



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

Appeal Number: HU/14160/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 26 February 2020**

**Decision & Reasons
Promulgated
On 17 March 2020**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MR IK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented. Sponsor present.
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. By my decision promulgated on 20 December 2019 I set aside the decision of the First-tier Tribunal (a copy of which is attached). I now remake that decision. As at the previous hearing the appellant was not represented but his mother (the sponsor) appeared on his behalf.

Background

2. The sponsor is a refugee. On 11 March 2018 the appellant, a citizen of Sierra Leone born on 24 April 1999, applied for leave to enter the UK as the sponsor's child pursuant to paragraph 352D of the Immigration Rules.
3. The application was refused by the respondent because:
 - (a) it was not accepted that the appellant is the sponsor's son; and
 - (b) even if the appellant is the sponsor's son, he did not satisfy paragraph 352D(ii) because he was over 18 when the application was made.
4. The respondent also considered the appellant's rights under article 8 ECHR and found:
 - (a) there was not family life between the appellant and sponsor and therefore article 8(1) ECHR was not engaged; and
 - (b) even if family life existed, refusing entry was proportionate under article 8(2).

Issues in Dispute

5. In the light of DNA evidence adduced by the appellant, the respondent now accepts that the appellant is the sponsor's son.
6. It is plain that the appellant does not satisfy the requirements of paragraph 352D because, at the time he made the application, he was over 18, and paragraph 352D does not provide a route to leave to enter for an applicant who is over 18.
7. The issues in dispute, therefore, are (a) whether the relationship between the appellant and sponsor engages article 8(1); and (b) if it does, whether there would be a disproportionate interference with the sponsor's right to respect for her private and family life under article 8(2) if the refusal of entry clearance is upheld.

The Evidence and Findings of Fact

8. Neither the sponsor nor appellant prepared a witness statement.

9. The only witness was the sponsor. Although she did not have a statement, she submitted a detailed letter, which had been prepared as part of her application for asylum in 2015 (the letter is dated 2 February 2014).
10. The evidence of the sponsor is that:
 - (a) Her parents died when she was a young child and she was brought up by a family who treated her in an abusive way.
 - (b) She was raped in 1998, following which she gave birth to her son (the appellant) on 24 April 1999.
 - (c) In 2000 she met a man who subsequently, in 2004, brought her to the UK without her son (having promised that he would arrange for her son to come afterwards). The man forced her into prostitution, holding her captive for several years, during which time she lost contact with her son. She only escaped from him in 2009. She describes having been left traumatised, suffering from constant nightmares, loss of her hair and an inability to have a close relationship with anyone.
 - (d) The sponsor would ask friends travelling to Sierra Leone to look for her son (she would give them a photograph of him, aged 4). In 2017 one such friend by chance met the woman who was, at that time, caring for her son. After this chance encounter she has become involved in her son's life.
 - (e) She speaks to her son regularly and they are rebuilding their relationship.
 - (f) Her son currently attends school, where he studies business and accounts, and he would like to study business at university in the UK.
 - (g) She is overwhelmed by a desire to see her son again and is very close to him.
 - (h) As a refugee, she is unable to travel to Sierra Leone to see him, and desperately wants him to move to the UK.
11. Various documents were submitted showing telephone contact between the appellant and her son and that some (small) transfers of money had been made by the sponsor to him.
12. The sponsor submitted letters from her GP. A letter dated 2 April 2019 states that she suffers from severe anxiety with depression, and is on medication. It is stated:

"I think [the sponsor's] loneliness and the inability to get her son to the UK are affecting her anxiety and depression, her symptoms are worsening and she has been getting suicidal thoughts of late. She feels she has nothing and no-one to live for. I feel if she could have her son by her side, it might help improve her mental health."

