IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000559
UI-2024-000560
UI-2024-000561
First-tier Tribunal Nos:
HU/53829/2023
HU/53833/2023
HU/53835/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27th of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

DBM
JM
MM
(ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Schymck of Counsel, instructed by Luqmani Thompson & Partners
For the Respondent: Mr Parvar, Senior Home Office Presenting Officer

Heard at Field House on 12 June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

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

DECISION AND REASONS

Introduction

1. The appellants are citizens of the Democratic Republic of Congo (DRC) who applied on 26 October 2021 for entry clearance for family reunion with the sponsor, who is the brother of the first and second appellants and the father of the third appellant. The respondent refused those applications on 24 February 2023. The appellants' appeal against those decisions was dismissed by First-tier Tribunal Judge Peer (the judge) on 18 December 2023 after a hearing on the 8 December 2023.

2. Permission to appeal was granted by the First-tier Tribunal, on 18 February 2024 on the basis that it was arguable that the judge had erred in law in giving inadequate reasons for finding that the third appellant did not form part of the sponsor's pre-flight family; inadequate reasons for finding that the first and second appellants did not form part of the sponsor's pre-flight family and in finding no family life between the sponsor and the third appellant including in applying principles concerning adults, to the third appellant's relationships with the sponsor.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and whether the decision needed to be remade. Although a Rule 15 (2A) application was made, it was agreed that this was not relevant to the error of law hearing.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions by Mr Schymck for the appellant it is argued, in summary, as follows. The first ground argues that the judge gave inadequate reasons for finding that the third appellant did not form part of the sponsor's pre-flight family, it being argued that the judge failed to properly explain at [42] why they had discounted the fact that the sponsor did mention the third appellant at question 11 of the Statement of Evidence (SEF) asylum interview and concluded that despite this evidence, that the third appellant was not part of the sponsor's pre-flight family.

5. Although the respondent argued that this was only a passing reference and did not mention the child by name, the appellant was not asked directly about his family, it being argued that the fact that the appellant made a passing reference strengthens the contention that this reflects the genuine reality at the time the sponsor left the DRC. It was argued that the judge did not explain why this reference to the third appellant, which given its context is a strong indication that the third appellant was a part of the sponsor's family unit, was dismissed. The judge's comments about the absence of other evidence does not explain why the evidence in the SEF interview was deemed insufficient.

6. The second ground contends that the judge at paragraph [43] relied on their earlier reasoning in relation to the third appellant to also conclude that the first and second appellants did not form part of the sponsor's pre-flight family unit. It was argued that those earlier reasons applied specifically to the third appellant without any additional specific reasoning in relation to the second and third appellants; the first and second appellants did not rely on the Immigration Rules and although the judge had relied on the lack of any photographs of him with the third appellant, that did not apply to the first and second appellant. It was argued that there was no real reasoning why the judge reached their conclusion at [43].

7. In terms of ground 3, it was argued that the judge erred in finding no family life between the sponsor and the third appellant and had erroneously applied principles concerning adults to the third appellant's relationship with the sponsor at [55]. It was submitted that the judge was wrong to dismiss the prospect of family life between the sponsor and the third appellant simply because they had not seen each other for many years, even with the limited evidence of financial support available.

8. In a Rule 24 response (which related specifically to the third appellant) and oral submissions from Mr Parvar it is argued as follows:

9. It was argued that the grounds amount to no more than a disagreement. The judge had set out the relevant issues and the judge, at [40] had noted the reliance on the Home Office Guidance on family reunion and in particular the statement that 'The fact that family members have been mentioned in the asylum claim is a strong indication that they formed part of the pre-flight family unit'. The judge noted, at [40] that the sponsor's SEF records an answer to a question about working in DRC that 'I was doing some trade selling things in order to make a living and help my mum, my child and my two siblings' The judge also reminded themselves, as cited in the Home office guidance that the extent and nature of any support from other family will be relevant as will the existence of any relevant cultural or social traditions, and the judge noted the evidence that the appellants' skeleton set out that most Congolese families live in a compound including immediate and extended family and that it would be natural for the sponsor to become head of the family upon his father's passing.

