



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003259
First-tier Tribunal No: HU/57288/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

14th February 2024

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Banyana Kgotso Tshiamo
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr S Hingora, of Counsel, instructed by Siddique Solicitors.
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 6 February 2024

DECISION

1. The appellant, a national of Botswana, born on 10 April 1986, appeals against a decision of Judge of the First-tier Tribunal Sweet (hereafter the “judge”) who, in a decision promulgated on 17 June 2023 following a hearing on 13 June 2023, dismissed her appeal on human rights grounds (Article 8, private and family life) against a decision of the respondent of 1 October 2022 to refuse her application of 18 November 2021 for leave to remain on human rights grounds.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Hollings-Tenant.

The judge's decision

3. It was accepted by Mr Hingora before the judge that the appellant could not succeed under the Immigration Rules, whether under para 276ADE(1) or Appendix FM.

4. The judge summarised the submissions of Mr Hingora at para 5 which set out succinctly the issues that were before him. Para 5 of the judge's decision reads:

"5. The only issue was Article 8 ECHR outside the Immigration Rules. Reliance was made on the credible evidence of the witnesses, and the fear of gender-based violence (GBV) in Botswana, which the appellant might face. She had witnessed and experienced abuse from her father, and this was a tight family unit in the UK, where she lived with her mother and step-father. She provides support, both practical and emotional, to her mother and step-father on a daily basis, and this is family life beyond normal emotional ties. It was accepted that there was the need for immigration control in the proportionality assessment, but the other factors outweighed that requirement."

5. The judge accepted that the appellant provides emotional and practical support to her mother and step-father but did not accept that there was evidence of family life beyond normal emotional ties between adults. He noted the evidence of the medical conditions of the appellant's mother and step-father but found that their health conditions were not such that they could not be met by the medical and social care services of the United Kingdom. He gave his reasons in two brief paragraphs which read as follows:

"7. It is accepted that the appellant is providing emotional and practical support to her mother and step-father, who married in December 2019. Her step-father, David Quigley, a British citizen, born on 25 May 1941, suffers from medical conditions of cataracts, hypertension and prostate issues, as set out in the GP letter from Dr Manisha Peehal, dated 11 November 2021. There is a further GP report from Dr Sarah Dixon, dated 10 November 2021, and her mother appears to suffer from knee and back issues according to the occupational health report (Dr Sandra Wilkins) of 17 January 2023.

8. The issue in this case is whether it is a breach of the appellant's Article 8 ECHR rights if this appeal was refused. I do not accept that there would be a breach. The appellant came to the UK as a visitor. Her claim to face GBV on return to Botswana has not been borne out by any separate claim for asylum. Indeed, it appears that the appellant's visit to the UK may have been driven by her wish to stay in the UK on arrival. Her mother and step-father's health conditions are not such that they cannot be met by the medical and social care services of the UK. It was submitted that her mother's employment (as a care and support worker) could only continue with the care provided by the appellant to her step-father, but as stated, this can be provided by health and social care services of the UK. Nor do I accept that there is evidence of family life beyond normal emotional ties between adults."

The grounds

6. The grounds, in summary, are as follows:

- (i) The judge failed to have regard to the following evidence that was before him:
 - (a) the appellant's evidence in her witness statement of the extent to which she cares for her step-father;
 - (b) the evidence in the witness statement of the appellant's mother wherein she had confirmed her emotional dependency on the appellant due to, inter alia, being vulnerable after having had two abusive marriages and her forgetfulness and reliance upon the appellant for emotional and physical support; and
 - (c) the letter from Dr Manisha Peehal (AB/104) and the letter from Dr Sarah Dixon (AB/102) which expressly referred to support provided by the appellant to her step-father.

- (ii) The judge failed to give reasons as to why he found that there was no evidence of family life.
- (iii) There was no clear indication in the judge's decision that he had adopted a 'balance sheet' approach to the question of proportionality or considered the factors set out in section 117B of the 2002 Act.
- (iv) It is not clear what weight the judge had attached to his finding that the appellant provides emotional and practical support to her mother and step-father who suffer from various medical conditions.

