ms Alexandra Everett, a Senior Home Office Presenting Officer

**Heard at Field House on 9 October 2023**

**DECISION AND REASONS**

**Introduction**

1. The appellant challenges the decision of First-tier Judge Latta (HU/04505/2021) promulgated on 23 March 2023, dismissing her appeal against the respondent's decision on 9 August 2021 to refuse her entry clearance pursuant to Appendix FM of the Immigration Rules HC 395 (as amended), based on family life with her mother, who is a recognised refugee in the UK.

2. The appellant is a citizen of Sudan and is 23 years old now. She was already 21 when this application was made.
3. **Mode of hearing.** The hearing today took place face to face.
4. **Representation.** These proceedings were issued by the appellant in person, out of country. The appellant was represented by Mr Jaisri of Counsel, who appeared by Direct Access. Mr Jaisri was not instructed in the First-tier Tribunal: the appellant was represented there by a solicitor named in the decision as Mr Aghayere<sup>1</sup>. The Latta decision does not give Mr Aghayere's firm, or his first name.

### **Background.**

5. The appellant lives in a home owned by her family, in Sudan, with family members nearby. Her sponsor mother has been in the UK since 2017 and is a recognised refugee here. The appellant had a traffic accident on 3 November 2017, and has been treated for the consequences of that accident in Sudan, at the Alsalama Physiotherapy and Rehabilitation Centre in Khartoum.
6. She has made two applications to join her mother. On 11 November 2020, the appellant made an out of country application for refugee reunion with the sponsor, her mother, who has refugee status in the UK. The application was refused on 12 March 2021. The applicant would have been 20 years old when the application was made, and 21 when it was refused.

### **The Rodger decision.**

7. The appellant appealed the refugee reunion refusal to the First-tier Tribunal (appeal no HU/02292/2021). On 17 March 2022, First-tier Judge Rodger dismissed that appeal (the Rodger decision). During the Upper Tribunal hearing, Mr Jaisri handed up a hard copy of the Rodger decision, which was omitted from the electronic appeal bundle. The Rodger decision was also not included in the electronic bundle filed by the appellant for the First-tier Tribunal hearing, but was handed up physically. It has now been uploaded to CEFile.
8. The Rodger decision also mentions the present application, made on 7 May 2021 and refused on 9 August 2021. After the hearing, I was concerned that it appeared that the Rodger decision concerned the application and decision before me. I ordered the parties and Mr Jaisri to clarify that point. Having seen Mr Jaisri's response, and re-read the Rodger decision, I am satisfied that it concerned the earlier decision and is, therefore, the *Devaseelan* starting point for any judge considering the 9 August 2021 refusal (in context, Judge Latta).

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<sup>1</sup> The only person with the name Aghayere in the open register kept by the Solicitors Regulatory Authority (SRA) is Viktor Aghayere Osasu. The SRA shows him as working at Lowell UK Shared Services Ltd, which employs solicitors but is not regulated by an approved regulator for legal services.

9. I approach this decision on the basis that the conclusions in the Rodger decision refer only to the 12 March 2021 refusal and not the 9 August 2021 refusal which is the subject of the present appeal.
10. Judge Rodger heard the appeal remotely by CVP on 14 March 2022 and dismissed it. He did not find the sponsor (the appellant's mother) to be a credible or honest historian. He did not accept that the appellant had no family left in Sudan. He did not consider the financial evidence to be sufficient to establish financial dependency, nor that the appellant was living alone in the most exceptional compassionate circumstances.
11. Judge Rodger held that the appellant was living in the family home, but was an independent adult, who in all likelihood had other close family members in Sudan, such as her aunt. He did find that the appellant still had family life with the sponsor, albeit at a distance. Judge Rodger had recorded a concession by Mr Worrall, who represented the appellant, that she could not meet the requirements of paragraph 317 of the Immigration Rules, because she could not show that she was living outside the UK in the most exceptional compassionate circumstances, or that she was financially wholly or mainly dependent on her mother in the UK.
12. He heard oral evidence from the sponsor, and set out at [17]-[18] why he considered that the sponsor was not a credible or honest historian and that he would not accept her account of the appellant's circumstances in Sudan. In particular, he considered that she was living with, and supported by, her family members in Sudan, with occasional money sent from the UK by her sister in the UK, rather than her mother.
13. When considering Article 8 outside the Rules, Judge Rodger accepted that there was a 'mother and adult child' relationship between the sponsor and appellant, which amounted to continuing family life, as she still lived in the former family home and had regular contact with her mother. Judge Rodger continued at [24]:

"However, even though there is family life between [the appellant and sponsor], I find that the refusal decision does not adversely interfere with their right to a family life or have consequences of such gravity [as] to potentially engage the operation of Article 8.

