



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

Case Nos: UI-2023-004755  
UI-2023-004756  
UI-2023-004758  
First-tier Tribunal Nos: HU/60229/2022  
HU/60230/2022  
HU/60228/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

26<sup>th</sup> January 2024

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**'ST' (Eritrea)**  
**'TH' (Eritrea)**  
**'DH' (Eritrea)**  
**(ANONYMITY ORDER MADE)**

Appellants

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellants: Ms G Capel, Counsel, instructed by Duncan Lewis Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**Heard at Field House on 8 January 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants and any member of their family, including the sponsor, are granted anonymity. This is because the sponsor has been recognised as a refugee by the respondent and the appellants have been recognised as refugees in Ethiopia, where they currently reside.**

**No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants and members of their family. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. These written reasons reflect the full oral decision and reasons which I gave at the end of the hearing.

### **Background**

2. The appellants, all Eritrean nationals, appeal against the decision of a Judge of the First-tier Tribunal, Judge Suffield-Thompson (the 'Judge') who, in a decision promulgated on 23 August 2023, dismissed the appellant's appeals on human rights grounds against the respondent's decision dated 25 November 2022 to refuse them entry clearance to join the sponsor. The first appellant is the mother of the sponsor and the other two appellants are the sponsor's siblings. The second appellant was born on 1 December 2002 and the third appellant was born on 8 December 2008. The sponsor was born on 2 March 1999 and was a minor when he entered the UK in 2015, as an unaccompanied asylum seeking child. His asylum claim was initially refused but his appeal was successful before the First-tier Tribunal (Judge Moran) in a decision promulgated on 21 November 2016. I pause to observe that Judge Moran did not accept that sponsor was at risk as a result of the religious activities of his parents who were Pentecostal Christians, but instead, the sponsor's asylum claim succeeded because of the risk to him on return to his country of origin, Eritrea, as somebody who had sought to avoid military service and had illegally exited Eritrea.
3. I also add by way of brief background that the sponsor has one other younger sibling who is said possibly to be living in Italy although his whereabouts are unknown. It is claimed that he had previously lived in Libya, in relation to which the appellants seek to criticise the Judge's findings that there was an inconsistency in the evidence, where they said that there was none. The sponsor also has an older sibling, whom it is unnecessary to name, who lives in Israel and with whom the sponsor and the first appellant are or have been in contact, although it is claimed does not remit any monies to the appellants, again something which the Judge did not accept.

### **The Judge's decision under appeal**

4. In her judgment, the Judge set out at §§5 to 7 the issues under appeal. The Judge identified that she was not considering a protection claim as the appellants are outside the UK but was instead considering family reunion in the context of the respondent's recognition of the sponsor as a refugee. However, the appellants did not meet the Immigration Rules (paragraphs 352A-D) and so their appeal was on the basis of the right to respect for family life under Article 8 ECHR. The respondent disputed that family life within the meaning of Article 8 ECHR existed, given that two of the three appellants are adults, the sponsor is an adult and the third appellant, a minor, lives with the first appellant, her mother, as part of a family unit. The respondent disputed that there was real, effective or committed support by the sponsor for the appellants who currently live in Addis Ababa, Ethiopia. Alternatively, the respondent asserted that refusal of entry clearance was proportionate.
5. The Judge found that the appellants are citizens of Eritrea, living in Ethiopia and are biologically related to the sponsor who lives independently in the UK whilst the appellants live in rented accommodation in Addis Ababa (§26). The Judge accepted the respondent's contention that the sponsor's account in relation to family life with the appellants was not credible, as he gave

