



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/08436/2016
HU/08437/2016, HU/08439/2016
HU/08440/2016, HU/09182/2016
HU/09166/2016, HU/09139/2016
& HU/09147/2016

THE IMMIGRATION ACTS

Heard at Field House
On 30 November 2018

Decision & Reasons Promulgated
On 02 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

(1) AZIZ [B]
(2) ABDALLAH [W]
(3) [A N]
(4) [R B]
(5) UMAR [S]
(6) RYNEE [K]
(7) BENJAMIN [A]
(8) MARVIN [K]
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants: None.

For the Respondent: Miss Z Kiss, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal from the decision of the First-tier Tribunal dismissing their appeals against the decision of an Entry Clearance Officer made on 22 February 2016 to refuse their applications for entry clearance for the purposes of settlement as, in the case of the first appellant (the partner of a refugee); and, in the case of the remaining appellants, as the children of a refugee who meet *inter alia* the requirements of 352D(iv) of the Rules - namely that they were part of the family unit of the person granted asylum at the time that the person granted asylum left the country of their habitual residence in order to seek asylum.

Relevant Background Facts

2. The appellants are all nationals of Uganda. Their case is that they are related to the sponsor, a recognised refugee, as set out below. The first appellant, "AB", is the sponsor's second husband who she married after the death of her first husband. The first husband, "CK", is said to have died on 10 October 2007, and the sponsor is said to have married AB on 15 December 2009.
3. The sponsor says she had six children by her first husband, CK. They were born respectively in 1979, 1981, 1984, 1986, 1998 and 1999. The two youngest, "RK", born on 20 February 1998 and "BA", born on 3 August 1999, are the sixth and seventh appellants.
4. The sponsor says that AB brought with him to join the family unit in December 2008 two children by his previous marriage: "RB" born on 2 February 2002 and [RS] born on 25 March 2005. RB is the fourth appellant.
5. The remaining four appellants are said to be the adopted children of the sponsor and AB. The sponsor says that AB adopted "AW" (born on 28 April 1999) and "AN" (born on 5 December 2002) following the death of their parents in December 2002. They were two orphans of his deceased brother. She says that BA assumed parental responsibility for them. AW is the second appellant, and AN is the third appellant.
6. The sponsor says that on 12 December 2000 her brother, Joseph Kaliisa, died leaving behind two children, "US", born on 10 January 1998, and "MK", born on 15 November 2000. US is the fifth appellant and MK is the eighth appellant. The sponsor says that she was granted full parental responsibility over US and MK by the leader of her clan following her brother's burial. On that day, she says that US and MK became part of her family unit.
7. She says that after she settled in with AB, he suggested that they formalise their adoption of AW, AN, US and MK. Accordingly, on 20 February 2009 the Chief

Magistrates' Court at Gulu had officially granted her and AB full joint parental responsibility over these four appellants by way of adoption orders.

