



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-000074

First-tier Tribunal No:
HU/04231/2020

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 3 August 2023**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**Saynab Mahamud Hilowle
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Pipe, Counsel, instructed by TRP Solicitors
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 11 May 2023

DECISION AND REASONS

1. The appellant's application for entry clearance as an adult dependent relative was refused by the respondent for reasons set out in a decision dated 13 February 2020. Three reasons were given by the respondent. First, the appellant failed to provide a valid medical certificate confirming she has undergone screening for active pulmonary tuberculosis and she is free from that disease. Second, the appellant has failed to establish that she requires long-term personal care to perform everyday tasks as a result of age, illness or disability. Third, the appellant has failed to establish that

she is unable, even with the practical and financial help of the sponsor, to obtain the required level of care in Uganda or Somalia.

2. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Anthony for reasons set out in a decision promulgated on 14 April 2021. In summary, Judge Anthony found the appellant suffers from a number of medical conditions that may impact on her ability to look after herself. However, she found the appellant's claimed need for care is not supported by any medical evidence. She found the appellant lives alone and does not receive consistent personal care from another person to perform everyday tasks. Judge Anthony found the appellant does not meet the requirements set out in E-ECDR.2.4 and E-ECDR.2.5 of Appendix FM of the immigration rules. As far as the Article 8 claim outside the immigration rules is concerned, Judge Anthony concluded the appellant has failed to discharge the burden upon her that she has established a family life with the sponsor within the meaning of Article 8(1). She did not therefore need to consider whether the decision to refuse entry clearance is proportionate.
3. The appellant claims the decision of Judge Anthony is vitiated by material errors of law. Four grounds of appeal are advanced. First, having accepted the appellant suffers from a number of medical conditions which impact upon her ability to care for herself and that the sponsor has been remitting funds to the appellant, and was instrumental in arranging for the appellant's move to Uganda, Judge Anthony erred in finding the appellant has not established a family life with her daughter. Second, it is irrational to say, as the judge did at paragraph [30]; "*.. Whilst it may be the case that the sponsor remits monies to the appellant, I find that such financial support is not an indication that family life exists...*". Third, in considering whether family life exists, the judge failed to have regard to the positive obligation to promote family life. Fourth, once Article 8 is engaged, Judge Anthony should have gone on to undertake a proper proportionality assessment.
4. Permission to appeal was granted by Upper Tribunal Judge Lindsley on 24 November 2021. She said:

"It is arguable that on the accepted findings, including those with respect to remittances, that family life (real, effective or committed support going beyond normal emotional ties) ought to have been found to exist between the appellant and sponsor applying the correct legal test; and that thus it was an error of law to fail to consider whether any interference with that family life was proportionate notwithstanding the failure of the appellant to meet the requirements of the Immigration Rules."

The hearing of the appeal before me

5. Mr Pipe adopts the grounds of appeal. The appellant does not challenge the finding made by Judge Anthony that the appellant does not meet the requirements set out in Appendix FM for entry clearance as an adult dependent relative. The focus is upon the judge's consideration of the Article 8 claim outside the immigration rules. Mr Pipe submits that at paragraph [27] of the decision, Judge Anthony notes the sponsor

reconnected with the appellant in 2018 and was instrumental in moving the appellant to Uganda so the sponsor could visit her. Mr Pipe submits Judge Anthony erred at paragraph [30] when she found that the financial support provided by the sponsor to the appellant is not an indication that family life exists. He submits that at paragraph [31] Judge Anthony found there is nothing to indicate that the relationship is anything unusual or that there are elements of dependency that would make it untenable for the appellant and sponsor to live separate lives, maintaining communication through other means as they have done through the years. Mr Pipe submits that Judge Anthony was looking for something 'exceptional'. He refers to the decision of the Court of Appeal in Mobeen v SSHD [2021] EWCA Civ 886, in which the Court of Appeal held that a Tribunal had been wrong in concluding that family life did not exist for the purpose of Article 8 in relation to an application for leave to remain in the UK.

