Case Nos: UI-2023-002952
UI-2023-002953

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal Nos: HU/22225/2018
HU/22228/2018

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17 January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

P N
R N
(ANONYMITY ORDERS MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr D Bazini of Counsel, instructed by AA Immigration Lawyers
For the Respondent: Mr A Melvin, Senior Home Office Presenting Officer

Heard at Field House on 16 October 2023

DECISION AND REASONS

Introduction

1. These are appeals against decisions of First-tier Tribunal Judge Eldridge promulgated on 19 May 2023 refusing on human rights grounds each of the linked appeals of the Appellants against decisions of the Respondent dated 21 September 2018 refusing entry clearance to the United Kingdom.

2. The Appellants are twins born on 9 September 1999. They are citizens of Uganda.

3. Applications for entry clearance were made on 2 August 2018 on the basis of family life with their mother who was living in the UK. The Appellant's mother is Bridget Namayanja (d.o.b. 2 March 1980) – (the 'Sponsor'). The Sponsor is a citizen of Uganda.

4. The applications were refused in respective, similarly worded, decision letters dated 21 September 2018.

5. The Appellants appealed to the IAC.

6. The First-tier Tribunal heard oral evidence from the Sponsor and from a family friend, Ms Burungi.

7. Both appeals were dismissed for reasons set out in the Decision and Reasons of Judge Eldridge promulgated on 19 May 2023.

8. The Appellants applied for permission to appeal to the Upper Tribunal. Permission was refused in the first instance on 5 July 2023 by First-tier Tribunal Judge Lester. Upon renewal, permission to appeal was granted on 7 September 2023 by Upper Tribunal Judge Norton-Taylor.

Consideration of the 'error of law' challenge

9. The Respondent refused the Appellants' applications with particular reference to section EC-DR of Appendix FM of the Immigration Rules, and further concluded that there were no 'exceptional circumstances' within the contemplation of paragraph GEN 3.1 and 3.2. Before the First-tier Tribunal, Counsel for the Appellants accepted that the Appellants could not meet the requirements of section EC-DR, and accordingly reliance was placed on paragraph GEN 3.2 of Appendix FM and/or Article 8 in its broadest sense: see Decision at paragraph 2.

10. In the premises, the Appellants related: that from 2000 they had lived with their paternal grandmother until 2015 when they started living with a maternal aunt; their mother, the Sponsor, had left them in about 2000 to live elsewhere in Uganda (although it was said that she maintained contact); even before moving to live with their aunt, the aunt had been looking after them since about 2009; their father was not involved in their lives; the Sponsor had begun to make financial transfers for the Appellants' benefit in or about 2013 after she had been able to start working in the UK. (E.g. see First Appellant's witness statement dated 16 March 2023.)

11. I pause to note that although the Sponsor was granted refugee status in the UK, the Appellants do not fall for consideration under the refugee 'family reunion' rules both because they are no longer minors, and because they did not seemingly form part of the Sponsor's family unit at the time she fled Uganda – the Sponsor having left them with their father's family whilst she led an independent life in Kampala.

12. Yet further in the premises, the following findings and observation of the First-tier Tribunal Judge at paragraphs 11-13 are noted:

> "*11. I find as a fact that [the Sponsor] left her husband and the children in the year after their birth and she was in an abusive marriage. I accept that she fled Uganda in 2008 and claimed asylum in this country and has been recognised as a refugee on the basis of her sexuality. She has not lived with nor has she been with the Appellants in person since she left. I accept that initially the Appellants lived with their grandparents and since 2015 they have lived with their aunt. They continue to do so. They have not formed an independent household. I am satisfied that their father is not a part of their lives and it is highly unlikely he ever would be.*
>
> *12. I accept that their aunt has at least three children of her own (being pregnant with another child is mentioned in the documents). I find as a fact that the two Appellants are maintained financially to a significant degree by their mother and I am satisfied from the documents produced that they are in regular contact with her. I see no reason to doubt the evidence given in written statements and that the two Appellants are not well treated and, indeed, may be abused physically and otherwise. I have taken account of the evidence given to me by Ms Burungi, which tends to support what the Appellants say but I do note that amongst the messages between mother and daughters, one of the Appellants describes her visit as lasting only "a few minutes". I do not think it would be easy for her to get a confident picture so short a visit.*
>
> *13. The issue of maintenance and accommodation in this country is not disputed. I accept that the mother is working and has her own property – as she has described.*"

13. Notwithstanding the positive findings set out above, the Judge expressed reservations in respect of supporting evidence provided by a local doctor: see paragraphs 17 and 18. The Judge concluded that the evidence was "*of limited value*", but accepted that "*the Appellants are probably anxious at their situation and feeling sad about their current circumstances and the continued separation from their mother*" (paragraph 17).