8. The application forms submitted by the appellants all contain the information that the sponsor had been issued with a Ugandan passport in Kampala on 12 December 2012; that she had arrived in the UK on 16 November 2013; and that she had subsequently been accorded refugee status on a visa that was valid until 12 December 2020.
9. On 22 February 2016 an Entry Clearance Officer issued separate notices of refusal to each appellant. The four appellants claiming to be the adopted children of the sponsor were refused on the grounds set out below.
10. The ECO did not accept that the sponsor was their parent. Although they had submitted a Ugandan adoption order in support of the application, the ECO was not satisfied that the document was genuine. It purported to have been issued in 2009, but its general condition contradicted this. The Court had granted AB and the sponsor custody for him/her based on the fact that their parents had died. Their parents' deaths were not registered until 26 October 2015, almost 6 years after the adoption order was made. The ECO was not satisfied that a competent authority would award custody of a child based on the death of his/her parents, where there was no evidence that the child's parents were dead. He also noted that the sponsor, when asked if she had any children during her asylum interview, did not mention his/her name. Also, their birth certificates were issued long after the event of their births. As such, it was merely a record of what the Registrar had been told. Given all the above, the ECO was not satisfied that the appellant in question was the child of a person granted refugee status, or that he/she was under the age of 18 years, or that he/she was part of the sponsor's family unit before the sponsor fled to the UK.
11. The two appellants who had applied on the basis that the sponsor was their birth mother, were refused on the ground that they had not provided satisfactory evidence of this.
12. In the case of BA, he had submitted a birth certificate issued on 2 April 2015, almost 16 years after the event of his birth, and very shortly after the sponsor was granted refugee status. Given the ease with which such documents were obtained in Uganda, the ECO was not satisfied that the information in the certificate was reliable. The sponsor had arrived in the UK on 16 November 2013, and had been granted asylum on 25 February 2015. She had then waited almost a year before deciding that she would apply for him to be reunited with her. It was reasonable to expect that if she was his mother, she would have applied to be reunited with him immediately. He also noted that there was no evidence, aside from the birth certificate, that he had met the sponsor. There was also no evidence of any contact that he had had with her, either before or after she had arrived in the UK.

13. AB was refused entry clearance due to an asserted lack of evidence of there being a marital relationship between him and the sponsor.

The Hearing Before, and the Decision of, the First-tier Tribunal

14. The appeals of the appellants came before Judge Telford sitting at Hatton Cross on 28 November 2017. The respondent was represented by Ms Lake, Home Office Presenting Officer. There was no legal representation on behalf of the appellants. The sponsor was, however, present at the hearing, and she gave oral evidence and she relied on the contents of her witness statements and the documents which she had filed. This comprised a main appellant's bundle (AB1) comprising pages 1-234; a relatively small supplementary bundle comprising pages 1-32, and containing DNA test results showing that the sponsor was the birth mother of RK and BA; and a letter dated 27 November 2017 from the solicitors who had acted for the sponsor in her asylum claim.
15. In his subsequent decision, the Judge addressed the contents of the letter from the solicitors at some length in his account of the proceedings, which he gave at paragraphs [4]-[16]. The Judge expressed disagreement with the view expressed in the letter that it would not have been unusual for the sponsor not to have supplied the Home Office - when making her asylum claim - with the names of the children that she said were part of her family unit which she had left behind in Uganda. Also, he commented on the fact that the sponsor had only chosen to disclose the first few pages of her full SEF interview: *"The [sponsor] did not prefer to supply a full record of the interview. The sponsor did not provide it. The [sponsor] did not seek any adjournment to provide such a formal record. That record too would include at the outset an area of time where family members could be provided and at the end an opportunity to provide any further information thought necessary. I find that the respondent would not have prevented the sponsor as applicant providing any information she or her then solicitors so wished, and that would include the opportunity to refer to family members at the time she was in Uganda."*
16. The Judge continued in paragraph [15]:

"The [sponsor] had said that following marriage, remarriage and living with her parents and other relatives, and due to mortality of adults in the wider family, she had to look after a wide family which changed in terms of membership from time to time (my emphasis). The [sponsor] did not wish for any adjournment today to obtain any further documents as she had attended in July 2017 only for the case to be adjourned."
17. At paragraph [17], the Judge summarised the issues, and at paragraph [18] he summarised the evidence. He began his findings at paragraph [19] with a general finding, before going on to give extensive reasons in respect of each class of appellant at paragraphs [20]-[51] for upholding the refusal of their respective applications under the Rules. At paragraphs [52]-[56], he addressed the appellants' Article 8 claims outside the Rules compendiously.