6. Here, Mr Pipe submits the reasons for the appellant's separation from her daughter are set out in paragraph [27] of the decision. The sponsor was instrumental in moving the appellant to Uganda so the sponsor could visit her. Judge Anthony found the sponsor has been remitting funds to the appellant, that at paragraph [20] of her decision, Judge Anthony said could pay for any treatment or care that the appellant may reasonably require. Judge Anthony accepted, at [29], that the sponsor regularly maintains communication with the appellant. Having identified those relevant factors it is, Mr Pipe submits, irrational to conclude the appellant's relationship with the sponsor is simply the ordinary relationship between a mother and her adult daughter such that the appellant has not shown that she has an established family life with the sponsor within the meaning of Article 8.
7. In reply, Mr Lawson adopted the rule 24 response dated 8 February 2023 that has been filed and served by the respondent. Mr Lawson submits the fact that the sponsor provides financial support to the appellant adds little. The appellant has lived apart from the sponsor since 2014. They reconnected in 2018 and the evidence regarding the sponsor's involvement in the appellant's life since the appellant moved to Uganda was very limited. Mr Lawson submits that on the findings made and the evidence that was before the First-tier Tribunal, it was open to the judge to find that the appellant has not shown that she has established a family life with the sponsor within the meaning of Article 8.

Decision

8. Although identified as four separate grounds of appeal, I can take the first three grounds together since they all concern the decision of Judge Anthony that the appellant has not established a family life with the sponsor, her adult daughter, for the purposes of Article 8 ECHR. The fourth ground of appeal relies upon the appellant succeeding on the first three grounds of appeal.
9. Ultimately, the question whether an individual enjoys family life is one of fact and depends on a careful consideration of all the relevant facts of the particular case. The question is highly fact sensitive. In Kugathas -v-

SSHD [2003] EWCA Civ 31, at [14], Sedley LJ cited with approval, the Commission's observation in S v United Kingdom (1984) 40 DR 196: "Generally the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case.". There is no presumption that a person has a family life, and the Tribunal must consider a range of factors that are relevant. Such factors include a consideration of matters such as the family members with whom the individual has lived, identifying who the direct relatives and extended family of the appellant are, the nature of the links between them, the age of the applicants, where and with whom they have resided in the past, and the forms of contact they have maintained with the other members of the family with whom they claim to have a family life.

10. In Mobeen v SSHD that is relied upon by Mr Pipe, having reviewed the authorities, at paragraph [46] of her Judgment Lady Justice Carr DBE said:

"However, the case law establishes clearly that love and affection between family members are not of themselves sufficient. There has to be something more. Normal emotional ties will not usually be enough; further elements of emotional and/or financial dependency are necessary, albeit that there is no requirement to prove exceptional dependency. The formal relationship(s) between the relevant parties will be relevant, although ultimately it is the substance and not the form of the relationship(s) that matters. The existence of effective, real or committed support is an indicator of family life. Co-habitation is generally a strong pointer towards the existence of family life. The extent and nature of any support from other family members will be relevant, as will the existence of any relevant cultural or social traditions. Indeed, in a case where the focus is on the parent, the issue is the extent of the dependency of the older relative on the younger ones in the UK and whether or not that dependency creates something more than the normal emotional ties."

11. At paragraphs [23] to [25] of her decision, Judge Anthony referred to the relevant authorities. At paragraph [27], she summarised the background to the appellant's separation from the sponsor. Judge Anthony notes the sponsor arrived in the UK in 2015, about a year after the sponsor had been left by the appellant in the care of a friend. She noted the appellant and sponsor re-established contact in 2018 and that the sponsor was instrumental in moving the appellant to Uganda so the sponsor could visit her. At paragraph [20] of her decision, Judge Anthony had noted there is some documentary evidence of financial remittance from the sponsor to the appellant. The appellant's bundle of documents before the First-tier Tribunal included (*pages 26 to 34*) various money transfer receipts referring to funds sent by the sponsor to the appellant between February 2019 and November 2020. Judge Anthony also accepted the sponsor regularly maintains communications with the appellant.
12. Judge Anthony refers to the sponsor's evidence, at paragraph [30], that the appellant and sponsor have not lived as a family unit since at least 2014, but the sponsor remits monies to the appellant. She said that "*such financial support is not an indication that family life exists*". At paragraph [31] Judge Anthony said:

“I conclude that the appellant’s relationship with the sponsor is simply the ordinary relationship between a mother and her adult daughter. It is clear the sponsor cares very much for the welfare of her mother and that is to be expected. However, I find there is nothing to indicate to me that the relationship is anything unusual or that there are elements of dependency that would make it untenable for them to live separate lives, maintaining communication through other means as they have done through the years. I conclude that the appellant has failed to discharge the burden of proof that she has family life with the sponsor going beyond the usual emotional ties between a mother and her adult daughter.”

13. There is nothing in that analysis of the evidence that indicates Judge Anthony was as Mr Pipe submits, looking for something ‘exceptional’. She had noted, at [26] that the issue under Article 8(1) is highly fact sensitive and there is no blanket rule. She noted each case should be analysed on its own facts taking into account the relationship between parent and adult child and its history to decide whether or not family life exists within the meaning of Article 8(1).
14. It is now well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular: (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently.
15. An appeal before the Upper Tribunal is not an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, even surprising, on their merits. Here, the decision of Judge Anthony must be read as a whole. She gives adequate reasons for the findings she made. As she noted, a fact-sensitive analysis was required. The findings and conclusions reached by the judge were neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusions that were wholly unsupported by the evidence. I reject the claim that the analysis of the evidence is irrational or perverse. The fact that the sponsor was instrumental in moving the appellant to Uganda and that the sponsor has been remitting funds to the appellant are relevant factors, but not determinative. I accept that at [30], Judge Anthony said that “*such financial support is not an indication that family life exists*”, but when the decision is read as a whole and in context, it is clear that Judge Anthony was not saying that financial support is never an indication that family life exists.
16. At paragraph [32] of her decision, Judge Anthony acknowledged that the decision would prevent the appellant and sponsor living together, but she noted there is nothing to show that this will result in any hardship or difficulty. The decision simply interferes with the preferences of the appellant and sponsor.

17. On the facts and evidence before Judge Anthony here, it was open to her to conclude that although the sponsor remits monies to the appellant, such financial support is not here, an indication that family life exists. The Judge did not consider irrelevant factors, and the weight that she attached to the evidence either individually or cumulatively, was a matter for her. The conclusion reached by the judge was based on the particular facts and circumstances of this appeal and the strength of the evidence before the Tribunal. Where a judge applies the correct test, and that results in an arguably harsh conclusion, it does not mean that it was erroneous in law.
18. Although I accept that the obligations under Article 8 require a state not only to refrain from interference with existing family life, but also from inhibiting the development of a real family life in the future, that is not to say that, only a future intention will be sufficient to engage Article 8. As explained in Adjei (visit visas - Article 8) [2015] UKUT 0261 (IAC), the first question to be addressed in an appeal against refusal to grant entry clearance as a visitor where only human rights grounds are available is whether article 8 of the ECHR is engaged at all. If it is not, no further assessment of the Article 8 claim is required. If article 8 is engaged, the Tribunal may need to look at the extent to which the claimant is said to have failed to meet the requirements of the rule because that may inform the proportionality balancing exercise that must follow. Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC) is not authority for any contrary proposition.
19. It follows that in my judgement, the first three grounds of appeal fail. It was open to Judge Anthony to conclude that the appellant has failed to establish that she has a family life with the sponsor within the meaning of Article 8(1). The question whether the decision to refuse entry clearance is disproportionate does not therefore arise. The Judge did not therefore err in concluding that she did not need to go on to consider proportionality.
20. It follows that I dismiss this appeal.

Notice of Decision

21. The appeal is dismissed.

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 June 2023