



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-005061
& UI-2022-005062
First-tier Tribunal Nos: HU/00402/2022
& HU/00557/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5 May 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

BRITTANY ANNEH BESSONG
COURTNEY AGBOR BESSONG
(no anonymity order made)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Ebot-Ntui, of Divinefield Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 19 April 2023

DECISION AND REASONS

1. The appellants are citizens of Cameroon born on 21 February 2010 and 26 July 2018 respectively, and are the daughters of the sponsor, Gilbert Bessong Bessong, a British citizen living in the UK. They appeal, with permission, against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision to refuse them entry clearance to settle in the UK with their father.

2. The appellants applied for entry clearance on 3 July 2021, together with their father's partner. Their father's partner was issued with entry clearance under Appendix FM, but the appellants' applications were refused on 12 January 2022.

3. The respondent, in the refusal decision, noted that the sponsor's partner was not the appellants' biological mother. The appellants' applications were accordingly assessed under paragraph 297 of the Immigration Rules in line with their sponsor rather than under Appendix FM in line with their sponsor's partner. The respondent noted the appellants' claim that their biological mother had passed away on 30 June 2020, that they had lived with their paternal grandmother after their mother's death but that after five months their grandmother was unable to care for them due to her medical condition, and that they then moved in with their father's partner. However the respondent was not satisfied that the documentary evidence supported the statements made or genuinely demonstrated the appellants' present family circumstances in Cameroon.

4. The respondent was not satisfied that the documents produced by the appellants were sufficient to demonstrate the relationship between themselves and their sponsor. The respondent noted that the sponsor had stated that the first appellant's mother was four months pregnant with her when he left Cameroon to study in the UK in September 2009 and that they were living together as a couple prior to his departure, but that his partner had stated that he was married to a different woman in Cameroon between 6 October 2006 and 28 September 2012 and had then married a British national on 22 June 2013 which ended in divorce on 22 May 2021. The sponsor stated that he travelled to Cameroon in October 2017 to discuss the first appellant's upbringing with her mother and they ended up having a one night stand which resulted in the conception of her sister, the second appellant. The sponsor was claiming to have taken responsibility for all decisions in the appellants' lives and to have been financially supporting them, but the respondent did not accept that his account of events leading to the conception of the first appellant and her sister was true. The respondent did not accept that the appellants were related to the sponsor as claimed but in any event did not accept that their mother was deceased. The respondent was not satisfied that there were serious and compelling family or other considerations which made the appellants' exclusion from the UK undesirable. Their applications were therefore refused under paragraph 297(i)(d) and 297(i)(f) of the Immigration Rules. The respondent did not consider that the decision was in breach of the appellants' Article 8 human rights.

5. The appellants appealed against the respondent's decision and their appeals were heard in the First-tier Tribunal by Judge Black on 17 August 2022. Although Judge Black's decision contained only one appeal reference, for the first appellant, it seems that the appeals of both sisters were before her, as indicated at [6] of her decision, and I have therefore proceeded on that basis.

6. The judge concluded, on the basis of DNA evidence produced for the appeal, that the appellants and sponsor were related as claimed. The judge had before her email correspondence and evidence of money transfers from the sponsor to the appellants' mother in 2015, 2016, 2017 and 2020. She accepted, on the basis of the evidence before her, that the appellants' mother had died in 2020 as claimed, and she accepted that the requirements of paragraph 297(i)(d) were met. With regard to paragraph 297(i)(f) the judge was not satisfied that it had been shown that the sponsor had more recently been providing financial support for the appellants, or that he had taken responsibility for their day to day living as claimed. She considered there to be no reliable evidence to show that the appellants were living with and being cared for by the sponsor's partner and noted the lack of satisfactory evidence of the health situation of the appellants' grandmother or of evidence to show that the appellants' grandmother could not continue to care for the appellants. She found that the requirements of paragraph 297(i)(f) had not been met and considered that the

respondent's decision was not contrary to the appellants' human rights. She dismissed the appeal in a decision promulgated on 22 August 2022.

7. The appellants then sought, and were granted, permission to appeal to the Upper Tribunal on the grounds that the judge had failed to consider whether the requirements of paragraph 297(ii) to (vii) had been met and that the judge had erred by conflating the issues within the immigration rules and those relating to consideration of the appellants' human rights outside the rules.

8. The matter then came before me at a hearing.

9. Ms Everett conceded that Judge Black had erred in law by conflating the issues within and outside the rules and that the decision had to be set aside in that respect. Ms Everett did not challenge Judge Black's findings in relation to paragraph 297(i)(d) of the immigration rules and the judge's decision that the requirements of that provision were met. She accepted that the re-making of the decision in the appeal was on very limited grounds, namely the sponsor's ability to accommodate and maintain the appellants and was given some time to consider a bundle of documentary evidence provided by Ms Ebot-Ntui containing documents relevant to those matters. Ms Ebot-Ntui confirmed that the documents had been submitted as part of the appellants' entry clearance application but she accepted that they had inadvertently been omitted from the appeal bundle before the First-tier Tribunal. They included the sponsor's tenancy agreement, bank statements, P60s and P45 and contract of employment at the time the appellants made their application.

10. Having considered the documents, Ms Everett submitted that she was content for the decision in the appellants' appeals to be re-made by allowing the appeals and did not consider it necessary for there to be an adjournment for a further hearing.

11. Accordingly, in light of Ms Everett's concession, I advised the parties that I was setting aside Judge Black's decision, other than her findings on paragraph 297(i)(d), and would re-make the decision by allowing the appellants' appeals. For the sake of clarity, I set out the reasoning for that decision as follows.

12. Having found that the requirements of paragraph 297(i)(d) were met, Judge Black did not need to go on to consider the provisions of paragraph 297(i)(f) and, in so doing, and in considering those requirements as part of a human rights assessment, had conflated the issues within the immigration rules and those relating to consideration of the appellants' human rights outside the rules and had thus erred in law.

13. Judge Black did not give consideration to the requirements of the other parts of paragraph 297, in 297(ii) to (vii), of which the relevant parts were those relating to the provision of accommodation and maintenance in the UK. Ms Everett was satisfied with the evidence produced by the appellants in that regard in the bundle relied upon by Ms Ebot-Ntui, and in any event the respondent had not raised any concerns on that basis in the refusal decision. As such, and considering that the only reason given by the respondent for refusing the appellants' applications, namely the concerns as to their relationship with the sponsor and their claim that their mother was deceased, had been determined by the judge in their favour, the appellants were clearly able to meet the requirements of the immigration rules and there was therefore no public interest in denying them entry to the UK to join their father. The respondent's decision to refuse the appellants entry to the UK therefore amounted to a disproportionate interference with their family life with their father and a breach of their Article 8 rights.

In the circumstances, and given Ms Everett's concession to that effect, the decision in the appeals is re-made by allowing the appeals on human rights grounds.

Notice of Decision

14. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. First-tier Tribunal Judge Black's decision is set aside. I re-make the decision by allowing the appellants' appeals.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 April 2023