18. The Judge's general finding in paragraph [19] was as follows:

"I find that this appeal is not made out on the available evidence before me for the appellants and the appeal fails under the Rules and human rights. In all cases, I initially consider the position as regard to the available evidence before the ECO as at the date of decision. I then proceed to look at any further evidence which has since been adduced to see if that can shine any light on the situation as it appertained at the date of decision. I then go on to weigh that evidence to see if it is reliable given the number of different factors involved which can affect the weight I can place on it, including the lack of explanation as to why late documents were produced, and the sequence of events, the prevalence of false documentation in Uganda, and any inconsistencies in the evidence. I consider the case of each individual appellant. I then bring to that the overview of this appeal as brought essentially through the sponsor and the first appellant."

The Application for Permission to Appeal

19. The application for permission to appeal was apparently settled by AB. He pleaded that the Judge had erred in law in giving inadequate consideration to the evidence before him (Ground 1); making inadequate findings on facts before him (Ground 2); setting the standard of proof too high (Ground 3); failing to make findings on facts before him (Ground 4); making findings not supported by the evidence (Ground 5); and making incorrect factual findings (Ground 6).

The Grant of Permission to Appeal

20. On 12 October 2018, Deputy Upper Tribunal Judge Chapman granted permission to appeal as she was of the view that the grounds of appeal raised arguable errors of law which might have made a material difference to the outcome.

The Hearing in the Upper Tribunal

21. The sponsor and the first appellant was notified of the date, time and place of the hearing in the Upper Tribunal by a notice issued on 29 October 2018 which was sent by second class post to the contact address given in the application for permission to appeal, which was the sponsor's home address in Stratford, London E15. There was, however, no appearance by the sponsor or by a legal representative instructed on behalf of the appellants. As I was satisfied that the first appellant and sponsor had been given adequate notice of the hearing, I was satisfied that it was in the interest of justice to proceed with the hearing in the absence of the sponsor.
22. Ms Kiss invited me to dismiss the appeal on the grounds that the error of law challenge was no more than an expression of disagreement with the findings that were reasonably open to the Judge on the evidence for the reasons which he gave.

Discussion

23. The Judge found against the appellants because he did not find the sponsor or AB to be credible on the relevant core issues arising under the Rules, notwithstanding the fact that the sponsor had provided a considerable number and range of documents to support the case advanced by the appellants.
24. In respect of the documents relied on as showing that the sponsor had married AB in 2008, and that they had had a genuine and subsisting marriage thereafter, the Judge found at paragraph [38] that *“these are reverse engineered documents designed to show the existence of a marriage and family life prior to the sponsor leaving her home country to seek asylum.”*
25. With regard to the sixth and seventh appellants, RK and BA, the Judge accepted that the sponsor was their birth mother, but did not accept that it had been satisfactorily demonstrated that they were part of the sponsor’s family unit when she left Uganda to claim asylum, as opposed to being part of someone else’s family unit, such as a family unit presided over by the sponsor’s mother. The Judge arrived at this adverse credibility finding on the basis that there was a discernible inconsistency between what the sponsor had said in her asylum interview and the information that she was said to have been given to her own solicitor as recounted in the sister’s letter of 27 November 2017. The Judge also drew an adverse inference from the non-disclosure of the entire record of the asylum interview, as well as a failure to produce the formal screening interview which had taken place on 2 December 2013.
26. With regard to the screening interview record, in oral evidence the sponsor claimed that she had given all the names of the appellants to the Home Office on two occasions: firstly, in a phone call made on 18 November 2013, and secondly, at the screening interview which took place on 2 December 2013. The Judge recorded, at paragraph [26] of the decision, that she had been given a chance to make an application to obtain any further evidence of this, and she had refused that opportunity, although she had been made aware by the respondent that this was a point that they might rely on *‘today’*, as indeed they had done in submissions.
27. With regard to the answers given by the sponsor in the asylum interview, the Judge said at paragraph [45] that it was indicated at AIR Q17 that the sponsor’s mother (the children’s grandmother) had taken care of a number of children including those of the sponsor. This was due to a number of factors including the death of the father of the sponsor, the death of the father of the children of the sponsor, the death of other relatives, and her remarriage to a man who had his own children. She had named only two children in care at that time. She stated that her own children were with her. But the sponsor did not put a date on when it was that they had all come together as one big family: *“However, it is also clear from what she says about her own troubles at that time, including being arrested for long periods of time, leading to her successful asylum claim, that it was her mother and other relatives who looked after her*

children. It is also clear that not all of the record of the interview has been put forward in evidence by the [sponsor]. It ends at Q18 but there are plainly more questions after that point in time which usually indicate questions about dates they have been together, who had what role and for how long, and who was caring for whom."

