IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005757
First-tier Tribunal No:
HU/57586/2021
IA/16891/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ISMAIL ALNOUR ISMAIL ADAM
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr. J. Howard, Fountains Solicitors
For the Respondent: Mrs. R. Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 9 November 2023

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge C. Taylor, (the "Judge"), promulgated on 6 September 2022, in which she dismissed the Appellant's appeal against the Respondent's decision to refuse his application for entry clearance. The Appellant is a national of Sudan who applied to join his mother, the Sponsor, a recognised refugee.

2. Permission to appeal was granted by Upper Tribunal Judge Hanson in a decision dated 24 January 2023 as follows:

> "Ground 1 asserts the Judge erred in law in the assessment of the claim under paragraph 319V of the Immigration Rules and when finding at [52] and [55] the appellant could not satisfy the test of exceptional compassionate

circumstances/unduly harsh consequences. The ground refers to the sponsors claim the appellant's life is in danger as a result of his belonging to the Berti Tribe and asserts the Judge failed to give any reasons as to why, in light of relevant country guidance caselaw and the appellant facing a real persecutory risk in Sudan as a result of his ethnicity, this would not be sufficient to amount to an exceptional compassionate circumstance.

Ground 2 asserts a contradictory finding in relation to whether the Judge found there was family life between the appellant and the sponsor or, in the alternative, had failed to adequately explain why the evidence was not sufficient to demonstrate that family life existed especially as it was accepted by the Judge the appellant receives financial support from his mother and his sister and that there is daily contact.

The Judge considered the question of whether family life existed which the Judge quite properly states is highly fact sensitive. The Judge accepted the existence of family life whilst the appellant lived with the sponsor in Sudan and at [58] found that the appellant, although over 18, has not left the family unit which amounted to evidence of real, effective committed support, the hallmark of a family unit. At [60] the Judge accepted the fact the sponsor had left Sudan would not automatically end their family but states there was little evidence of how that family life was being conducted. I find merit in the ground asserting the Judge has found the appellant appears to remain within the family unit that existed prior to the sponsor having to come to the UK. It can be further inferred from the findings that family life recognised by article 8 previously existed and that the appellant had not yet formed an independent family unit of his own. Family life recognised by article 8 can exist independent of how that family life is conducted. It cannot be conducted as it was before with the sponsor now in the UK. The Judge had ample material showing how the family dynamics now worked with the family being separated. It is arguable that a more detailed analysis of this aspect was required by the Judge and more extensive findings made in support of the conclusion that the Judge could not find that family life recognised by article 8 existed.

In relation to the appellant's tribal ethnicity, it is correct to say there is no reference to that in
the determination or to have been factored into the decision. At the next hearing the appellant's representatives must draw to the attention of the Upper Tribunal the evidence in which such a claim was made before Judge Taylor."

The hearing

3. The Sponsor attended the hearing.

4. In her submissions, Mrs. Arif accepted on behalf of the Respondent that the decision involved the making of a material error of law in relation to Ground 1, the consideration of paragraph 319V. She did not accept that Ground 2 identified a material error of law, and maintained that the Judge had been entitled to find that there was no family life on the evidence before her.

5. I agreed that the decision involved the making of a material error of law in relation to Ground 1. Additionally I found that Ground 2 was made out, and that the Judge had erred in her findings in relation to family life.

6. I set the decision aside to be remade. A short adjournment was taken for the parties to prepare submissions.

7. When I returned after the adjournment, Mrs. Arif stated, with reference to the CPIN Sudan: Security Situation, June 2023, paragraph [3.1.2], that the test set out

in paragraph 319V, that the Appellant was living alone outside the United Kingdom in the most exceptional compassionate circumstances, was met given the evidence of the current situation in Sudan.

8. I stated that I would therefore allow the appeal, as it had been conceded that the immigration rules were met, and as I was satisfied that there was family life between the Appellant and Sponsor. I set out the reasons for my decision below.

Error of law

9. It was accepted by Mrs. Arif that Ground 1 was made out. The Judge considered whether the Appellant was living alone in the most exceptional compassionate circumstances from [48] to [52]. There is no reference in these paragraphs to his tribal ethnicity. I find that this issue was raised before the Judge. In particular, at [28] of the Skeleton Argument before the First-tier Tribunal it states:

> "The Appellant has explained that his life remains in danger in Sudan as a result of his ethnicity."

10. At [16] of the Sponsor's statement she states:

> "It is not safe for Ismail to remain in Sudan. I am extremely worried for his safety. His life is in danger as a result of him belonging to the Berti tribe."

11. I find that the Judge's failure to consider this issue as part of her assessment is a material error of law. I further find that there was inadequate consideration of the evidence before the Judge regarding the Appellant's circumstances, in particular the evidence of the Appellant's siblings.

