



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

Appeal Numbers: HU/21363/2016
HU/21360/2016

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 25 January 2019**

**Decision & Reasons
Promulgated
On 11 April 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SANDISIWE [M]

[M M]

(anonymity direction not made)

First Appellant

Second Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellants: Mr A Johal, Counsel instructed by Tann Law Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in HU/21363/2016, Sandisiwe [M], is described in the decision of the First-tier Tribunal as the “first appellant”. The appellant in HU/21360/2016, [MM], is described in the decision of the First-tier Tribunal as the “second appellant” and I so designate them.

2. They are sister and brother and are the children of a refugee from Zimbabwe. They appeal a decision of the First-tier Tribunal dismissing their appeal against the decision of the respondent refusing them entry clearance under paragraph 352D of the Immigration Rules as the family members of a refugee.
3. I begin with the first appellant. She was born in September 1997 and so is now 22 years old. It is accepted that she was over 18 years old when the application was made. The application was refused by the Entry Clearance Officer in part because it is a requirement of the relevant Rule that the applicant is under the age of 18 years. Whilst this is an appeal on human rights grounds the decision under the Immigration Rules illuminates the public interest and the first appellant's case under the Rules simply did not begin to run. The First-tier Tribunal decided in a possibly rather perfunctory way that there was no question of their having an Article 8 right because she was old enough to be living as an independent adult.
4. Permission was granted by First-tier Tribunal Judge Blundell who referred to the case of **Rai [2017] EWCA Civ 320**. With respect I understand the point. It was made plain in **Rai** that there needs to be a proper consideration of a claim that private and family life exists which is not normally answered just by reference to the age of the people concerned. This was particularly in the context of a Gurkha case where there is considerable evidence of high degrees of dependency often extending into adult life well passed an age that would be expected in western European society.
5. However there was very little before the judge that would have assisted him if he had tried to embark on the most comprehensive analysis. Extraordinarily, given the age of the appellant, there is no statement from her at all. There are some documents showing correspondence between her and her mother but that is not the point. I see no reason why she could not have given detailed and full instructions about her relationship with her mother which could have been considered with other evidence but she did not.
6. Further the mother's own evidence of the relationship is somewhat skimpy. She claims it is a close emotional relationship. That is not unusual between mother and daughter of all kinds of ages and the appellant is a young woman who might ordinarily be expected to be close to her mother but the only strand of evidence I see that points to her not being able to live independently is that her mother continues to pay her school fees. I am not entirely sure what that means and the point is not explained but in my judgment there is just not enough in the evidence which would have enabled the judge to find that there is the kind of relationship between these two adults which comes within the protection of Article 8(1) in a way that requires the United Kingdom to facilitate entry into the country. There is no material error here. I raise this point specifically with Counsel but Mr Johal could not say very much. That is not his fault. There is not very much worth saying.

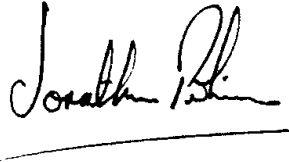
7. It follows that I dismiss the appeal in the case of the first appellant.
8. The case of the second appellant is a little more complicated. He remains a minor. Very broadly, and by way of introduction only, the children of people who are refugees are in a better position to gain entry to the United Kingdom than other children. Broadly they do not have to prove compliance with the financial requirements of the Rules and it is clearly advantageous to a properly qualified appellant to seek entry by that route.
9. The First-tier Tribunal was not satisfied that the second appellant was able to satisfy the Rules. The judge did not accept that the second appellant was part of the family unit when the mother left Zimbabwe in order to seek asylum.
10. It is interesting to see how the Secretary of State has considered the problem. It is a requirement of the Rules that the person seeking entry in this capacity 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” (paragraph 352D(iv) of HC 395). This is a rather troublesome phrase in the case of a person who did not leave her country of nationality intending to seek asylum but decided to, and did, seek asylum after arriving in another country. The Secretary of State has considered (although on what basis is unclear) a more generous test and has asked himself if the appellant were part of the “family unit before they left their country of habitual residence or at the time they made their application to seek leave outside of the Immigration Rules.”
11. The Secretary of State decided this was not shown and the First-tier Tribunal agreed. The First-tier Tribunal did not accept that the second appellant had shown that she was part of the mother’s family unit when she left Zimbabwe in order to seek asylum. That finding is clear but it is not particularly well-reasoned. This is what concerned the First-tier Tribunal Judge when permission was granted. It is the evidence of the sponsor that when she left Zimbabwe she left the children in the care of her mother. Again there is a want of detail in her evidence. It is a feature of her case that she did not even name the second appellant when she was interviewed about asylum. It is a matter of record that the sponsor did not claim asylum on arrival in the United Kingdom. She said she came to the United Kingdom to attend her sister’s graduation. She then remained as a student. It was only in 2009 that she made an asylum claim. That was some years after she arrived in the United Kingdom. It may well be that the sponsor continued to provide financial support for her children but the evidence was wholly open to the interpretation that the children and their grandma had established their own independent family unit by then although no doubt very grateful for the financial support from the United Kingdom. This is important. The decision that the second appellant is outside the scope of the refugee relevant Rule is important and permissible. Once that has gone then the human rights consideration has to be informed by other Rules and the obligation to meet the financial requirements which cannot be met here.

12. In short I see no material error. The judge made decisions that were open to him and they are intelligible and lawful and I dismiss both appeals.

Notice of Decision

These appeals are dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 10 April 2019