14. I pause to note that it is, in my judgement, clear from this passage that the Judge did not accept that the medical letters established that the Appellants had any relevant underlying mental health diagnoses: rather, the acknowledgement that they were probably 'anxious' and 'feeling sad' about their situation and circumstances is to be understood in a non-medical sense.

15. Further to the above, the Judge also made the following findings/observations:

> (i) There is no suggestion that maintenance from the Sponsor could not continue (paragraph 15).
>
> (ii) "*No sensible explanation has been given as to why neither of them would be capable of finding work in helping to support themselves*" (paragraph 15).

16. The Judge - it seems to me uncontroversially – identified the key issue in the appeals as being that under paragraph GEN 3.2 – "*whether the refusal of leave to enter results in "unjustifiably harsh consequences" for the Appellant or, indeed, their mother*" (paragraph 14).

17. The Judge essentially restated this key issue at the beginning of paragraph 19, but adapting it in the context of the particular facts and circumstances of the instant appeals:

> "*Ultimately, the question is whether it is unjustifiably harsh to expect them to continue to live as they are or, the age of approaching 24, to begin to fend for themselves with the support financially and emotionally of their mother from within the United Kingdom.*"

18. The Judge answered that question against the Appellants (paragraph 19) and the Sponsor (paragraph 20). In consequence the Judge determined that the Appellants did not satisfy the requirements of the Immigration Rules (paragraph 21), and in the alternative, with particular reference to the public interest, concluded that the Respondent's decisions were not disproportionate (paragraph 22).

19. In my judgement the written Grounds of Appeal rely to a significant extent on rearguing the issues that were before the First-tier Tribunal without any very clear identification of error of law: they read primarily as a dispute with the outcome. The pattern being set, unfortunately Mr Bazini in his oral submissions frequently trespassed into the territory of rearguing the case as it was before the First-tier Tribunal rather than identifying and amplifying on any specific error of law pleaded in the Grounds.

20. It is convenient to address the Grounds by reference to the sub-headings therein.

21. GEN 3.2 – paragraphs 3-9. Paragraphs 3 and 4 identify the Judge's findings at paragraphs 11-13 of the Decision, and the reasoning at paragraph 19; paragraph 5 then pleads that the Judge's finding that the Appellants can begin to fend for themselves with the support of their mother "*is speculative and not based [on] the evidence before him*". This submission is then supported by highlighting aspects of the Appellants' circumstances and the evidence before the First-tier Tribunal: in particular paragraph 6 emphasises the finding that the Appellants are being abused by their aunt "*and suffered from mental health illnesses*", and paragraph 7 criticises the Judge's findings that no evidence had been submitted as to why neither of the Appellants could be capable of finding work given the medical reports.

22. GEN 3.2 requires a decision maker to give consideration to the resultant consequences of a decision – "*refusal would result in unjustifiably harsh consequences…*". Necessarily this is a forward-looking assessment. The Tribunal in a number of spheres is used to evaluating the likelihood of future events: it does so by evaluating available evidence with regard to the past and the current circumstances, and using its skill and knowledge as a specialist Tribunal to draw inferences from established facts. It is to be recalled that the burden of proof in this regard was on the Appellants.

23. The Grounds are ill-conceived insofar as they are premised in significant part on the notion that the Judge had accepted the medical evidence at face value. The Judge found that little value was to be attached to the letters from a local doctor for the reasons identified at paragraph 17. There is no specific challenge to the Judge's reasoning in this regard raised in the Grounds. Accordingly, the Grounds are falsely premised in submitting that the Judge accepted that the Appellants suffered from mental health illnesses and in particular PTSD (Grounds at paragraphs 6 and 7).

24. In such circumstances the Judge's finding at paragraph 15 – "*No sensible explanation has been given as to why neither of [the Appellants] would be capable of finding work in helping to support themselves*" – is no more than a recognition that the Appellants had not discharged the burden of proof of showing, on a balance of probabilities, that they might not be able to support themselves. This did not involve any element of speculation on the part of the Judge; rather, it was more by way of an observation on the quality of the evidence before the Judge (cf. paragraph 5 of the Grounds).