The appellant is an adult and has been living in her home country without her parents since 2017. She has no private life in the UK but has substantial private life in Sudan, as she has lived there since birth and is living as a young adult with close family members in her home country. ...

There is no persuasive evidence that the relationship that has been enjoyed between the appellant and sponsor cannot be continued as per the status quo that has been in place since 2017. ..."

14. When considering proportionality, Judge Rodger held that:

"It may not be the family's choice or preference for the appellant to remain in Sudan, but there are no exceptional or weighty circumstances or persuasive evidence of any unjustifiably harsh consequences for the appellant or the sponsor or the appellant's

father, if the refusal decision is maintained. The separation of the family in the circumstances of this family and this appellant is not disproportionate and the refusal decision is not a breach of the appellant's Article 8 rights or that of her other family members."

15. The Rodger decision was sent to the appellant on 17 March 2022. The appellant was appeal rights exhausted thereon in April 2022.

### **Refusal letter**

16. In the meantime, while the appeal the subject of the Rodger decision was pending, on 7 May 2021 the appellant made another application for entry clearance as an adult dependent child. The application was considered under the Adult Dependent Relative provisions of Appendix FM.
17. The respondent accepted that the appellant met the suitability requirements, and also met the eligibility requirements in Section E-ECDR of the Rules, with the exception of E-ECDR 2.4 and 2.5:

"E-ECDR.2.4. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.

E-ECDR.2.5. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because-

- (a) it is not available and there is no person in that country who can reasonably provide it; or
- (b) it is not affordable."

The respondent considered that the appellant was receiving the required level of medication and care in Sudan. She had not produced any reliable evidence to show that in the future, that level of care would not be available in Sudan.

18. The respondent then considered the exceptional circumstances provisions of GEN.3.1 and GEN.3.2 of the Rules. She was not satisfied that exceptional circumstances had been shown: the appellant's sponsor mother had been in the UK since 2017 and the evidence of dependency was insufficient to meet the exceptional circumstances standard. The respondent refused the application for entry clearance on 9 August 2021.
19. The appellant appealed to the First-tier Tribunal.

### **The Latta decision**

20. On 23 March 2023, following a hearing on 28 February 2023, First-tier Judge Latta dismissed the present appeal. That is the decision under appeal before me. The respondent was not represented before Judge Latta.

21. There was new evidence, comprising more details of the sister's payments to the appellant, and medical evidence: the appellant submitted a certified translation of a medical report dated 10 October 2020 from Dr Muhammad Nour, Medical manager at the Alsalama Centre. Following her accident in November 2017, the appellant had a left posterior hip dislocation and whiplash, which affected the motor function of her lower limbs. Apart from some brief detail of the physiotherapy (pain relief, ultrasound, heat therapy and hip exercises), there are no more details of her circumstances.
22. The Alsalama Centre says that the appellant underwent a non-surgical hip reduction, and thereafter, was 'under the care of our centre'. She was prescribed physiotherapy, which was resulting in slow but steady improvement, which would eventually make her capable to travel. It is not clear why that report would not have been produced to Judge Rodger in 2022. It was three years out of date when produced to Judge Latta.
23. The appellant's mother gave oral evidence. The Judge asked some clarificatory questions, as there was no Home Office Presenting Officer. The appellant does not complain about that. During those questions, the sponsor mentioned the Rodger decision earlier in the year. Mr Aghayere, the solicitor who represented the appellant at the First-tier Tribunal, confirmed when asked that he was aware of that decision, and produced it. No explanation seems to have been offered for omitting that important document from the First-tier Tribunal bundle.
24. There was no other oral evidence. There was no witness statement from the appellant's father, and neither he nor the appellant's sister, who sends the payments relied upon, attended to assist the First-tier Judge with oral evidence.
25. First-tier Judge Latta correctly treated the Rodger decision as the *Devaseelan* starting point for her consideration of the present appeal. She noted that the further evidence of payment was again from the appellant's sister, not her mother. She placed little weight on the Alsalama Centre report, the evidence in which was both vague and sparse, as well as out of date.
26. The First-tier Judge considered that the new evidence from the sister and the Alsalama Centre, taken with the sponsor's unsatisfactory oral evidence, was not sufficient to establish that the appellant could not have made an application for reunion with her mother and other family members in the UK before she reached the age of majority.
27. Having considered all the evidence, the First-tier Judge was not satisfied that the new evidence submitted with this appeal was sufficient to enable her to depart from the findings of fact and credibility in the Rodger decision, in March 2022. She dismissed the appeal.

