



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003428

First-tier Tribunal No: HU/04952/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

5th February 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MY Y
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms N O'Mara, counsel instructed by Bureau for Migration and Policy

For the Respondent: Mr A Basra, Home Office Presenting Officer

Heard at Field House on 8 January 2024

DECISION AND REASONS

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. I make this order owing to the status of the sponsor as a refugee.

Owing to a proposed London tube strike permission was granted to Mr Basra to attend remotely and no objection was raised to a hybrid hearing.

1. The appellant challenges the decision of First-tier Tribunal ('FtT') Judge Chana ('the judge') in dismissing his appeal against the Entry Clearance Officer's ('ECO') refusal dated 9th December 2020 of the appellant's application for entry clearance under rule 319X of the Immigration Rules and pursuant to Article 8 ECHR.
2. The appellant is a national from Eritrea born on 28th October 2003 and living in Ethiopia. As set out in the FtT decision, the ECO did not accept that the whereabouts of his father were unknown or that he had not heard from his mother who was said to have been arrested in 2018. The ECO did not accept the parents were no longer involved. The appellant asserted he was living with a family friend who was his legal guardian and thus the arrangements could continue. Nor was the ECO satisfied with the arrangements made for the care of the appellant in the UK. The sponsor, the appellant's brother, was at the time of the ECO decision in the care of Newham Care Team and receiving support with housing, education, employment, training and general assistance. Nor did the ECO consider, despite having addressed s55 of the Borders Citizenship and Immigration Act 2009 that there were any exceptional circumstances or unjustifiably harsh consequences of refusal to breach Article 8 of the ECHR.

The grounds of appeal

3. The appellant was represented by Ms Hassan at the hearing in the First-tier Tribunal and she drafted the grounds of appeal. In essence the grounds were fourfold as follows
4. Ground (1) the decision was tainted by procedural error. Some of the judge's questions amounted to cross examination and the approach was hostile. The judge should not embark on questioning in order to develop his or her own theory of the case, **KJ (Conduct of Hearing) Cote d'Ivoire** [2004] UKIAT 00061. Questions should not be leading questions but direct and open ended, **XS (Kosovo - Adjudicator's conduct -psychiatric report) Serbia and Montenegro** [2005] UKIAT 00093. The judge asked questions which amounted to cross-examination and examples were given of questions such as 'my understanding of the Eritrean community is you are all a very close-knit community, is that correct?'. The judge referenced such questions at [21] of her decision and the judge relied on her questioning for example at [37] on the fact the appellant could work in Ethiopia having asked the question 'do you know that they are now allowed to work in Ethiopia, did you know that?'
5. The manner in which the judge asked the questions was unlawful but there was no evidence about the 'close knit nature of the community which was a matter for expert evidence. The judge ignored the country evidence which noted high unemployment rates for Eritrean refugees in Ethiopia particularly for young people. Further the judge's questioning was hostile.
6. Further there were a number of factual errors which amounted to a material error of law. Unfairness resulted in the judge's misunderstanding; (a) the judge recorded at [10] that the sponsor and appellant lost contact with the sister in Sweden owing to a family feud but nowhere in the sponsor's asylum records did it mention a feud with the sister, (b) in relation to the £5,000 the judge recorded that this was because the sponsor gave evidence that 'this is because I import some things'. By contrast the sponsor confirmed the balance stating 'it's something around £5,000 because I have also bought some things', (c) The judge stated the appeal form includes that the appellant would seek the assistance of

social services. This information is not contained in the appeal form and the sponsor confirmed he would be the one supporting the appellant.

7. The decision was littered with grammatical and typographical errors with four errors in just [12]. As such there was extensive procedural unfairness.
8. Ground (2) It was asserted that the judge failed to consider the appellant's skeleton argument ('ASA') when making her decision. The judge indicated that she had not received the ASA despite it being submitted on 26th April 2022 and she refused to receive the skeleton argument by email. She also indicated that she would only take into account what was held on the system and the judge had not referenced the ASA properly or at all.
9. Ground (3) levelled that the judges' findings on credibility were irrational. The judge relied on the fact that the appellant's temporary carer in Ethiopia was described as both a distant relative and a family friend. It is plausible that in migrant communities these descriptors could be interchangeable.
10. Secondly, the judge relied on the fact that the sponsor did not evidence any efforts to locate his parents in 2018 and did not evidence that his parents had disappeared [30]. This was trying to prove a negative.
11. Thirdly it was asserted that the judge found it was not credible that the sponsor would not have asked people in the Ethiopian camp with the appellant to locate the parents but the sponsor made clear he did not know them and the appellant asked them a favour to contact the sponsor. It was unreasonable to expect the refugees to assist in the location of the parents.
12. Fourthly, the judge made credibility findings at [34] not open to her when finding that the appellant likely knew where their parents were and the appellant was possibly living with them .
13. Ground (4) advanced that the failure to make an anonymity direction was unlawful. It was acknowledged that this was not a protection claim but nonetheless it referred to the sponsor who was a refugee.

