



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17198/2018

THE IMMIGRATION ACTS

Heard at Bradford
On 11 July 2019

Decision & Reasons Promulgated
On 16 September 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

[M E]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Greer, instructed by Howells solicitors
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 6 February 2005 and is a female citizen of Uganda. She applied for entry clearance to the United Kingdom on the basis of family reunion with a recognised refugee, her father [PE] (hereafter referred to as the sponsor). The First-tier Tribunal in a decision promulgated on 28 March 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. To be granted entry clearance, the appellant must meet the requirements of paragraph 352D of HC 395 (as amended):

'Requirements for leave to enter or remain as the child of a refugee

352D. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with the parent who currently has refugee status are that the applicant:

- (i) is the child of a parent who currently has refugee status granted under the Immigration Rules in the United Kingdom; and
- (ii) is under the age of 18; and
- (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
- (iv) was 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; and
- (v) the applicant would not be excluded from protection by virtue of paragraph 334(iii) or (iv) of these Rules or Article 1F of the Refugee Convention if they were to seek asylum in their own right; and
- (vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity.'

3. At the initial hearing at Bradford on 11 July 2019, Mr Mills, who had appeared for the Entry Clearance Officer, acknowledged that the judge had erred in law. He told me that the respondent accepted that the judge had not given any or any clear reasons to explain why he had not believed the evidence of the sponsor. However, he submitted that the error was not material and that the appeal was bound to fail in any event. He relied on the decision of the Asylum and immigration Tribunal, *BM and AL (352D(iv); meaning of "family unit")* Colombia [2007] UKAIT 00055. The headnote reads:

"What is a 'family unit' for the purposes of para 352D(iv) Immigration Rules is a question of fact. It is not limited to children who lived in the same household as the refugee. But if the child belonged to another family unit in the country of the refugee's habitual residence it will be hard to establish that the child was then part of two different 'family units' and should properly be separated from the 'family unit' that remains in the country of origin."

Mr Mills submitted that, whatever view a decision-maker might take of other parts of the sponsor's evidence, it was accepted by both parties that the sponsor had not been part of the appellant's family unit in Uganda at the time he had left the country to seek asylum abroad. Mr Greer, who appeared for the appellant, submitted that the rule contained no cohabitation requirement and that determining of which family unit the appellant had been a member prior to the sponsor's departure was question of fact. He submitted that, for the judge's errors to be immaterial, there must be no doubt whatever as to the outcome of the appeal.

4. Whilst there is much force in Mr Mills' submission, I find that I prefer the submission of Mr Greer. I do so for the following reasons. The judge's assessment of the evidence and his findings regarding the credibility of the sponsor are, both advocates agree, deeply flawed. I agree. I find the criticisms of the judge's analysis in the grounds of appeal are in each case made out. The appellant, therefore, has been denied a proper

and thorough consideration of the evidence advanced in her appeal. I agree with Mr Mills that the IAT decision in *BM and AL* remains good law; paragraph 352D has not, so far as I can see, been amended since the IAT made its decision in 2007. However, the IAT did not conclude that it would be impossible for an appellant to prove that he or she is a member of two family units, only that it would be 'hard to establish.' Determining whether the appellant meets the requirements of the Immigration Rules is a question of fact and so far the appellant has not seen sustainable findings of fact made on the evidence which she has adduced in support of her appeal. It may well be the case that when a competent assessment of the evidence has been carried out, the appellant may fail for the reasons given by Mr Mills but I am not satisfied that the outcome of the appeal can accurately be said, before the assessment has concluded, to be inevitable.

5. I set aside the decision of the First-tier Tribunal. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision at or following a hearing.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 28 March 2019 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for the tribunal to remake the decision at or following a hearing de novo.

Signed

Date 30 August 2019

Upper Tribunal Judge Lane