## Grounds of appeal

28. The appellant appealed to the Upper Tribunal. There were four grounds of appeal, as follows:

**Ground 1 - Misdirection of law on a material issue.** Misapplication of the *Devaseelan* principles in relying on the Rodger decision's negative credibility findings, failing to attach weight to the sponsor's new evidence, giving weight to the absence of any evidence from the appellant's father or sister, and failure to balance proportionality correctly. The appellant contends that the misapplication of *Devaseelan* 'was extraneous', and asserts that 'Judge Rodger bought a pre-existing family life, previous share of household, and dependency of mother and daughter';

**Ground 2 - Procedural unfairness.** The appellant contends that the First-tier Judge's decision 'bore the hallmarks of a pre-determined outcome' which was a 'serious law of law';

**Ground 3 - Lack of adequate reasoning.** At [41]-[42], the appellant contends that the Judge failed to give proper weight to the positive Article 8 finding in the Rodger decision, to the passage of time and new evidence showing dependency, and that her conclusion that immigration control outweighed the Article 8 private and family life rights of the appellant; and

**Ground 4 - Taking into account irrelevant considerations.** The appellant contended that at [36]-[38], the First-tier Judge took into account unspecified irrelevant consideration and failed to give appropriate weight to the physiotherapy evidence.

## Permission to appeal

29. The application for permission to appeal to the Upper Tribunal was out of time but First-tier Judge Gumsley treated it as timely. Permission to appeal to the Upper Tribunal was granted on the following basis:

"...2. I note that there was some 'new' evidence in the form of further financial support and a physiotherapy report. Given that to be the case (notwithstanding its possible limitations) I am satisfied that it is arguable that in approaching the Sponsor's evidence by simply dismissing it in its entirety on the basis of the previous judge's finding, and without considering it alongside the further evidence provided, the FtT Judge erred in law. It is also arguable that the FtT Judge's assessment of Article 8 outside the Rules was inadequate or that insufficient reasons were given to allow for the decision on this point to be properly understood.

3. I do not understand Ground 4.

4. However, the other Grounds, which are effectively asserting that the approach to reconsidering the case and the strict approach as to the *Devaseelan* guidelines was a material error may be argued. Permission to appeal is granted on that basis."

## Rule 24 Reply

30. On 9 August 2023, the respondent filed a brief Rule 24 Reply, resisting the appeal on the following basis:

“3. It is clear that the key issue in this case was the appellant’s current situation in Sudan. It appears that, apart from the evidence of the sponsor, who had previously been found not to be a credible witness, the actual evidence on this point was very sparse. With respect to the sponsor’s evidence, the judge gave themselves the appropriate self-directions on the *Devaseelan* principles but concluded that there was nothing in the new evidence that would cause them to depart from the findings of the previous tribunal. This was clearly a conclusion that was open to them, there is no material error of law.”

31. That is the basis on which this appeal came before the Upper Tribunal.

## Upper Tribunal hearing

32. The oral and written submissions at the error of law hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal, including a hard copy of the Rodger decision, which has now been uploaded to the Upper Tribunal’s electronic database, CE-File.

## Analysis

33. That was the starting point from which Judge Latta was required to begin her consideration of the present appeal. I remind myself of the Court of Appeal’s guidance in *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022):

“2. The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:

i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be

discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

34. The First-tier Judge gave the sponsor's evidence no weight 'in light of the findings made by Judge Rodger': that is not well expressed, but the judge had seen and heard the sponsor give her evidence, and in the course of so doing, had discovered that she had omitted to mention the Rodger decision and that a copy of it was in the hearing room, with the appellant's solicitor, disclosed only on request.
35. This appeal, though framed as on a point of law, is really a disagreement with the First-tier Judge's findings of fact and credibility. I am not satisfied that the decision made by First-tier Judge Latta is plainly wrong, or one which no reasonable judge could have reached. It is clear from her decision, in particular her conclusions at [40]-[42], that she did have regard to all of the evidence before her, and that she considered the Rodger decision, produced only during the sponsor's evidence, and treated it as the *Devaseelan* starting point, as she is required to do.

## Conclusions

36. It is right that the treatment of the sponsor's credibility could have been better expressed, but I am satisfied that there were good reasons for not believing her evidence in this appeal, and that in any event, the other evidence produced was not sufficient to lead to a different outcome. It was open to Judge Latta to conclude, as Judge Rodger had, that the sponsor was not a reliable or credible witness.
37. The appellant's family life with her sponsor mother has been conducted at a distance for 6 years now, despite her physical difficulties after the accident in November 2017. She had physiotherapy in Sudan, as confirmed by the Alsalama report, but there is no indication whether, with the steady improvement recorded in October 2020, she still needs or receives it. It is her sister, not her mother, who sends money sometimes to the appellant in Sudan.
38. The First-tier Tribunal's conclusion that the decision not to admit her is not disproportionate is not rationally insupportable. There is no error of law in the First-tier Tribunal decision.
39. I upheld the decision of the First-tier Tribunal and dismissed the appeal at the hearing.



**Notice of Decision**

40. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

*Judith A J C Gleeson*  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 12 October 2023**