IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003420/
UI-2023-003421
First tier number: HU/59901/2022/
HU/59903/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 22nd of February 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

BDE and MDE

(ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr Timson
For the Respondent: Mr Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 12 January 2024

DECISION AND REASONS

1. The appellants, born on 25 December 2006 and 15 August 2005 respectively, are citizens of Eritrea. They appealed to the First-tier Tribunal against decisions of the Entry Clearance Officer dated 9 December 2022 refusing them entry clearance to the United Kingdom on the basis of family life with the sponsor, who both parties accept is their uncle. The First-tier Tribunal dismissed the appeals and the appellants now appeal, with permission, to the Upper Tribunal.

2. There are two grounds of appeal. First, the appellants contend that the judge made inadequate findings on material issues. At [16] the judge found that the appellants and sponsor had provided insufficient evidence regarding their mother who it is claimed is missing and also who looked after the appellants after she disappeared in the period March 2018 – May 2021. The grounds query in what way the evidence was inadequate and assert that the judge had 'affidavit evidence and …evidence from a Court recognising that the mother had gone missing' but upon which the judge had made no findings.

3. The problem for the appellants is that the judge has acknowledged the evidence showing that the mother went missing but that was not the element of the evidence which concerned him. The judge found there was a period of 3 years when the appellants appeared to have been on their own, their mother having disappeared, and at ages when it was not credible that they would have been able to care for themselves. The judge did not find it credible [18] that the appellants at such young ages would have made their own way to and then crossed the border into Sudan; indeed, there was no evidence to explain how they had done so. In my opinion, these were entirely legitimate concerns and the judge was not arguably wrong in law to conclude that 'serious doubt' was cast 'on the merits of the appeal' by the failure of the evidence to address this part of the account. The evidence cited in the grounds of appeal does not answer any of these questions. It was for the appellants to provide in their evidence a coherent narrative account of relevant past events. It was not for the judge to say how the appellants might have filled the gaps in that account.

4. Secondly, the appellants complain that the judge erred in law by finding that it was a requirement of the Immigration Rules that the appellants should have lived with the sponsor. The parties agree that there is no such requirement in paragraph 319X of the Rules.

5. The ground is without merit. At [19], the judge found that there 'was a lack of evidence to suggest that the sponsor has ever resided with the appellant, this again undermines the claim/appeal'. The judge's statement is admittedly a little cryptic but I do not accept that it comes close to indicating that he believed that past cohabitation of the sponsor and appellants was a requirement of the Rules; had the judge believed that, I find that he would have said so. I understand the judge's remark to mean that his concern over the 'missing years' in the appellants' narrative is deepened by the fact that it is proposed that the appellants should travel to settle in a foreign country with a relative with whom they

not at all familiar. Again there is nothing irrational or perverse in the judge's concern.

6. In the circumstances, the appeals are dismissed.

Notice of Decision

The appeals are dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 16 February 2024