



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003280
UI-2023-003285

First-tier Tribunal Nos: HU/57453/2022
HU/57455/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

26th October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**FREZGHI GEREMESKEL
FNAN GEREMESKEL
(ANONYMITY ORDER NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr. M. McGarvey, Counsel instructed by Crowley & Co.
For the Respondent: Mrs. R. Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 12 October 2023

DECISION AND REASONS

1. This is an appeal by the Appellants against a decision of First-tier Tribunal Judge Chohan, (the "Judge"), dated 27 June 2023, in which he dismissed the Appellant's human rights appeals. The Appellants are Eritrean nationals living in Sudan. They applied for entry clearance to join their brother who has indefinite leave to remain in the United Kingdom as a refugee.
2. Permission to appeal was granted by First-tier Tribunal Judge Curtis in a decision dated 9 August 2023. The relevant paragraphs state:

“3. However, paras. 15-17 of the grounds indicate that a number of background articles had been provided relating to the internal armed conflict in Sudan which had broken out two months before the hearing on 15 June 2023. I have looked at the stitched bundle and those documents are not contained therein. A perusal of the appeal record, though, confirms that five background articles, an additional skeleton argument from counsel, a s.84 notice and a letter from the person who obtained the appellants’ birth certificates were uploaded at 09:46 on the morning of the hearing.

4. The Judge’s decision makes no mention of what documents were before him. I have considered the Presidential Practice Statement No.1 of 2022 which provides, at A.13, that material that is provided late, such as the above, may not be relied upon without leave and, at A.14, that where material is provided late, “including on the day of the hearing, the Judge must deal with the admissibility of that material at the hearing as a preliminary matter”.

5. If the Judge was made aware of the existence of this late evidence, he does not record in his decision dealing with its admissibility as a preliminary matter. If the Judge ruled that evidence inadmissible, he does not say so. One such document was a recent situation report from the UN’s Office for the Coordination of Humanitarian Affairs setting out the impact of that internal armed conflict. The Judge does not mention the conflict in his decision and the grounds submit that he ought to have done, and that that failure amounts to an error of law. In Mr McGarvey’s skeleton argument of 14 June 2023 he argued that the conflict added to the serious compelling and family or other considerations which make the exclusion of the appellants undesirable (para. 24).

6. It seems to me at least arguable, when considering the plight of two Eritrean minors who fled to Sudan which then became embroiled in an internal armed conflict, that the fact of that conflict ought to have been considered by the Judge when deciding whether the requisite serious compelling family or other considerations existed. Ground 1 is arguable.”

The hearing

3. The Sponsor attended the hearing.
4. Mrs. Arif conceded on the part of the Respondent that the decision involved the making of a material error of law in the Judge’s failure to consider the evidence before him.
5. She asked that the decision be set aside, and remade in the Appellants’ favour, allowing the appeals on human rights grounds.

Error of law

6. I find that the evidence referred to in the grounds, and in the grant of permission, was before the Judge but that he failed to take it into account. It is not clear why the evidence was not considered by him, but his failure either to admit it, or to give reasons for not admitting it, is an error of law. Given the contents of that evidence, this error is material.
7. As stated in the Skeleton Argument at [8], on 15 April 2023 an internal armed conflict broke out in Sudan. At [23] the of the Skeleton Argument it states:

“It is submitted that the recent internal armed conflict in Sudan has added to the serious compelling family or other considerations which make the exclusion of the Appellants undesirable.”
8. The Appellants provided a number of pieces of evidence of the internal armed conflict, including evidence of the risk to Eritrean refugees in Sudan. The Grounds of Appeal do not

suggest that the Judge should have taken into account the Country Policy and Information Note Sudan: Security situation, June 2023 (the “June 2023 CPIN”) issued on the day after the hearing, but rather the Respondent’s policy - Family reunion: for refugees and those with humanitarian protection, July 2022. This indicated that exceptional or compassionate circumstances “could be that the applicant would be left in a conflict zone or dangerous situation”. The evidence before the Judge was that this was the position that the Appellants had found themselves in following the breakout of internal armed conflict in Sudan.

9. I find that this evidence was relevant to the issue before the Judge. I find that his failure to take it into account amounts to a material error of law. I set the decision aside.

Remaking

10. As set out above, Mrs. Arif asked that I substitute the decision with one allowing the Appellants’ appeals on human rights grounds given the internal armed conflict in Sudan, and the evidence set out in the Respondent’s June 2023 CPIN.
11. The Executive Summary of the June 2023 CPIN sets out the background. At [3.1.2] it 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”
12. The Appellants are living in Khartoum. Mrs. Arif accepted on behalf of the Respondent that the Appellants meet the requirements of paragraph 319X of the immigration rules as the situation in Sudan means that there are “serious and compelling family or other considerations” which make their exclusion undesirable.
13. Following the caselaw of TZ (Pakistan) and PG (India) [2018] EWCA Civ 1109, it having been accepted that the Appellants meet the requirements of the immigration rules, and there being no dispute as to the existence of family life between the Appellants and Sponsor, I find that the Appellants have shown on the balance of probabilities, that the decision is a breach of their rights, and those of the Sponsor, to a family and private life under Article 8 ECHR.

Notice of Decision

14. The decision of the First-tier Tribunal involves the making of a material error of law.
15. I set the decision aside.
16. I remake the decision allowing the Appellants’ appeals on human rights grounds, Article 8. It is accepted that the Appellants meet the requirements of paragraph 319X of the immigration rules.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
12 October 2023