25. For the avoidance of any doubt, paragraph 9 of the Grounds does not, in my judgement, disclose any error of law. The mere fact that the Appellants

would have been closer to the age of 18 if the appeals had been processed more quickly does not in any way invalidate the Judge's assessment of the evidence that was before him, and the circumstances that pertained, at the time of the hearing.

26. Article 8 – paragraphs 10-12. In my judgement these paragraphs amount to no more than a repeat of the submissions advanced on behalf of the Appellants before the First-tier Tribunal, and a pleading that the Judge reached the 'wrong' conclusion. The Judge plainly had it in mind that the Appellants were not well treated by their aunt. However, the Judge's reasoning was informed by the Appellants having failed to show that they could not begin to fend for themselves with the financial and emotional support of the Sponsor: it cannot be said that the Judge disregarded the 'Abuse' (as per the sub-heading between paragraphs 10 and 11). The pleading in the Grounds in this regard is essentially wrongly premised: the Judge was not striking a simple balance between public interest and a continuation of a situation of abuse.

27. Other Article 8 matters: Medical – paragraph 13. This Ground repeats the error of pleading that the Judge accepted the Appellants' medical condition.

28. Other Article 8 matters: Impact on Sponsor/family life – paragraphs 14-16. Paragraph 14 contains a factual error: the Appellant fleeing Uganda due to her sexuality was not what had led to the break-up of the family unit. It was not until 2008 that the Sponsor fled Uganda; she had left her children in 2000. Contrary to the pleading in paragraph 15, the Judge expressly recognised that maintenance and accommodation was not in dispute – see Decision at paragraph 13. In any event, in my judgement it is quite simply not the case that the Judge has failed to have regard to all relevant matters when evaluating Article 8 in its widest sense. There is no merit in the pleadings here which are, again, little more than an attempt to re-put the case.

29. For the avoidance of any doubt I have noted Judge Norton-Taylor's observation in granting permission to appeal that it seemed to him "*somewhat extraordinary*" that it had taken so long for the appeal is to be heard by the First-tier Tribunal. Be that as it may, there is nothing in such delay that impacts on the analysis above. In this context I also have in mind the references to delay made in the Grounds at paragraphs 9 and 16. Jurisprudence in respect of delay in decision-making and the impact upon Article 8 has focused on the position for in-country applicants: it is recognised that such delay may typically have two impacts – (a) the passage of time may have strengthened the quality of private/family life established in the UK, and (b) the lack of action on the part of the immigration authorities may detract from the weight to be accorded to any argument focused on the imperative of maintaining effective immigration

control. Neither of such matters apply in the case of an out-of-country applicant.

30. As adverted to above, and for completeness, I note that at times Mr Bazini's submissions sought to reargue aspects of the case below, and in doing so went beyond the scope of the written Grounds.

31. It was argued that the Judge had been wrong to marginalise the weight to be accorded to the testimony of Ms Burungi in respect of her visit to the Appellants: however, not only is there no such pleading in this regard, and not only is it difficult to see that there is any materiality in any possible error given that the Judge in any event accepted that the Appellants were not well treated, in my judgement there is nothing impugnable as being an error of law in respect of the Judge's reasoning in this context at paragraph 12 of the Decision.

32. Mr Bazini also sought to articulate submissions in respect of the Judge's observations on the medical letters. Again, this was beyond the scope of the written Grounds. In so far as Mr Bazini sought to rely upon references in the medical letters to "*medical tests, counselling and medications*", it is to be noted that the medical letters themselves offered no meaningful detail of the nature and type of counselling, and did not identify the prescription of any specific medication. The witness statement of the First Appellant did not mention any medical input at all; there was no witness statement from the Second Appellant; the Sponsor's witness statement whilst referring to "*counselling and medication*" (paragraph 28) offered no further detail. In all the circumstances it seems to me that even if this matter had been raised in the written Grounds there was no real basis for impugning the conclusion that the medical letters were of "*limited value*" (paragraph 17). Further in this context it is be noted that the Judge observed that at least in some part the contents of the medical letters did not appear to be consistent with other aspects of the evidence: see paragraph 18. Procedurally – because the matter was not raised in the Grounds – there is no argument that can avail the Appellants here; in any event there does not appear to be any argument of substance that might have availed them.

33. In all the circumstances I conclude that the Appellants have not identified any error of law in the Decisions of the First-tier Tribunal: their challenges fail accordingly.

Notice of Decisions

34. The decisions of the First-tier Tribunal contained no material error of law and accordingly stand.

35. Each of the appeals remains dismissed.

Ian Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

14 January 2024