28. In her witness statement signed on 10 June 2017, the sponsor said that she was arrested and detained by the Ugandan Government in August 2012. She left all the dependent children in the care of her second husband. They continued to live in the matrimonial home in Kasubi village and he continued to provide for them. When she escaped from prison and came to the UK to claim asylum in November 2013, her husband continued to live with the children.
29. It is not pleaded that the Judge's adverse credibility findings are perverse or irrational. In essence, the error of law challenge is that the Judge failed to give adequate reasons for not finding the supporting documentary evidence to be persuasive.
30. Having carefully reviewed the grounds of appeal and the documentary evidence in AB1, I am not persuaded that Grounds 2-6 are made out. I agree with Ms Kiss that they are an expression of disagreement with findings that were open to the Judge for the reasons he gave. However, I am persuaded that Ground 1 is made out.
31. I find that an error of law is made out with regard to the Judge's failure to engage with apparently contemporaneous evidence pointing to the sponsor cohabiting with AB and at least one of the child appellants, US, in the period up to and including August 2012, which is when the sponsor says she was first detained.
32. The bank statement evidence in respect of a joint account apparently held by the appellant and the sponsor shows regular deposits and withdrawals by the sponsor up until 1 August 2012. There was then no further activity on her part for the period thereafter until the last entry on the statement which is 30 October 2013 when AB withdrew most of the balance in the account. AB1 also contains utility bills in the name of the sponsor and AB, evidencing cohabitation. These are not specifically identified by the Judge as having been reverse engineered, and the same applies to payment receipts issued over an extended period by the schools apparently attended by the child appellants. Of particular note are the copy receipts at page 60 of AB1. On the face of it, they show that the sponsor paid a term's fees for US at Katikamu Senior Secondary School on 8 February 2012 and also on 15 August 2012.
33. The Judge is not bound to comment on every piece of evidence, and the documentary evidence to which I have referred above by no means addresses all the legitimate concerns raised by the Judge as to the make-up of the sponsor's family unit before she left Uganda in order to claim asylum. It was open to the Judge to find that the membership of the sponsor's family unit appeared to have changed from time to time. I consider that the Judge was justifiably frustrated at not being provided with

all the documentary material generated by the sponsor's asylum claim, including her screening interview, her substantive interview and any witness statements she had made so as to give him a full picture of the sponsor's asylum narrative and the precise composition of her family unit, particularly in the period from August 2012 until her flight from the country. However, one crucial aspect of his credibility assessment presents as unfair and unbalanced, which is the Judge's apparently exclusive focus on documents which have been generated long after the event, such as birth certificates, while appearing to ignore documents which present as having been generated contemporaneously, and thus which have a far greater inherent probative value. Alternatively, if he was of the view that such documents were reversed engineered - in other words, forged - he did not give adequate reasons for reaching this conclusion.

34. The effect of the error is to render unsafe the adverse findings on all the appellants, and so the decision must be set aside and remade. Due to the extent of fact-finding which is required, the First-tier Tribunal is the appropriate forum for remaking.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision must be set aside and remade.

Directions

These appeals are remitted to the First-tier Tribunal at Hatton Cross for a de novo hearing (Judge Telford not compatible), with none of the findings of fact by the previous Tribunal being preserved.

Signed

Date 14 December 2018

Deputy Upper Tribunal Judge Monson