13. A letter of 19 June 2018 stated:

“[The sponsor] feels the main reason for her depression is that she has not been able to see her son since the last fourteen years, as she could not travel to her country. She also lost her parents back home, and seems to be grieving until now. She feels very lonely and isolated here, she has expressed suicidal thoughts in the past, as she thinks she hardly has a life. The only hope for her is that her son will be able to join her here, and she has been officially trying to get him to join her in the UK.”

14. Mr Melvin did not challenge the appellant’s account of having suffered sexual abuse and having been trafficked to, and forced into prostitution in, the UK. However, he submitted that the appellant’s account of her reconnection – and relationship – with her son was not plausible, for two primary reasons.

15. Firstly, he argued that it is not plausible that the sponsor’s friend would, by chance, meet the woman looking after the sponsor’s son, when her only means of identifying the son was a photograph taken when he was four. He argued that the evidence of the sponsor as to how this chance encounter occurred was confused, and confusing.

16. Secondly, he observed that, in response to questions he posed about the son, the sponsor was unable to provide much detail, and did not appear to know very much about his interests, activities, or how he had been cared for since the age of four. Mr Melvin submitted that this is implausible, in the light of the sponsor’s claim to now be very close to her son.

17. There is considerable merit in the points made by Mr Melvin. It does, on its face, seem extraordinary that a friend of the sponsor would find the appellant, who at the time was 17, based solely on a photograph of him at the age of 4. It also seems to be an extraordinary coincidence that by chance the sponsor’s friend met the woman with whom, at the time, the appellant was living. It is also notable that in giving evidence on this issue the sponsor seemed to become muddled, and it was difficult to follow her account.

18. Mr Melvin is also correct when he highlights that the sponsor was unable to give detailed answers in response to questions about her son and appeared to have only a superficial knowledge about his life, activities, and interests.

19. However, sometimes coincidences – even extraordinary ones – happen. And sometimes people who are telling the truth become muddled and confused whilst giving evidence. I consider this to be such a case. Had I only seen the evidence in written form, I am in no doubt that I would have reached the conclusion proposed by Mr Melvin – that the account is simply too implausible to believe. However, the oral evidence given by the sponsor was compelling and powerful. I was left in no doubt that, through no fault of her own, she was forced apart from her 4-year-old son and that she did not know of his whereabouts until her friend located him when he

was 17. I am also in no doubt that reconnecting to and rebuilding her relationship with her son is, by far, the most important thing in the sponsor's life, and that her desire to see him is overwhelming. The sponsor explained that the reason she did not know details about her son is that she just wants to be his mother and that when they speak on the telephone she does not probe him about the details of his life. I found this to be entirely believable.

20. I find that the appellant has given a truthful account in all respects and I accept her evidence in full.
21. I also find, in the light of the GP records, that the sponsor suffers from anxiety and depression, has had suicidal thoughts, and feels that she has nothing to live for other than her son.

Analysis

Are the appellant's article 8 rights engaged?

22. Whether family life exists is highly fact sensitive. Depending on the particular circumstances, it may exist between parent and child even after the child has reached the age of majority.
23. The facts of this case are stark, and unusual. The sponsor and appellant enjoyed family life together until the sponsor was trafficked to the UK, when the appellant was only four. The sponsor's separation from the appellant was not her choice, and, because of the terrible circumstances - and lack of freedom - she faced after arriving in the UK, she was unable to maintain contact with the appellant. It was only many years later, when the appellant was 17, that she discovered his whereabouts and reconnected with him. I find, in these unusual circumstances, that the family life which existed until the appellant was aged 4 continued thereafter notwithstanding the absence of contact, because the sponsor's relationship with the appellant continued, throughout this time, to be central to her identity and of fundamental importance to her.
24. The appellant is now an adult. However, it is well established that family life does not abruptly come to an end when a child turns 18. Whether family life persists will depend on the specific circumstances. Love and affection between a parent and adult child is not enough - there must be something more. In *Singh v SSHD* [2015] EWCA Civ 630 Sir Stanley Burnton, with whom Richards and Christopher Clarke LJ agreed, stated at para. 24:

"The love and affection between an adult and his parents or siblings will not of itself justify a finding of a family life. There has to be something more. A young adult living with his parents or siblings will normally have a family life to be respected under Article 8. A child enjoying a family life with his parents does not suddenly cease to have a family life at midnight as he turns 18 years of age. On the other hand, a young adult living independently of his parents may well not have a family life for the purposes of Article 8."