10. Mr Parvar argued that the case law reminds that reasons need not be extensive, as long as they make sense and submitted that the judge carried out a holistic examination on all the evidence and it was not the case that the appellant can rely on this particular mention in the SEF and expect this to be determinative. The determination goes on to consider very substantial points in relation to photographs, evidence of financial support, and oral evidence, with the judge making quite damaging

findings. At [42] the judge found that there was a lack of any real detail or specificity about the third appellant being part of the pre-flight family. In the light of those findings, Mr Parvar argued that there was no need to the judge to take the approach suggested in the grounds of appeal. Ultimately the wight to be attached to the evidence was a matter for the judge. The judge was clearly aware of the SEF and had provided more than adequate reasons and had properly directed herself, including that the approach can be flexible, and the judge had regard to the difficult circumstances that appellants found themselves in.

11. In relation to paragraphs 11 and 12 of the grounds and the judge's finding at [49] that there was no evidence of family life between the sponsor and the third appellant, it was noted in the grounds that the third appellant is a 10 year old child. Mr Parvar submitted that this was no more than a disagreement and the appellant rearguing their case before the Frist-tier tribunal. There was nothing to suggest the judge wasn't aware of the third appellant's age and the judge made very nuanced findings and criticisms of the sponsor's oral evidence. Contrary to the grounds of appeal, the judge at paragraph [33] highlighted inconsistencies in the evidence. Paragraphs [32] to [35] of the decision demonstrate the lack of awareness of the circumstances of the third appellant and are relevant to the judge's finding on family life.

12. Although the grounds of appeal asserted that it was never confirmed at any stage in the hearing that the appellant and the sponsor speak with the appellant together which suggested that the discrepancies between the sponsor and his wife set out at [33] were not blatant contradictions, Mr Parvar argued that the opposite is the case and this was recorded at [31], in terms of the sponsor and his wife speaking to the appellants together.

13. In terms of **Mundeba [s55] and paragraph 297(i)(f) [2013] UKUT 0088 (IAC)**. Mr Parvar submitted that the judge identified the authority at [19] and considered this and properly applied the rationale, including hat the judge at [53] identified that there was no evidence of abuse, no evidence of any unmet needs and the judge reached conclusions that the arrangements were relatively stable and the judge found that it was in the appellants' best interests to remain in DRC, which was open to the judge.

14. Whilst the grounds at paragraph 15 argued that the judge's reasoning was inadequate because the third appellant is a minor and the first appellant is not in employment, Mr Parvar submitted that the judge's findings, at [53] that there was no evidence as to work circumstances and no evidence the first appellant was not capable of working, are unchallenged. The judge dealt with best interests at [52] and did not accept the claim that the third appellant had no relationship with their biological mother.

15. It was argued that the final points in the grounds as to the bond between parent and child were not well particularised and in any event, it was the very clear observations and findings of the judge that the evidence did not properly substantiate that there was family life. The judge was aware of the biological relationship and was entitled to take into account the lack of detail in relation to contact or day to day circumstances and the judge's view that there was no evidence of real, effective or committed support. The judge had to make findings on all the evidence, particularly as in this case, where the sponsor and the third appellant had been separated for a substantial period of time.

16. In any event, even if the judge was wrong about family life, the judge went on to make proportionality findings and it was argued that there was no real issue in the grounds with the reasoning on proportionality.

Conclusions – Error of Law

17. Although the First-tier Tribunal undertook a very detailed assessment of the evidence, the judge's approach to the evidence of pre-flight family and the significance of the biological relationship of father and child, which was accepted, does disclose errors, which I consider to be material.

18. Notwithstanding that the judge had noted that the sponsor referred to his family in his SEF interview and that the judge had reminded herself of the relevant respondent's guidance, the judge's approach, particularly at paragraph [42] is problematic.

19. The judge found as follows:

> "There is little real evidence beyond the assertions of the sponsor and his wife as to any pre-flight family unit including the third appellant. The written and oral evidence did not contain much detail as to circumstances at that point in time. The photos provided are of limited probative value as to this issue for the reasons set out above. There are in particular no photos of the sponsor with the third appellant, his daughter, at all. The written statements clearly set out that the sponsor's focus was to have family reunion with his wife and brothers as soon as he had sufficient funds rather than any focus on the third appellant's situation. Even accepting the cultural tradition of living in a compound with others, the evidence lacks any real detail or specificity as to the third appellant being part of a pre-flight family unit with the sponsor. I am required to assess the evidence available to me and consider whether the burden of proof which rests on the appellants is met to the necessary standard which is the balance of probabilities standard. I consider my approach can be flexible and note that the Home Office Guidance refers to the difficult context that refugees can find themselves in with regard to periods of separation and securing

> evidence. Notwithstanding that, I have concluded that the third appellant has not demonstrated to the necessary standard that she was part of the sponsor's pre-flight family unit as asserted."

