



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/02697/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 25th March 2015**

**Determination and reasons
promulgated
On 30th March 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

JOEL MADILA

Appellant

and

ENTRY CLEARANCE OFFICER, NAIROBI

Respondent

Representation:

For the Appellant: Mr A Devlin, Advocate, instructed by McGlashan MacKay,
Solicitors

For the Respondent: Mr A Mullen, Senior Presenting Officer

DETERMINATION AND REASONS

- 1.** The appellant is a citizen of the Democratic Republic of Congo, born on 27th March 1995. He appeals against a determination by First-tier Tribunal Judge Doyle, promulgated on 4th August 2014, dismissing his appeal against refusal of entry clearance to join his sponsor in the UK under the Immigration Rules and under Article 8 of the ECHR.
- 2.** The appellant regards his sponsor as his adoptive mother. She is his maternal aunt. An adoption order was made in the Democratic Republic of

Congo (DRC) in 2003, but carries no formal recognition for present purposes.

3. The appellant has a sister, born on 16th June 2002. She stands in the same relationship to the sponsor. The judge dismissed her appeal (OA/02701/2014) against refusal of entry clearance under the Immigration Rules, but allowed it under Article 8 of the ECHR.
4. The grounds of appeal to the UT strike at paragraph 14(k) and (l) of the determination, where the judge drew a distinction between the two appellants because this appellant had attained majority “and because of the paucity of evidence about his circumstances and the nature and extent of his relationship with the sponsor”. At (l) the judge acknowledged that his decision might separate the two appellants before him, but referred to *Bakir* [2002] UKIAT 01176 for the proposition that it would be most unusual for Article 8 purposes to extend the notion of family life to adult siblings. The relationship was not one which could be expected to give rise to a permanent common household, and it was possible to maintain family life between siblings by regular communications and visits. (Those observations appear to derive from the case cited, rather than from the particular facts of this case.)
5. The grounds cite case law (from England and Wales and from Strasbourg) to the effect that family life does not automatically terminate when a child obtains majority; the existence of family life between parent and child depends on the facts; removal of an adult may interfere with his right to respect for his family life with parents and siblings; there is no authority that Article 8 cannot be engaged when the family life is that of adult siblings living together; and each case is fact sensitive. The argument is that the judge failed to analyse the circumstances and to explain why the relationship of the appellant with the sponsor and his sister did not amount to family life.
6. The grounds also argue that the judge failed to take account of the best interests of the child (the sister) in respect of separation from the appellant. Authority is cited on failure to take account of a relevant consideration. The grounds found on UNHCR guidelines on determining the best interests of the child, paragraph 3.4, on the importance of the continuity of a child’s relationship with family members including siblings. One of the factors to be considered is that “every effort should be made to keep siblings together”.
7. The grounds finally argue that the judge failed to consider the family as a whole in accordance with *Beoku-Betts* [2009] AC 115.
8. Mr Devlin recalled that the sponsor tried to bring the appellant to the UK before he reached the age of 18, but the funds sent for that purpose were misspent by another family member. He accepted that the judge had not found that there were serious compelling circumstances, but he pointed out the appellant and sister had been living with elderly grandparents and

with an aunt who suffered from a psychiatric condition. He also accepted that there had been no statements from the appellants, only from the sponsor. The appellant and his sister had been traced to a refugee camp in 2011, there having been no contact since 2004. They had then been reunited with the other family members in DRC. Mr Devlin submitted that an inference could legitimately be drawn that the older sibling would have assumed a protective, quasi-paternal and close relationship with the younger sister. The judge failed to address whether under such circumstances her best interests would be adversely affected by separation from her brother. The judge appeared to have found at 15(l) that there was no family life, but the authority he cited did not suffice for that purpose. The existence of family life was more a factual than a legal question. Even if the judge had been correct to find no family life between the appellant and his sister there was nevertheless a relationship, the severance of which would have to be factored into the analysis of her best interests. The judge failed to look at these matters. On a true consideration of the facts, his decision should be reversed.