12. In relation to Ground 2, the Judge's findings in relation to family life are set out from [58] to [62] as follows:

> "58. The question of whether family life exists between an adult child and their parent is a question of fact and an issue which is highly fact-sensitive. The facts of this care are that the Appellant and Sponsor lived in the same home as a family unit before the Sponsor fled Sudan. The Appellant, although over 18, had not left the family unit, I can take this ongoing cohabitation as evidence of real, effective committed support, the hallmark of the family unit. I find that there was family life when the Sponsor was in Sudan, the question is, whether there is currently family life.
>
> 59. The Sponsor did not leave this family unit by choice but fled because of persecution. I accept the evidence of the Sponsor that she speaks to the Appellant regularly. At the time of her asylum interview she stated that she had spoken to him a week before.
>
> 60. The act of the Sponsor leaving Sudan would not necessarily end her family life with the Appellant. The difficulty is, that I have very little evidence of how the family life is conducted in the new factual circumstances of the Sponsor being in the UK and the Appellant being in Sudan.
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> 61. There is no documentary evidence before me of financial support and dependence. The emotional support is described as daily telephone calls, but without any details of the substance of this contact or specifically how the Appellant and Sponsor provide each other with support.

> 62. It is now four years since the Sponsor left Sudan. I need to see evidence of more than the normal emotional ties between the Appellant, an adult child, the Sponsor and his siblings in order to find that there is currently family life. On the evidence before me, I cannot make that finding."

13. I agree with the grounds that these findings are contradictory, and that it could be read from [60] that there is family life, albeit little evidence of it. However, this is contradicted by the later finding at [62]. Further, I find that there was evidence before the Judge from the Sponsor and from the Appellant's siblings as to how family life was conducted. The Judge has not given reasons for why she rejected this evidence, or why it was not sufficient to show the existence of family life. She accepted that family life existed prior to the Sponsor and the Appellant's siblings leaving Sudan, and she had evidence before her as to how that family life was being maintained, but she has failed to give reasons for why she has not accepted that evidence.

14. I find that Ground 2 is made out and that the Judge has erred in her consideration of family life.

Remaking

15. As accepted by Mrs. Arif, the Appellant meets the requirements of paragraph 319V of the immigration rules. It was accepted that he is living alone in Sudan, as found by the Judge at [49]. Paragraph [3.1.2] of the CPIN states:

> "the levels of indiscriminate violence in Khartoum, and its immediate hinterland, Darfur and North Kordofan are at such a high level to mean that there are substantial grounds for believing there is a real risk of serious harm to a civilian's life or person solely by being present there."

16. In reliance on this evidence, Mrs. Arif accepted that the Appellant was living alone in the most exceptional compelling circumstances. I find that the Appellant meets the requirements of the immigration rules.

17. The case of TZ (India) [2018] EWCA Civ 1109 states at [34]:

> "That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."

18. Further to this, the headnote to OA and Others (human rights; 'new matter'; s.120) India [2019] UKUT 00065 (IAC) states:

> "(1) In a human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002, a finding that a person (P) satisfies the requirements of a particular immigration rule, so as to be entitled to leave to remain, means that (provided Article 8 of the ECHR is engaged), the Secretary of State will not be able to point to the importance of maintaining immigration controls as a factor weighing in favour of the Secretary of State in the proportionality balance, so far as that factor relates to the particular immigration rule that the judge has found to be satisfied."

19. As I stated at the hearing, I find that there is family life between the Appellant, Sponsor and the Appellant's siblings, and that therefore Article 8(1) is engaged.

It was accepted by the Judge that family life existed prior to the Sponsor and the Appellant's siblings leaving the Appellant in Sudan. The only reason that the Appellant did not accompany his family was due to his age, being over 18. I find that there was no intention for family life to cease. I find that the Sponsor has continued to support the Appellant financially. Following Rai [2017] EWCA Civ 320 I find that this support is real, effective and committed.

20. In relation to emotional support, the Sponsor set out in her statement that she had daily contact over the telephone [11]. The statements from the Appellant's siblings set out how they miss the Appellant (pages 18 to 21 of the Appellant's bundle). At [30] and [31] the Judge set out the evidence from two of his siblings.

> "Rital Adam, the Sponsor's daughter, adopted her statement and gave evidence that the Appellant lives alone and she speaks to him daily. He cannot remain in Sudan because he is unwell and needs care daily. His being in Sudan is causing harm and anxiety to the family.
>
> Gory Adam, the Sponsor's daughter, adopted her statement and confirmed that the family are all very close and bonded having all been brought up together. It is very difficult without their brother. The Appellant lives alone, he used to live with her maternal uncle who passed away. The Appellant is on his own and suffering. He needs someone to care for him."

21. I find that there is regular telephone contact between the Appellant and his family in the United Kingdom, which is how they maintain family life. I find that there is real, committed and effective emotional support between them. I find that the Appellant is not living an independent life, especially given the current situation in Sudan. I find that family life continues between the Appellant and his family in the United Kingdom.

22. With regard to the factors set out at section 117B, as it is accepted by the Respondent that the Appellant meets the requirements of paragraph 319V of the immigration rules, there will be no compromise to the maintenance of effective immigration control by allowing his appeal. Taking all of the above into account, and following Razgar [2004] HL 27, I find that the rights of the Appellant, Sponsor and the Appellant's siblings outweigh the weight to be given to the public interest in maintaining effective immigration control. I find that the Appellant has shown on the balance of probabilities, that the decision is a breach of his rights, and those of the Sponsor and his siblings, to a family life under Article 8 ECHR.

Notice of Decision

23. The decision of the First-tier Tribunal involves the making of material errors of law. I set the decision aside.

24. I remake the decision allowing the Appellant's appeal on human rights grounds, Article 8.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
10 November 2023