25. In this unusual case, I find that family life exists because:

- (a) The appellant is a very young man (not yet 21) still in education and without a family of his own;
- (b) The sponsor has endeavoured, since discovering the appellant's whereabouts when he was 17, to become as involved as possible in his life despite being unable (because of her refugee status in the UK) to travel to Sierra Leone; and
- (c) The emotional/psychological impact on the sponsor of being apart from her son is far greater than the norm for a parent living apart from an adult child, given the traumatic history.

Is the Interference with the Appellant's Article 8 Rights Proportionate?

26. In order to assess the proportionality of the respondent's decision to refuse entry clearance to the appellant, I have considered the factors favouring a grant of entry clearance and those against, adopting the "balance sheet" approach recommended by Lord Thomas in *Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] UKSC 60. I have had regard to the relevant considerations listed in section 117B of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act") as well as other considerations that I consider relevant. I have also kept in mind that I am concerned with sponsor's (and not the appellant's) rights under article 8 as it is only the sponsor who is in the UK. See *KF and others (entry clearance, relatives of refugees) Syria* [2019] UKUT 00413 at 14.

27. The factors weighing in the appellant's favour are as follows:

- (a) The sponsor cannot return to Sierra Leone in order to live with (or in the vicinity of) the appellant because she is a refugee from that country. The only realistic way the appellant and sponsor can have a meaningful in person relationship (as opposed to a relationship that is conducted solely by telephone and electronic communication) is for the appellant to come to the UK. Moreover, even visiting each other will be extremely problematic given the sponsor cannot travel to Sierra Leone and the difficulties the appellant may face in obtaining a visit visa to the UK.
- (b) The sponsor has significant mental health problems which are connected to her separation from her son and might be alleviated by his presence. Her GP stated:

"She feels she has nothing and no-one to live for. I feel if she could have her son by her side, it might help improve her mental health"

- (c) The sponsor is alone in the UK, without family support.

28. The factors weighing against the appellant are:

- (a) The appellant is not entitled to entry clearance under the Immigration Rules and maintenance of effective immigration controls is in the public interest (this is a mandatory consideration under s117B(1) of the 2002 Act).
- (b) The appellant is not financially independent, and is likely to be, at least in the short-term, a burden on the taxpayer. This weighs against a grant of entry clearance in accordance with the mandatory consideration under s117B(3) of the 2002 Act.
29. As the appellant speaks English, section 117B(2) of the 2002 Act (it is in the public interest that a person seeking entry to the UK speaks English) is a neutral factor. The other considerations in Part 5A of the 2002 Act are not relevant.
30. There must be something exceptional or compelling to make denial of entry clearance, which would otherwise be consistent with the Immigration Rules, a disproportionate interference with a person's family life. In this unusual case, which is very specific to its facts, I am satisfied that there are compelling (indeed, very compelling) circumstances which make this appeal exceptional.
31. Although I attach significant weight to the important factors weighing against a grant of entry clearance (the public interest in the maintenance of immigration controls and the public interest in those granted entry clearance being financially independent), the balancing exercise under article 8 nonetheless falls firmly on the side of the appellant because the sponsor's mental health issues arising from her separation from him combined with it being practically impossible for the appellant and sponsor to reunite elsewhere than in the UK makes this an exceptional and very compelling case.

Decision

32. The appeal is allowed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Although the parties did not seek an anonymity order, given that the sensitive nature of some of the matters described in this decision I make the following direction: Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Upper Tribunal Judge Sheridan

Dated: 17 March 2020