20. It was not in dispute before the First-tier Tribunal that the third appellant is the sponsor's biological child. In those circumstances, whilst the judge identified what gaps she considered to be in the evidence, including that there were no photographs of the sponsor with the third appellant at all and that the focus of the evidence had been on family reunion with his wife and brothers, significantly there was no adequate reasoning, and indeed no reasoning at all, as to why the judge rejected the evidence in the SEF where the sponsor clearly referenced both his child and his siblings.

21. The judge has provided inadequate reasons for those findings at [42] that the third appellant had not established that she was part of the sponsor's pre-flight family unit. Whilst such is not determinative and it might have been open to the judge to reject that SEF evidence, in the context where the sponsor is a recognised refugee and where, as the judge acknowledged at [40], the respondent's policy guidance indicates that mention of preflight family in the asylum claim is a strong indication that they formed part of the pre-flight family, it was incumbent on the judge to explain why that 'strong indication' was rejected, if that was the judge's finding.

22. Although, at [41] the judge set out the respondent's submissions that the SEF is a passing reference which was insufficient especially as the third appellant was not referred to by name, again given the mention in the asylum claim and the respondent's policy that such is a strong indication that they formed part of the pre-flight family unit, the judge needed to do more than recite the respondent's submissions.

23. If the judge accepted those submission of the respondent, the judge was required to say so and to give reasons why the sponsor's evidence in his asylum claim was rejected. The context in which this evidence was provided by the sponsor during his asylum claim, spontaneously at interview when being asked about work in the DRC, could be said to be potentially more corroborative of the genuineness of the pre-flight arrangements and such context equally could be said to have provided an explanation for the lack of specificity in that evidence, including in terms of the third appellant's name, as the sponsor was not being asked about his family and was not asked any follow up questions about his family.

24. In those circumstances, even allowing for the difficulties identified with the sponsor's oral evidence and that of his wife, the judge's consideration does not indicate that she considered the SEF evidence in the round, prior to reaching her conclusions.

25. Such error is in my view material, as I cannot be satisfied that the outcome of the appeal would definitely have been the same, had the judge reached findings on the SEF evidence.

26. The error identified in Ground 1, in terms of the approach to the SEF evidence, infects the safety of the decision as a whole, including the judge's approach to the credibility of the oral evidence and written evidence before her.

27. In addition, the judge's reasoning for finding that the first and second appellants did not form part of the pre-flight family unit is also inadequate for the same reason. Further, at [42] whilst the judge relies on the absence of photographs of the third appellant, that was not the case in relation to the first and second appellant and the judge therefore needed to do more than simply rely on their findings at [42] in rejecting the evidence that the second and third appellant were part of the preflight family, which in any event was not determinative as the second and third appellant were considered only under Article 8 outside the Immigration Rules.

28. The argument that the sponsor prioritised the applications for the first and second appellants, cannot be properly relied on by the judge as an adequate reason for finding that they did not form part of the sponsor's pre-flight family.

29. The judge's flawed findings at [42] and [43] contaminate her subsequent findings in relation to Article 8 ECHR in respect of all three appellants.

30. The judge's finding that the third appellant did not have family life with the sponsor, in circumstances where the third appellant is the accepted biological minor child of the sponsor, are unsafe. It is unclear whether the judge gave adequate consideration to the significance and importance of the accepted biological relationship between the third appellant child and her father, or that the judge applied the correct jurisprudence including at paragraph [55]**.**

31. Although Mr Parvar argued that any such error was not material as the judge went on to consider proportionality, given that the judge's starting point was that there was no family life, those findings are undermined by the same preceding errors in the consideration of whether the third appellant and her father enjoyed family life and in relation to the judge's consideration of the evidence of the sponsor's pre-flight family.

32. I find therefore that the judge fell into material error and given the nature of that error, a full remaking of the appellants' appeals is required. As to disposal, I have considered the Court of Appeal's decision in **AEB v SSHD [2022] EWCA Cin 1512,** the Upper Tribunal's decision in **Begum**

(Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) and 7.2 of the Senior President's Practice Statements. I am satisfied that the nature and extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Decision:

33. I set aside the decision. The linked appeals are remitted to the First-tier Tribunal, any London centre, other than before Judge Peer.

M M Hutchinson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 June 2024