



Upper Tribunal
(Immigration and Asylum Chamber)

HU/22520/2016

THE IMMIGRATION ACTS

Heard at Glasgow
on 17 January 2019

Decision & Reasons Promulgated
on 28 January 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

B T ESHEFU

and

ENTRY CLEARANCE OFFICER, Pretoria

Appellant

Respondent

For the Appellant: Ms N Loughran, of Loughran & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is to be read with:
 - (i) The respondent's decision dated 5 September 2016, refusing entry clearance.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal, contained in his application dated 23 September 2016.
 - (iii) The decision of FtT Judge Fox, promulgated on 14 February 2018, dismissing the appeal.

- (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal made to the FtT, dated 2 March 2018.
 - (v) The refusal of permission by the FtT, dated 7 June 2018.
 - (vi) The application for permission to appeal made to the UT, on the same grounds, dated 25 July 2018.
 - (vii) The grant of permission by the UT, dated 20 August 2018.
 - (viii) The respondent's response under rule 24, dated 11 October 2018.
2. Ground (a) challenges [24] of the FtT's decision, where the judge said, "There has been no family life identified in the evidence before me today that would suggest family life has been interfered with."
 3. Although the immigration rule was relevant, the appeal was on human rights grounds only. The first matter to decide was whether family life for article 8 purposes was established, and the second was whether any interference was proportionate. Ms Loughran was able to point to a body of evidence from which it might have been held that family life falling within article 8 (i.e., the equivalent of a parental relationship) did exist. At other points in his decision the judge accepted that there was some evidence of relationship. Perhaps the judge over-compressed the questions whether there was *any* evidence tending to show family life; how far any evidence took the appellant; and if there was family life, the extent and proportionality of the interference. The judge's expression is unclear. Family life, and interference, were certainly identifiable in the evidence.
 4. Grounds (b) is somewhat confusing in referring to an adoption order. What the appellant produced at inventory III item C was evidence not of adoption but of guardianship. (The originals of this and of other items are with the appellant's solicitors.) This brings an error to light. As identified by the judge granting permission, the judge failed to make any reference to this item.
 5. As Ms Loughran submitted, this omission becomes more significant in context of the rest of the reasoning. The judge declined to give much weight to birth and death records from a church, because these were not official government records, but has not mentioned evidence which *did* appear to come from official records.
 6. A linked error is apparent from [4] of the decision. Although this paragraph is set out as a summary of the ECO's reasons, the 7th "bullet point" is not from the ECO's decision, but a record of a submission made at the hearing. It was said that the evidence did not confirm guardianship or responsibility and did not refer to the appellant's father not caring for him. That conflicts with the terms of the court decision on guardianship. It may be that a flawed submission, or the judge's misunderstanding of a submission, played some part in his decision.

7. I am not persuaded that ground (c) demonstrates error. It is understandable that the sponsor might wish to emphasize her responsibility for the appellant, but the judge was entitled to take the answer as not meeting the question.
8. Ground (d) essentially says only that the judge should have given more weight to the evidence of birth, baptism and death from church records. That is disagreement rather than error of law, and the judge's evaluation was within reason. However, that is not reasoning of such force that the decision survives excision of errors on other points.
9. The decision at [25] I find cryptic at best, but it is unnecessary to take that any further.
10. The errors shown by grounds (a) and (b), and which are apparent from the 7th "bullet point" of [4], are such that the decision of the FtT falls to be set aside. It stands only as a record of what was said at the hearing.
11. The nature of this case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing.
12. The member(s) of the FtT chosen to consider the case are not to include Judge Fox.
13. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

17 January 2019
UT Judge Macleman