



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004645

First-Tier Tribunal No: HU/60449/2022
LH/03264/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 25th April 2024**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**HS
(ANONYMITY ORDER MADE)**

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr BN ('the Sponsor')

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 8 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant, BN and SN are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, BN or SN 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. In a decision promulgated on 22 December 2023 the Upper Tribunal set aside a decision of the First-tier Tribunal which dismissed the Appellant's appeal against the refusal of her application for leave to enter the United Kingdom dated 30 December 2021.

2. Directions were given for the filing of further evidence and the matter comes back before me today for the purposes of a Resumed hearing to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.
3. The Appellant was represented previously but on 26 March 2024 correspondence was received from the Sponsor confirming they are acting in person. The Sponsor in fact represented the Appellant at the earlier hearing before the Upper Tribunal.
4. The decision under challenge is dated 25 November 2022 which refused an application for entry clearance under the Family Reunion provisions of the Immigration Rules made on 30 December 2021. The relevant text of the refusal reads:

On 30/12/2021 you apply for entry clearance to the UK under the family reunion rules. The relevant Immigration Rules can be viewed on gov.uk here: www.gov.uk/guidance/immigration-rules.

Your application has been considered under 352A of the Immigration Rules as your application is on the basis that you are the partner of your sponsor, who has leave to remain in the UK.

Your application has been considered both under the Immigration Rules, and with reference to the right to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR).

I have considered all the information provided by yourself and your sponsor to decide whether you meet the requirements of the Immigration Rules. The following documentary evidence has been considered as part of your application:

- Passport
- sponsors payslips
- sponsors the bank statements
- sponsors tenancy agreement
- DDC DNA test report dated 26/08/2021
- Appendix 4
- Birth certificate, details unclear
- IOM TB certificate dated 06/01/2022
- money transfer receipts X 22
- visa application form
- sponsors initial interview dated 05/08/2010
- sponsors substantive interview dated 17/08/2010

I have decided you do not meet the requirements of the Immigration Rules for the following reasons:

It is noted that as part of your application, no evidence at all has been submitted in an attempt to show any kind of a pre-flight relationship with your sponsor, be that photographic, documentary, or otherwise. Furthermore, that you have the relationship you claim to have with your sponsor is further doubted when considering that as part of your sponsors initial interview with the Home Office in August 2010, when asked if he was married, the name and date of birth provided of who he claimed to be his wife were completely different to your own. Therefore, that you had a pre-flight relationship with your sponsor is rejected.

In addition to the above, though it is noted that you have submitted a number of money transfer receipts in an attempt to evidence a post flight relationship with your sponsor, despite the fact that he had been in the UK for over 11 years at the point you may decide application, absolutely no evidence of any contact you may have had from during this time has been submitted with the application. Furthermore, as it is already

been found that you have not been able to evidence any kind of pre-flight relationship with your sponsor, it is therefore deemed that you do not have a relationship with your sponsor with which to subsist.

Therefore, due to a lack of evidence I have refused your application as you have not met the parameters set out or points (i,ii,iii, & v) of paragraph 352A of the Immigration Rules.

I have also considered whether there are any exceptional circumstances in your case, including whether refusal would breach Article 8 of the European Convention on Human Rights (ECHR). I have also considered whether there are compassionate factors which may justify the grant of leave outside the rules.

No such circumstances have been highlighted, nor have I identified any.

Given the above, I am not satisfied that your circumstances are such that I should grant leave outside the Immigration Rules.

5. I have within the bundle a witness statement from the Appellant dated 23 January 2024 in which she confirms that she met the sponsor, who has refugee status in the UK, in February 1992 in Yaoundé in Cameroon.
6. The Appellant claims they have been in a relationship since, residing in the Melen district adjacent to the University of Yaoundé 1 where the Sponsor was a student.
7. They have a son together, SN born in July 2006.
8. The appellant states the Sponsor fled Cameroon in August 2010 but has remained in regular contact with both her and their son whilst he has been building a new life in the UK. The Appellant states that the Sponsor has consistently promised that once he settled, he will bring them to the UK to continue their family life.
9. The Appellant states that in 2020 she and the Sponsor planned to reunite in Nigeria for marriage but Covid-19 pandemic and air travel restrictions thwarted their plans.
10. The Appellant claims the separation has caused trauma affected her well-being, and that her son has suffered emotionally and academically due to the absence of a father figure.
11. The Appellant claims the Sponsor has consistently provided financial and emotional support.
12. The Appellant claims she and the sponsor intend to reunite and marry in the UK and to live together as a family for the rest of their lives.
13. The Appellant states it is unreasonable and unduly harsh to deny her the right to join her family, despite clear evidence of the relationship, including the fact they have a child who is in the UK, which is said to be a breach of Article 8 rights protected by the ECHR.
14. I have also seen within the bundle a letter from SN who at the time was 16 years of age. In that he confirms that he has lived with his father, the sponsor, since 6 January 2023, that he claims to have “been like a fish out of water” and describes his experience since he came to the UK without his mother as follows:

“I couldn’t play with my friends again, studies has no meaning to me again. Above all, I feel sick often which is not been my usual self. I am seriously missing my mom. Back home then, I felt my dad was been unfair to us for not inviting us to UK. But now the pains of not having my mom around me is much more greater. I am sincerely begging for my mom to come over to us here I am missing her a lot.”

15. In his witness statement dated 4 October 2022 the Sponsor confirms what he said about his relationship with the Appellant. The statement was written in support of the appeal against the refusal of SN's application as the child of a refugee set out in paragraph 352D of the Immigration Rules. The Sponsor confirms he left Cameroon when SN was 4 years of age.
16. I have also seen a further statement from Sponsor dated 26 May 2023.
17. Mr Bates was able to ask SN a number of questions in cross-examination which he was able to answer, and submissions were made by both Mr Bates and BN, with the assistance of a French African interpreter where required.

Discussion and analysis

18. The Refugee Family Reunion Rules allow a spouse or partner and children under the age of 18, who formed part of the family unit before the sponsor fled their country, to be reunited with the family member who has been granted refugee status or humanitarian protection in the UK. These provisions were set out in paragraphs 352A- 352FJ of the Immigration Rules.
19. Although those provisions have been revoked and replaced by Appendix Family Reunion (Protection) they still require consideration as that was the basis on which the application was refused.
20. The key relationship requirement which led to the refusal is that it is said there was insufficient evidence provided with the application to show an appropriate pre-flight relationship between the Appellant and the Sponsor.
21. The Appellant claims she and the Sponsor met in February 1982. It is not disputed that they are unmarried. It is not disputed they have a son, SN, born in July 2006.
22. The chronology shows the Sponsor left Cameroon in August 2010.
23. There is little other than this chronology in the Appellant's statement although further clarification can be gleaned from the refusal itself and the Sponsor's more recent witness statement dated 26 May 2023.
24. The Sponsor confirms that in his 2010 asylum interview he gave the name of his girlfriend and not the Appellant as he wanted his girlfriend to join him first due to his emotional attachment with her. The Sponsor claims he believed that it would be easier to bring his partner at a later stage as he has a child with her.
25. The Sponsor refers to spending time away from the Appellant and his son and his statement indicates that he more than likely had formed a separate relationship with his girlfriend prior to coming to the UK.
26. I do not find it made out on the evidence that the concerns expressed by the Entry Clearance Officer in relation to the situation which existed prior to the Sponsor coming to the United Kingdom have been shown to lack merit. I do not find it has been established on the evidence that the Appellant had can succeed under the Immigration Rules. It is not made out she was the Sponsor's pre-flight unmarried partner.
27. The refugee reunion guidance indicates that if a person is unable to satisfy the Rules consideration should still be given to whether there are exceptional circumstances sufficient to warrant a grant of leave pursuant to Article 8 ECHR.
28. A change that has occurred since the refusal is that SN is now in United Kingdom. SN attended court was able to answer a number of age-appropriate questions put to him by Mr Bates to ascertain his circumstances, wishes, and feelings.
29. SN had lived with his mother from his birth until the time we came to the UK, aged 16. He will become an adult, aged 18, on 27 July 2024.
30. Mr Bates explored with SN what his wishes and feelings were with regard to whether he would like to go back to live with his mother or remain with his