9. The Presenting Officer submitted that the judge correctly took into account that there was not much evidence of substantial family life among the appellant, his sister and the sponsor. The sponsor separated from them when the appellant was aged 9 and his sister aged 1. There had been no relationship at all until 2011, by which time the appellant was almost 16. Since 2011 there was evidence of the sponsor's involvement only through sending money but not through making important decisions or otherwise participating in family life. The judge noted at paragraph 14(e) that the evidence gave him only a limited glimpse of the operation of family life between the sponsor and the appellant. Very little was known of the life of the appellant and his sister during the absence of the sponsor. It would be conjecture rather than inference to find that there must have been any more than an ordinary sibling relationship. In any event, from 2011 grandparents and an aunt assumed the parental role. By the time of the application the appellant was 18 years old. He was living in a house with the other adults. There was nothing to suggest that he still exercised any particular protective role. Even if the age of 18 is not always a clear cut off point, there is a proper distinction between minor and adult children. It was for the appellant to produce evidence going beyond that, and there was none. There was no error on the evidence in thinking that for Article 8 purposes family life among the appellant, his sponsor and his sister came to an end on his 18th birthday. The appellant had not provided evidence upon which findings of primary fact might be made leading to a conclusion in his favour. The Immigration Rules are in principle compatible with Article 8. There was no reason to look outside them. The original application was not made on the basis that the appellant was a person without whom his sister could not reasonably be expected to travel to and settle in the UK, and he was an adult at that time. There was no evidence to permit conclusions that this was a relationship within the scope of Article 8, or that separation carried significant disadvantages for his sister.

- 10.** Mr Devlin in response submitted that conclusions in favour of the appellant in respect of his role in his sister's life would not be speculative but legitimate on the basis of common sense and the practical experience of a judge. Two children who had lived together in a refugee camp without an adult family member for seven years were almost bound to develop a mutual relationship going beyond the ordinary. In any event, there did not need to be a special protective relationship to extend family life beyond the age of majority. Either on the basis of greater than usual ties between siblings, or on the basis of the sister's tender years at the point of separation from her brother, the case should have succeeded under Article 8. It had not been appropriate to distinguish between the siblings in the outcome.
- 11.** I reserved my determination.
- 12.** At paragraph 14(d) the judge says that family life clearly exists because the appellants are brother and sister and the sponsor is their adoptive mother. At paragraph 14(l) he decides that the relationship is not family life. The contradiction is only apparent and not an error. It is due to the fact that there is a distinction between family life in ordinary usage, which extends to relationships among adult siblings, adult children and their parents, and other relatives beyond the common core, and family life for purposes of protection under Article 8.
- 13.** Article 8 does not define family life. However, the core relationships it protects are those based on marriage (or a similar relationship) and those between parent and child. Whether wider relationships, including relationships going beyond the age of majority with parents, or among siblings, fall within Article 8 is a question primarily of fact. It turns on the strength of ties. The thrust of the determination is plainly enough that although wider family life existed, the judge drew the Article 8 line at the point of the appellant's majority. On the evidence, I see no error therein.
- 14.** The issue of family life extending beyond age 18 or among siblings was not significantly developed in the FtT, where the case was put as essentially the same for both appellants. The case is not now argued to any significant extent on the basis of the appellant's relationship with the sponsor, but on his relationship with his sister and on her best interests. That was not put in the application to the respondent or in the FtT. It is artfully developed in the grounds and submissions to the UT, but as an afterthought.
- 15.** The Presenting Officer was justified in pointing to the absence of evidence, and to the fact that the application was not presented as one in which the desirability of not separating the siblings was an important issue. The two appellants at that stage, who had legal advice, could not properly have assumed that their cases must stand or fall together, it being obvious that one was an adult and one a child. The argument in the First-tier Tribunal focused on the parent and child relationship and not on the relationship between the siblings. There do not appear to have been any significant

submissions on why the appellant should be treated not as an independent adult but as a child, nor on the issue of separation. The UNHCR guidelines were not drawn to attention.

- 16.** The ECHR is designed for the protection of fundamental rights, which should not be obscured by niceties of pleading, but it was for the appellant to make his case both by evidence of primary facts and by submissions.
- 17.** The judge gave Article 8 a wide application in finding that notwithstanding the Rules the respondent was under a duty to permit the entry of a child to join a maternal aunt who does not stand legally in the place of a parent, and whom she has not seen since infancy. It would be an even wider finding that the child has a relationship with an adult sibling which requires the entry also of that sibling. A consideration of the best interests of the child might in principle require the entry of such a relative, but that would need a positive case. It would be conjectural to reverse the present determination and reach an opposite decision on the basis of the asserted best interests of the child. Those matters had faint foundation in evidence and were not developed either in the application to the respondent or in the case put to the First-tier Tribunal. (Nor was any further evidence offered, if the decision were to be remade; and the appellant's sister is now in the UK.)
- 18.** The finding that family life for Article 8 purposes was not established for this appellant either with the sponsor or with his sister was open to the First-tier Tribunal. In reality, on such evidence as was made available, no other conclusion on that point could reasonably have been expected.
- 19.** The argument based on the best interests of the child was not put to the First-tier Tribunal; very little evidence can be found to support it once the point is identified; and it carried little prospect of another outcome being reached, based on such evidence as there was.
- 20.** The grounds disclose no error of law by the First-tier Tribunal which would justify interference by the Upper Tribunal. The determination of the FtT shall stand.
- 21.** No anonymity direction has been requested or made.



30 March 2015
Upper Tribunal Judge Macleman