Submissions

7. Mr Hingora submitted that it was incumbent upon the judge to give reasons for his finding that the appellant did not enjoy family life with her mother and stepfather. He submitted that paras 7 and 8 of the judge's decision are incredibly short.
8. Mr Hingora submitted that there was substantial oral evidence from the appellant and her step-father of the support that the appellant gives her stepfather. However, I reminded Mr Hingora that there was no mention of any oral evidence in his grounds which only referred to the written evidence from the appellant, her mother, Dr Patel and Dr Dixon. I informed him that, if the grounds had mentioned oral evidence, I could have requested him to provide his notes of the evidence and/or requested a transcript of the evidence at the hearing before the judge and that it was too late for him to contend that the judge had failed to take account of the oral evidence. Mr Hingora did not object.
9. Mr Hingora referred me to the last sentence of the first paragraph of the letter dated 10 November 2021 from Dr Dixon (AB/113) which stated that "*[the appellant's] support enables [the appellant's mother] to continue to work otherwise she would need to stay at home to support her husband*" and the penultimate sentence of the letter dated 11 November 2021 from Dr. Peehal (AB/115) which explained the medical condition of the appellant's stepfather and then stated "*[The appellant's stepfather] is supported by his wife and step-daughter, [the appellant]. [The appellant's] support is very valuable to [the appellant's step-father]*".
10. Mr Hingora submitted that the judge did not carry out a 'balance sheet' approach at paras 7 and 8 of his decision. This undermines his assessment almost entirely. He asked me to find that the judge had materially erred in law and, in view of the fact that there was an insufficient basis upon which to make fresh findings of fact, he asked me to remit the appeal to the First-tier Tribunal for a fresh hearing.
11. Ms Everett relied upon the respondent's Rule 24 response. Whilst she said that she accepted that the judge's decision was brief, she submitted that neither the appellant nor her mother had given evidence in their witness statements of their relationship with each other. Their witness statements were mainly about the conditions in Botswana and not about what the appellant does for her stepfather. She submitted that it was therefore difficult for the judge to make detailed findings on family life given the limited evidence that was before him. In her submission, the two letters to which I had been referred by Mr Hingora were not relied upon to establish the nature of the relationship between the appellant and her stepfather. They merely state that she helps her stepfather.

12. In Ms Everett's submission, the bulk of the evidence in the appellant's application and appeal concerned the fact that she did not wish to return to Botswana because she feared that she would face difficulties there and not that the decision would interfere with her family life in the United Kingdom.
13. In reply, Mr Hingora referred me to paras 3-4 and the last sentence of para 5 of the witness statement of appellant's mother which summarised the abuse that the mother had suffered in Botswana. This was evidence of her particular vulnerabilities. Although not expressly stated, she was trying to convey that the appellant's assistance given the family's experience was important to her. This evidence went 'hand-in-hand' with the appellant's evidence about her protection case. In his submission, these were the factors that should have been taken into account in the proportionality assessment.

ASSESSMENT

14. Whilst I acknowledge that the judge's decision is brief, the fact is that the evidence before him was very limited, for the following reasons:
15. I do not accept Mr Hingora's submission that the contents of the letters from Dr Peehal and Dr Dixon contain any evidence to show that the appellant enjoyed family life with her step-father. At most, Dr Dixon says that the appellant's support to her step-father enables her mother to continue to work and Dr Peehal states that the appellant's support is very valuable to her step-father. There is therefore no substance in the ground summarised at my para 6(i)(c).
16. Turning to the ground summarised at my para 6(i)(a), the appellant's evidence in her witness statement of the extent to which she cares for her step-father is set out in two sentences at para 5 which read: "*I am taking care of my step-dad. I accompany him to shops, surgery, church and radio club meetings*". Not only was there no further detail, this evidence says nothing (or hardly anything) of her relationship with her stepfather.
17. In relation to the ground summarised at my para 6(i)(b), the appellant's mother focused on her own experiences in Botswana and the general situation there at paras 3-4 of her witness statement. There is simply nothing in this part of her witness statement which amounts to evidence of her emotional dependence on the appellant.
18. In the last sentence of para 5 of her witness statement, the appellant's mother said: "*... if [the appellant] cannot be given the chance to remain, it will exacerbate my health because I am going through anxiety and depression which has now affected my memory*". On any reasonable view, this is not evidence of the relationship between the appellant and her mother.
19. Mr Hingora submitted that, taking paras 3-4 and last sentence of para 5 of the witness statement of the appellant's mother together, the appellant's mother was trying to say that the appellant's assistance was important to her because of her particular vulnerabilities. Mr Hingora was essentially submitting that the judge erred by failing to infer from paras 3-4 and the last sentence of para 5 of the mother's witness statement that the appellant and her mother enjoyed family life. There is quite simply no basis upon which the judge could have legitimately drawn such an inference. He would have been speculating if he had done so.

20. For the reasons given above, the grounds as summarised at my paras 6(i)(a) and (b) are devoid of substance.
21. The brief reasoning in the judge's decision reflects the fact that there was very limited evidence before him of family life. In my judgement, he gave adequate reasons for his decision.
22. The ground summarised at my para 6(iv) above ignores the judge's finding that the health conditions of the appellant's mother and step-father were not such that they could not be met by the medical and social care services of the United Kingdom.
23. The mere fact that the judge did not adopt a 'balance sheet' approach does not mean that he erred in law. I have rejected the other grounds and Mr Hingora's other submissions. Accordingly, I have concluded that the judge did not err in law in his assessment of proportionality, notwithstanding that he did not adopt a 'balance sheet' approach.
24. Permission to appeal to the Upper Tribunal should not have been granted. On any reasonable view, the grounds were unarguable.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of any error of law sufficient to require it to be set aside.

Signed
Upper Tribunal Judge Gill

Date: 12 February 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is **7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email