contradictory and inconsistent evidence. He changed his answers during his oral evidence and said he did not know answers to questions that he should have known. Some of his answers conflicted with those he had given in his asylum application (§34). The Judge did not accept, as credible, the sponsor's claim that he had paid for the appellants' rent and living expenses since 2017 (§36). The Judge noted the sponsor's acceptance that in his culture, it is typically the responsibility of the eldest son to support the family and he was not that eldest son, who lived in Israel (§37). The Judge further concluded at §§38 to 41 that the sponsor's evidence was inconsistent in relation to his relationship with his older brother. His evidence to the Judge was that he last had contact with the older brother when the brother fled to Israel in 2010 and that none of his family members had contact with the older sibling, but in his asylum form, stated that it was his brother was the one who arranged and paid for the sponsor to travel to the UK in 2015, via a friend, but without any direct contact, which the Judge did not find to be plausible. When the Judge asked the sponsor if his mother, the first appellant, had had contact with his older brother, the sponsor said he did not think so, but later in the hearing said that his mother and he talked about everything and so she would tell him if she had heard from either of his brothers. The sponsor claimed that his brother did not have legal status in Israel, but when asked how he knew, if there was no contact, said that he knew because of the general situation of Eritreans in Israel.

6. The Judge found that when the sponsor's brother arrived in Israel, it was documented that he was given six months' leave to remain, renewable every six months so it was highly likely that thirteen years later he would now have some form of legal status. While the sponsor asserted his older brother could not travel outside Israel, the Judge had no idea how the appellant would know this if there were no contact. The sponsor then changed his evidence and said that he had no idea of his brother's situation, but despite this also claimed that his brother was not safe. The Judge concluded that it was highly probable that the sponsor and the eldest brother were in touch and that it was the brother who was the main financial supporter of the appellants. When he was asked whether the same brother had paid for a younger brother to flee to Italy, once again, the sponsor said he had no idea, but the Judge concluded it was likely that the older brother who paid. This was in the context that the sponsor was a minor in the UK and living in foster care at the time and so could not have supported financially his family or the younger brother's travel to Italy.
7. At §45 to 46, the Judge found that, bearing in mind the sponsor's limited financial means as he arrived in the UK aged 15 and was on Universal Credit, it was not plausible that he had sent money to the appellants. Even if he had sent some money this would not have been sufficient to pay for his family's rent bills and other living costs as well as to support himself. The sponsor had not given any details or evidence about what he received as income and what he sent to them.
8. At §47, the Judge recorded that the sponsor was asked about the proof of sending remittances, as he had said that he had sent them via his bank account. When asked why he had not produced evidence, the sponsor said he had been stressed and no one had asked him. The Judge also regarded as inconsistent the sponsors claim to have supported his family since 2019, having told social workers that he had supported them since 2021 (§48). This

also contradicted his other evidence that he was sending money from his Universal Credit before 2021.

9. The Judge recorded an alternative claim of remittance via contacts, which were never sent to the same person, in case this put his family at risk. The Judge recorded that when asked how he knew if the money was received, the sponsor said he did not know (§49). The appellant's dispute that this was the sponsor's evidence.
10. The Judge noted, as important, the lack of contact between the sponsor and his family on his arrival in the UK for two years. Why asked to explain this, the sponsor said he had been busy settling into the UK and learning the language (§50). I note here that the appellants claim that this was not the sponsor's evidence and that he had not contacted them for fear of risking their safety.
11. The Judge was critical of an independent social worker report, relied on by the appellants (§§52 to 54). In particular, the Judge criticised the suggestion that the sponsor was suffering from mental health issues where there was no evidence of that, other than to record the sponsor's narrative. This amounted to an uncritical acceptance of that claim, without any medical expertise. The Judge did not accept, as the report implied, that the sponsor did not have a support network in the UK. She noted his football studies, which involved practices and matches as part of a team. She noted little evidence of contact between the appellants and sponsor other than a small number of 'voice notes' and 'emojis' on a communications application. This contrasted, the Judge observed at §56, with the first appellant's claim of speaking to her son four times a week. The Judge also considered, at §59, the report's references to religious persecution and imprisonment of the first appellant's husband, of which there was no evidence beyond the appellants' claimed narrative. The report had similarly accepted the narrative, despite inconsistencies, in relation to the eldest son in Israel, (see §61).
12. The Judge also noted an inconsistency as to whether the sponsor claimed that his younger brother had been trafficked in Libya. The appellant's also dispute the accuracy of this.
13. At §64, the Judge referred to the contact and emotional support between the sponsor and the appellants, but also found that they had not lived together as a family since 2014 and the sponsor now had his own life here as a 23-year-old man with his own accommodation, and a role as a professional footballer. The Judge concluded, by reference to the well-known authorities of Rai v Entry Clearance Officer, New Delhi [2017] EWCA Civ 320 and Kugathas v SSHD [2003] EWCA Civ 31, that there was nothing over and above the usual family ties and consequently she rejected the existence of family life for Article 8 purposes. She nevertheless considered the question of proportionality (§66 onwards). The Judge assessed the evidence as to the family situation in Addis Ababa.
14. The judge concluded at §78 that it was not 'unduly harsh' for the appellants to remain in Ethiopia where they had refugee status. (I bear in mind that this is not an appeal against deportation). The Judge also considered the proportionality of the refusal of leave to enter for each of the three appellants in turn. The Judge reminded herself of section 117B of the Nationality,

