



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

Appeal Number: OA/08191/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 06 April 2016**

**Promulgated**

**On 13 April 2016**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**ENTRY CLEARANCE OFFICER (NAIROBI)**

Appellant

**and**

**JANAT SEBI**

Respondent

**Representation:**

For the Appellant: Mr L. Tarlow, Home Office Presenting Officer

For the Respondent: Mr S. Unigwe, Counsel instructed by A & C Solicitors

**DECISION AND REASONS**

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal although technically the Entry Clearance Officer is the appellant in the appeal before the Upper Tribunal.
2. On 08 December 2012 the appellant made an application for entry clearance for refugee family reunion. At the date of the application she

was 17 years old. It is stated that the application was refused on the ground that the Entry Clearance Officer did not accept that the UK sponsor, Mrs Aida Nakabugo, was the appellant's biological mother. The appellant appealed the decision. The appeal was heard on 31 October 2013 and dismissed in a decision dated 05 November 2013. That is the limited extent of the information currently before the Tribunal in relation to the first application for entry clearance made in 2012. No copies of the earlier decision to refuse entry clearance or the First-tier Tribunal decision were produced in this appeal.

3. On 03 March 2014 the appellant made a second application for entry clearance for refugee family reunion. At the date of the second application she was 18 years old. The respondent refused the application on 12 June 2014 on the ground that she was not under 18 years old at the date of the application and did not meet the requirements of Appendix FM for entry as an adult dependent relative. The appellant appealed the decision.
4. First-tier Tribunal Judge Moore ("the judge") allowed the appeal in a decision promulgated on 01 September 2015. The judge was hampered by the fact that no bundle had been prepared by the respondent and no representative appeared on behalf of the respondent at the hearing. The judge went on to decide the appeal based on the evidence given by the sponsor and the limited documentary evidence contained in the appellant's bundle. He concluded that the respondent had failed to give adequate consideration to the immigration rules regarding family reunion and as such found that the decision was not in accordance with the law. He allowed the appeal to the limited extent that the case was "remitted" to the respondent to give proper consideration to whether the appellant met the requirements of "paragraphs 352A-FJ" of the immigration rules and the relevant UKBA policy relating to refugee family reunion.
5. The respondent seeks to appeal the First-tier Tribunal decision on the ground that the First-tier Tribunal erred in determining the appeal in light of a mistake of fact. It was correct that the appellant made an initial application for entry clearance on 08 December 2012 but at the date of the second application she was 18 years old and did not therefore meet the requirements of the immigration rules for refugee family reunion. The judge should have considered whether the appellant met the requirements of the immigration rules at the date of the second entry clearance application, which was the subject of the appeal.

### **Decision and reasons**

6. After having considered the grounds of appeal and oral arguments I am satisfied that the First-tier Tribunal decision involved the making of an error on a point of law.
7. It is clear from the decision that the judge was aware of the fact that appellant made an "initial application" for entry clearance in 2012, which

was refused [11]. He was also aware of the fact that a further decision was made to refuse entry clearance for family reunion under Part 11 of the immigration rules (paragraph 352A-FJ) on 12 June 2014. The judge identified the second decision as the subject of this appeal [10 & 17].

8. The judge was faced with some difficulty in deciding the appeal in light of the fact that the respondent failed to serve a bundle and did not attend the hearing. As such, he was unaware of the fact that the appellant appealed the first decision made in 2012. No doubt his task was also made more difficult by the way in which the appellant's representative is said to have put the case. It was suggested that the second decision to refuse entry clearance somehow formed part of a continuing application for entry clearance [15].
9. Even taking into account the limited evidence before the judge it is clear that a copy of the second application for entry clearance was before the First-tier Tribunal. The application form states that the application was submitted online on 03 March 2014. At the date of application the appellant was 18 years old. The application form states that the application was for settlement for the purpose of "Family reunion - under Part 11 Asylum, Immigration Rules".
10. The former Family Reunion Policy was replaced by specific provisions incorporated into the immigration rules. Paragraphs 352A-FJ of the immigration rules, and the Family Reunion Policy that accompanies those provisions, make clear that only children under the age of 18 are eligible for family reunion. Dependent children over the age of 18 are specifically identified as ineligible applicants under the terms of the Family Reunion Policy, which was relied upon by the appellant before the First-tier Tribunal.
11. The judge was correct to point out that entry clearance was refused with reference to the rules relating to adult dependent relatives contained in Appendix FM. The reasons for refusal show that this was considered in the alternative because the appellant was no longer eligible for family reunion:

"The solicitor's letter you have provided says that you are applying to join your mother on the basis of family reunion. With regard to this I note that you are aged over 18 and a fee has been paid for your application. Family reunion applications are gratis and for the purposes of Family Reunion under the immigration rules, family members include children under 18 only. I have therefore considered your application as the adult dependent of a person with refugee status in the UK."
12. The judge understood that two entry clearance decisions had been made and that the operative decision for the purpose of this appeal was the one dated 12 June 2014. However, in paragraph 21 of the decision it seems that he failed to appreciate that this was not a continuing application from the one made in 2012 but a fresh application for entry clearance made on 03 March 2014.

13. Entry Clearance Officers sometimes make fresh decisions as part of an ongoing application but that will usually happen in circumstances where an appeal is allowed to a limited extent. In this case the appeal against the first decision to refuse entry clearance was dismissed. The appellant made a second application for entry clearance. Given the strict age requirement it was not necessary for the Entry Clearance Officer to make specific reference to paragraphs 352A-AF because the appellant was, by the date of the second application, ineligible for family reunion.
14. I conclude that the First-tier Tribunal erred in finding that the decision was not in accordance with the law when it was quite clear that the Entry Clearance Officer had considered the terms of the rules relating to family reunion and gave reasons for refusing the application on the ground that the appellant was not under 18 years old at the date of the second application.
15. During an informal discussion with Ms Nakabugo at the hearing it became clear that she is understandably frustrated and upset by her continued separation from her children. However, very little evidence was produced in support of the appeal before the First-tier Tribunal to explain the details of her circumstances or those of her children in Uganda.
16. Mr Unigwe's submissions bore little relevance to any of the issues raised in the respondent's appeal to the Upper Tribunal. He talked of delay in the application but any delay that has occurred was as a result of the natural process of appealing a negative decision. I note that Ms Nakabugo was recognised as a refugee in 2010 yet no explanation has been given as to why she did not apply for the children to join her at a much earlier stage. In support of the second application for entry clearance she sought to address the original reasons for refusal with DNA evidence to prove that she was the children's biological mother. Such evidence could have been produced in support of the first appeal rather than waiting to make a second application for entry clearance. Unfortunately, by the time she made the second entry clearance application her daughter was 18 years old.
17. For the reasons given above I have concluded that the First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside. It was agreed at the hearing that if I found an error of law it would be appropriate to remit the appeal to the First-tier Tribunal for a fresh hearing because no findings were made by the previous judge in relation to human rights issues.
18. It will be a matter for the First-tier Tribunal to determine all the relevant issues but given what I have said about the appellant's eligibility for family reunion at the date of the second application for entry clearance the sponsor may want to focus her preparation on whether, at the date of the decision, there were any compelling circumstances outside the

immigration rules that might have justified entry clearance being granted on human rights grounds. The sponsor will need to ensure that there is a detailed statement outlining her history and current circumstances as well as those of the children. Where possible the case should be supported with evidence.

## DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside and remitted to the First-tier Tribunal for a fresh hearing

Signed  Date 07 April 2016

Upper Tribunal Judge Canavan