**Upper Tribunal**
**(Immigration and Asylum Chamber) Appeal Number HU/06293/2019 (V)**

**THE IMMIGRATION ACTS**

| **Heard by *Skype for Business*** | **Decision & Reasons Promulgated** |
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| **On 5 May 2021** | **On 17 May 2021** |

**Before**

**UT JUDGE MACLEMAN**

**Between**

**DANIEL TEKLIT MENGUSTU**

Appellant

and

**ENTRY CLEARANCE OFFICER**

Respondent

For the Appellant: Mr K Forrest, Advocate, instructed by JK Law, Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Eritrea, born on 27 January 2002. His sister has entered the UK to be reunited with her husband, who is here as a refugee. The appellant applied for entry clearance for purposes of refuge family reunion. The ECO refused his application on 7 March 2019.

2. The appellant appealed to the FtT on these grounds:

> Appellant wishes to reunite with sponsor brother-in-law and his sister (sponsor's wife) … to resume their family life given they were responsible for him in Eritrea and Sudan. As

such, refusal by the ECO to allow appellant to join family in UK results in breach of sponsor and his wife's article 8 ECHR rights.

3. FtT Judge Montgomery dismissed the appellant's appeal by a decision dated 27 December 2019.

4. The appellant appeals to the UT on grounds, in summary, as follows:

(1) The judge found that the appellant spent only limited time with the sponsor. This was due to the sponsor's compulsory military service, a function of the persecution which forced him to flee. The judge had regard to an irrelevant factor.

(2) The appellant was *de facto* adopted by the sponsor in 2014. Conscription and enforced separation cannot invalidate family ties. It was irrational to hold to the contrary.

(3) The judge failed to have "proper regard" to the appellant's age, inability safely to return to Eritrea, lack of legal status in Sudan, vulnerability to removal to Eritrea and "conscription into endless national service".

(4) The judge did not have "proper regard to the requirement to consider the best interests of the child as a primary factor … it is simply wrong in law" to consider that the appellant is "better placed in a country of which they are not a national … liable to removal to their home country where they will certainly face persecution for illegal exit, rather than with … the sponsor in the UK".

5. The appellant's case was focused somewhat differently in the skeleton argument helpfully provided by Mr Forrest and in his oral submissions. Mr Whitwell argued that the case so developed went beyond the grounds, and that there had been no application to amend them. However, I consider that the generality of the grounds was wide enough to accommodate the case as it was eventually put, and find it preferable to resolve it in those terms.

6. Mr Forrest said that the judge, firstly, failed "to take into account properly the existence of family life" and, secondly, went wrong on whether the decision represented a proportionate interference with that family life.

7. As Mr Whitwell said, the first question is decisive.

8. At 34 (a) – (q) the judge states her primary findings of fact. She goes on to explain them clearly, and apart from whether there has been a *de facto* adoption, they have not significantly been disputed.

9. The judge observed that the appellant's mother is alive; there was no evidence that she had transferred her parental rights to anyone else; the written evidence tendered to show an adoption in fact stated that the appellant is the only caregiver to his mother; the evidence from the appellant's sister and the sponsor was inconsistent, misleading and unreliable; the appellant lived with the sponsor for no more than 3 months, several years ago; he was recognised as a refugee in Sudan and was "leading an independent life there".

10. The appellant's argument is that the three protagonists were bound together in adversity in a family relationship; there was at least an element of dependency; and the FtT gave insufficient weight to the facts that all three had been forced to flee, and that the appellant is at risk of deportation from Sudan to Eritrea.

11. Mr Forrest, wisely, did not press the contention of a *de facto* adoption. The judge gave overwhelming reasons for holding that had not been established. Indeed, the evidence was so weak that it is difficult to see that any tribunal might rationally have found otherwise.

12. Mr Forrest was correct in submitting that family life protection for article 8 purposes is not always limited to the core family unit of parents and minor children. The appellant no doubt has family life in the extended sense with his sister, but there is nothing wrong in law with the judge's finding that this does not go beyond the relationship normally to be expected between an adult and a minor sibling.

13. The feature that the three protagonists have all, separately, fled from Eritrea, might well be relevant in a proportionality exercise, but it has little to do with whether family life, in the core sense qualifying for protection, ever came into existence. The same applies to the point about deportation from Sudan to Eritrea.

14. As there is no error on the first issue, the grounds on proportionality cannot lead to the decision being set aside. I deal with those only briefly.

15. I do not accept the contention that the public interest in applying the rules is less because the appellant is outside the UK.

16. I also do not agree that because the appellant accepts that he cannot meet the immigration rules, they are irrelevant. The respondent is entitled to set rules and policy, consistent with refugee protection and human rights law, on refugee family reunion. That is always the starting point. If the case reached the stage of a fresh proportionality exercise, failure to meet the rules would be a consideration against the appellant.

17. The decision of the FtT shall stand.

18. An anonymity direction is in place.

Hugh Macleman

6 May 2021
UT Judge Macleman

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within

the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent' is that appearing on the covering letter or covering email.**