Immigration and Asylum Act 2002 and concluded that there were no exceptional circumstances, (§102). She dismissed all of the appeals.

### **The appellants' grounds of appeal and the respondent's concessions**

15. I turn to the grounds of appeal, which were renewed upon initial refusal, and I refer to them as recorded in Ms Capel's skeleton argument and her numbering.
16. At the beginning of the hearing, Ms Everett made formal concessions that the Judge had erred in law; that those errors were material; and the consequence was that the Judge's decision should be set aside without preserved findings of fact. Ms Everett conceded the errors in relation to grounds 1(a) to 1(d) as numbered by Ms Capel. Whilst she did not make concessions in the remainder of the grounds 1(e); and 2 to 6, she was content that it was unnecessary for me to make decisions on the remainder of the grounds and Ms Capel was also content, provided that the Judge's decision was set aside, without preserved findings of fact. I concluded that the concessions were properly made and that it would not be appropriate to preserve any of the Judge's findings, as they undermined the assessment of the sponsor's credibility. A remaking judge will need to consider all of the evidence in the round, including the weight, if any, to be attached to the independent social worker report and any additional new evidence.

### **Grounds in respect of which there were formal concessions**

17. Ground 1(a) - the Judge had erred at §48 in concluding that the sponsor was inconsistent about when he had begun to support the appellants financially. The independent social worker report did not record that he had been supporting them since 2021, rather, in 2022, he had been supporting them for the last two years.
18. Ground 1(b), the sponsor had included in his witness statement dated 24 November 2021, about sending money via the 'hawala' system, which the Judge had failed to consider, when assessing the plausibility of informal money transfers.
19. Ground 1(c) - the Judge had misrecorded the evidence at §49 that when asked how, if the sponsor never contacts people transferring the money in person, the sponsor knew that the money had been sent, the sponsor said that he did not know. The sponsor's evidence was that he checked with family members.
20. Ground 1(d) - the Judge erred at §51 when concluding that the appellants' representative had speculated about why the sponsor had not contacted family members for two years, when the sponsor had given a reason in his witness statement dated 19 January 2023.

### **One other ground**

21. Grounds 1(e) (duplicate). The first ground 1(e) contends that the Judge had erred at §63 in recording that the sponsor had never mentioned that his

younger brother had been in Libya, whereas the sponsor did, on his witness statement dated 25 November and also reflected in his account to independent social workers. I am content, without any concession, that that also amounts to a material error.

22. In terms of the remainder of the grounds, in the interest of proportionality, and where it was accepted that the Judge's decision was not safe and her findings could not be preserved, and with the agreement of the representatives, I have made no decision on whether they disclose errors of law. They are set out in Ms Capel's skeleton argument, should a remaking Judge regard them of assistance, but I express no view on them. I emphasise that in not making a decision on these grounds, this should not be seen as expression of a view on their merits, particularly where Ms Capel was willing to make detailed submissions. I have only focussed on the grounds on which there were concessions and one more straightforward ground, in the interests of proportionality.

### **Disposal of appeal**

23. I also canvassed with the representatives how I should dispose of the remaking of the appeal. I refer to §7.2 of the Senior President's Practice Statement and I am satisfied that the nature and the extent of fact-finding, as both representatives accepted, means that it is appropriate that I remit matters back to the First-tier Tribunal. That should be by a judge other than Judge Suffield-Thompson.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside.**

**I remit this appeal to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.**

**The anonymity directions continue to apply.**

**J Keith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**25 January 2024**