- father in the UK. SN, after a pause, indicated that if his mother's appeal was refused, he would like to go back to live with his mother.
31. When SN was asked whether there was anything that would stop him going back he indicated that it was his father.
 32. SN's answers were wholly understandable. He clearly misses his mother with whom he was brought up and spent his entire life until he came to the UK and had clearly struggled in adapting to life with his father in the UK.
 33. SN confirmed he is at college studying an engineering course of three years duration. He maintains daily contact with his mother when they speak to each other, but confirmed he was finding his studies difficult especially when he starts thinking about his mum.
 34. SN came to UK January 2023, has completed some exams obtaining maths and English GCSE's.
 35. SN was asked whether, when he turned 18 and was an adult, he would choose to go back to his mother but claimed he would not due to his studies.
 36. There is clearly family life between SN and his mother. The current arrangement means they cannot only continue their family life together by indirect means.
 37. Whilst the decision does interfere with the family life Article 8 is not an absolute right.
 38. Both parents agreed that SN will come to the UK to be with his father. Indeed, SN is recorded as having been frustrated at not being able to come to the UK to join his father previously.
 39. Although SN will be an adult very shortly it is clear he remains in his father's household, is in education, does not live independently, and is still finding his feet in terms of life in the UK, especially without his mother.
 40. I do not find it made out there was anything to prevent SN visiting his mother or returning to stay with her at any time, other than his personal choice.
 41. Other than SN's stated view there was no other evidence, including from the Sponsor, to suggest that the impact of the ECO's decision has resulted in consequences, on their own, sufficient to tip the balance in the Appellant's favour.
 42. Looking at the Welfare Checklist applied by the family courts, this addresses a number of key criteria as follows:
 - i. the ascertainable wishes and feelings of the child concerned (considered in light of his age and understanding)
 - ii. the child's physical, emotional and educational needs
 - iii. the likely effect on the child of any change in his or her circumstances
 - iv. the child's age, sex, background and any characteristics of which the court considers relevant
 - v. any harm which the child has suffered or is at risk of suffering
 - vi. how capable the parents are meeting the child's needs
 - vii. the range of powers available to the court under the Children Act 1989 in the proceedings in question.
 43. So far as the first issue is concerned, SN's ascertainable wishes and feelings are referred to above. He is nearly an adult and clearly demonstrated an appropriate level of understanding of the issues being considered.
 44. There is no evidence that SN's physical and educational needs are not being met or to show the Sponsor is not doing what he can to meet SN's emotional needs.
 45. In relation to the impact on SN of any change in his circumstances, if the application is refused there will be no change. If the appeal is allowed there will

- be a positive change in SN's circumstances as he misses his mother and wishes he could live with her.
46. SN is a male, nearly an adult, who lived with his mother until he came to the UK. No other relevant considerations or adverse characteristics have been pleaded.
 47. There is no evidence from an independent source, such as an independent social worker, or elsewhere, including lay evidence, which shows SN has suffered any harm either with his mother in Cameroon or with his father in the UK. There is no evidence of any physical risk and very little evidence to indicate any emotional or psychological harm if the application is refused. Many children miss their parents and adopt routines to enable them to adapt. That takes time. Whilst the situation prevailing may not be perfect for SN it is not made out that he will suffer harm sufficient to warrant the appeal being allowed, without more.
 48. It is not made out the Sponsor is not capable of meeting SN's needs.
 49. Powers available under the Children Act are not relevant as these are not Children Act proceedings.
 50. Points in favour of the Appellant in relation to human rights balancing exercise include the fact SN is now in the UK was his father, that family life exists between the Appellant and SN, that she was the primary carer of SN until he came to the UK, that SN wishes to return to live with his mother but feels conflicted for the reasons given, and that unless she is able to visit SN in the UK or he is able to visit her in Cameroon the only contact they have is by indirect means, albeit daily.
 51. In favour of the Entry Clearance Officer, that the Appellant has not demonstrated that she is able to succeed under the Immigration Rules, that SN coming to the UK was a matter of choice, that SN could return to live with his mother in Cameroon especially as he is nearly an adult and able to make such choices for himself, that it has not been shown SN could not continue his education in engineering in Cameroon, contact can continue by modern means of communication between any face-to-face visits that may occur, there is insufficient evidence of harm to SN if the application is refused, that Article 8 does not give a person to choose where they wish to live, that the UK has a margin of appreciation in relation to the operation of those who it allows into the UK, the weight to be given to the right of the UK to have an effective and workable immigration control.
 52. In light of the evidence that is available, and having weighed up the competing arguments and interests, I find the Entry Clearance Officer has established that any disruption in the family life that previously existed by maintaining the decision to refuse the application is proportionate.
 53. On that basis I dismiss the appeal.

Notice of Decision

54. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 April 2024