



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/16753/2012

THE IMMIGRATION ACTS

Heard at Bradford
On 28 August 2013

Determination Promulgated
On 12 November 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

DJENAN CLAUDE SYMOPHORINE KOFFI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant, Djenan Claude Symophorine Koffi, was born on 26 May 1982 and is a female citizen of Ivory Coast. The appellant had appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer, Accra, dated 13 June 2012 refusing her application under paragraph 317 of HC 395 (as amended) to settle in the United Kingdom as the daughter of Bi Koffi Pierre Dje (hereafter referred to as the sponsor). The First-tier Tribunal, in a determination promulgated on 21 May 2013, dismissed

the appeal in respect of the Immigration Rules but allowed the appeal under Article 8 ECHR. Permission was granted to the appellant by Judge Lewis on 22 July 2013:

The application argues that in relation to the requirements of paragraph 317 the judge misunderstood and consequently misinterpreted the evidence. It also argues that he failed to have regard to the best interests of the 13 year old daughter of the sponsor. That issue was not addressed in the determination; whether it was submitted to the judge is not immediately clear.

2. The respondent has also obtained permission to appeal the Article 8 ECHR determination. Granting permission on 13 June 2013, Judge Osborne wrote:

Although the judge was entitled to make his own findings on the basis of the evidence adduced, those findings have to be for adequate reasons. It is at least arguable that the judge has in this case on the particular issue of the sponsor's mental condition failed to give adequate reasons why the appellant's presence will have a very significant beneficial impact on the sponsor's wellbeing. The judge finds that there are emotional ties between the appellant and her father but has failed to [identify] any likely improvement in his mental condition in the context of the medical evidence.

3. I shall deal first with the Article 8 ECHR appeal brought by the respondent. The judge had been satisfied that the relationship between the sponsor and the appellant was that of father and daughter [15]. That finding has not been challenged by the respondent. The Judge accepted that the sponsor sends money to the appellant in Ivory Coast but he did not find that dependency had been established. He was not satisfied that there was no close relative in Ivory Coast to whom the appellant could turn. He found that the appellant was not living alone, "giving [that] phrase its full and proper meaning". At [15] he found that she was not living alone in the most exceptional compassionate circumstances. The judge noted that the appellant could not qualify for entry clearance under Appendix FM of the Immigration Rules. Following the relevant jurisprudence, the judge went on to consider Article 8 ECHR separately from the Immigration Rules. At [17], he found:

"The sponsor's mental condition leaves me in no doubt of the truth of his claimed circumstances in leaving the Ivory Coast. Government forces broke into his house, ransacked the place and when the sponsor's 7 year old son clung to his side one of the soldiers smashed his gun down on his head before dragging him away to his death. The sponsor himself was then gravely and brutally beaten before being able to make his escape. His claims were consistent with the scars examined. The severity of the trauma he suffered is extreme and continues after more than a decade. The reports from well qualified experts are unanimous that he suffers from severe post-traumatic stress disorder and moderate depressive disorder with psychotic symptoms. He is treated by an atypical anti-psychotic and anti-depressant. He has severe physical disabilities too. Whilst he is making some progress under treatment his reaction to the earlier objections of his asylum claim is instructive, and repeated when his application for ILR was rejected and he was placed in detention surrounded by uniformed guards.

I was able to observe his extraordinary behaviour at the hearing. He is a man in torment. I found it very easy to agree with the comments in the report of Dr Goldwin that, 'Koffi is the most distraught person I have seen, he is uncontrollably sad'."

4. The first ground of appeal submitted by the respondent concerns the operation of Appendix FM. By failing to engage with the Immigration Rules, it is asserted that the judge had failed to have regard to the public interest (expressed through the Rules) concerned with the exclusion of this appellant from the United Kingdom. I consider that the judge was right to apply Article 8 ECHR on a free-standing basis in this appeal. I note also that the new Rules were not in force at the date of the decision to refuse. In any event, I find that the judge did not err in law by failing to say more about the relevance to the Article 8 ECHR appeal of the new Appendix FM.
5. The second ground of appeal from the respondent is essentially a "reasons" challenge to the determination. The respondent submits that the judge failed to provide adequate reasons for finding that "more than emotional ties" exist between the sponsor and appellant given that there was no evidence of contact. No evidence had been produced to show why the sponsor could not travel to Ivory Coast in order to visit the appellant.
6. The Tribunal should hesitate before setting aside a determination of the First-tier Tribunal for the inadequacy of its reasoning (**Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)**). I reject the submission that the judge has failed to relate his reasoning to the evidence before him. I refer to the passage from the determination which I have quoted above which, in turn, make several references to the medical evidence regarding the sponsor's mental condition. The judge had before him letters from three counsellors, a medico-legal report from Dr Goldwin and a further psychiatric report (which gave details of the sponsor's risk of suicide) from Dr Ali, a consultant psychiatrist. Further, I reject the submission that the judge has found an especially strong link between the appellant's absence and the sponsor's poor mental health. There was no suggestion that the "extraordinary behaviour" demonstrated by the sponsor at the hearing was in any way false; the judge's finding that the sponsor was "a man in torment" could not have been expressed in stronger terms. The judge had the advantage of hearing the sponsor give evidence. At [19], he commented, "what emerges from the reports is the huge part played in the sponsor's continuing torment by what he sees as the abandonment of the appellant". Medical evidence may only (as it was required to do) establish that the sponsor's poor mental condition may have been at least in part as a result of the appellant's absence and the sponsor's guilt at having abandoned her, but it appears to me to be a reasonable inference to draw from the medical evidence that, if the sponsor and appellant were to be reunited, this would have, as the judge found, "a very significant impact on [the sponsor's] wellbeing" [19]. The judge was well aware that his decision to allow the appeal on Article 8 grounds was an unusual one ("I have found that the refusal of her application would, quite exceptionally, create an interference sufficient to engage the 1950 Convention"). On the basis of the evidence before him, the decision cannot be described as perverse although I accept that

another judge, faced with the same evidence, may have reached a different conclusion. That observation does not render the judge's determination wrong in law. He has considered the evidence very carefully. He has not ignored evidence which was relevant nor has he had regard to evidence which was irrelevant. Although he does not deal in detail with the public interest in this case, it is clear from the judge's remarks about the exceptionality of his decision that he was well aware that the public interest should generally require the exclusion of the appellant from the United Kingdom. However, I have concluded that the judge has not erred in law such that his determination falls to be set aside.

7. I shall now deal with the Immigration Rules appeal brought by the appellant. I find that that appeal should be dismissed. The grounds suggest that the appellant, whilst she lives with her stepmother's sister, is, in effect, living alone because she is psychologically isolated. That submission is not supported by the evidence and the fact that the appellant may be living with a relative only in the short-term (grounds, paragraph 9) is also of little assistance in enabling the appellant to meet the requirements of paragraph 317. As regards the judge's findings on "living alone" and in "in the most compassionate circumstances" the grounds submitted by the appellant amount to little more than a disagreement with the judge's findings which were clearly available to him on the evidence adduced.
8. I therefore dismiss both the appellant's appeal in respect of the Immigration Rules and the respondent's appeal against the Article 8 ECHR decision.

DECISION

9. The appellant's appeal is dismissed.
The respondent's appeal is dismissed.

Signed

Date 30 October 2013

Upper Tribunal Judge Clive Lane