The Hearing

14. At the hearing Ms O'Mara was given time to read the Rule 24 response served in February 2023 by the respondent. She acknowledged the lack of the transcript of the proceedings and the lack of any witness statement from Ms Hassan who had represented the appellant before the FtT and drafted the grounds of appeal to the Upper Tribunal. Ms O'Mara noted the two Case Management Review hearings following which UTJ Keith issued directions. She relied substantially on the grounds of appeal. She submitted overall that although errors may be minor, cumulatively they amounted to a material error of law.
15. Mr Basra referred to and relied on the Rule 24 response. In effect it was submitted that the questions asked were not material to the conclusions. There was no material error of law and the decision of the First-tier Tribunal should stand.

Conclusions.

16. Following settling the grounds of appeal there were two case management reviews with directions. The first dated October 2022 showed that enquiries were made as to the production of a transcript of the proceedings and a possible

witness statement from counsel who appeared in the FtT. An enquiry was made on whether concerns were raised at the hearing itself and whether the appellant continued to pursue an allegation of bias.

17. At a further case management review hearing dated 16th February 2023, it was confirmed by appellant's counsel that there was an absence of a witness statement or notes from counsel who appeared in the FtT and that the allegations of bias were no longer pursued (paragraphs 10, 11, and 16 of the grounds). Nor was a transcript produced as the appellant could not afford to pay for one. It was pointed out that counsel's note might have sufficed but it was recorded in the written reasons of the directions hearing that 'counsel who appeared below had not responded to requests for her notes'.
18. In relation to ground (i) therefore assertions were made about the conduct of the hearing but counsel having settled the grounds did not, despite the opportunity to do so, substantiate the assertions made. The tone and manner of questioning is important and a mere transcript is not necessarily conclusive that the judge was hostile or the questioning amounted to cross examination rather than clarification. It is not apparent that such concerns were raised at the hearing. Even if there were a question as to the close knit nature of the Eritrean community, it does not translate into the actual conclusions of the judge. Ms O'Mara could not take me to a passage where the judge relied on the answers to this question to reveal a material error of law.
19. The judge was commenting at [37] on the sponsor's *explanation* as to why the appellant was not working in Ethiopia which was that refugees *could not* work and it was open to the judge to correct this (indeed this was shown in the evidence submitted by the appellant that Eritreans could indeed work albeit unemployment was high) and as the judge stated, notwithstanding her question on work, 'there was no objective evidence before me to say that refugees cannot work in Ethiopia.' That statement was correct and this finding did not indicate that the judge ignored the evidence about employment in Ethiopia rather the reverse.
20. In relation to the factual errors, I located the grounds of appeal to the FtT and contrary to the written grounds, these do include a statement that 'in respect of the appellant's sister in Sweden contact was lost due to a family feud'. The judge was correct at [10] in the decision that it was the appellant's case that contact was lost owing to a feud, and this can be clearly found in the written appeal document.
21. In relation to (b) and the answer as to why the sponsor had over £5,000, the reason is not material when considered in the context in which the answer was deployed in the decision. Ms O'Mara confirmed that the existence itself of the money or its amount was not in error. From this it was the judge's conclusion that the sponsor's response that it was expensive for him to make enquiries of his and the appellant's parents in view of the importance of the same was not credible. That conclusion was self evidently open to the judge. To assert that to make a phone call is expensive when holding over £5,000 in an account is obviously pertinent. Secondly on this point without counsel's notes or a transcript the mis-recording of the evidence as to whether this money stemmed from an 'import' or from goods 'bought' is not made out and in fact the former seems more logical.
22. In relation to ground (1)(c) it was again asserted in the grounds that the statement in relation to the appellant looking for social assistance once in the UK could not be located in the appeal documents and the judge had erred. Again, I

have checked the appeal document and it is clearly written that 'if the appellant was granted EC to the UK assistance would be sought from social services'.

23. I note that there are typographical errors in the decision particularly leading up to the findings of fact but the sense of the decision is clear and the conclusions evident, various and ranging. It is clear why the appeal was dismissed. The judge found the sponsor's evidence that he did not know the whereabouts of the parents was not credible. That challenge was put squarely in the refusal letter from the ECO and an issue for the judge to decide. If anything, in terms of the factual errors I found the grounds misconceived as demonstrated above. The challenge on hostility and bias were abandoned by counsel at the CMRs before Judge Keith and despite Ms O'Mara's valiant efforts, the absence of even counsel's note undermined ground (1). I find no material error of law.
24. Ground (2). Again, although the assertions are made as to the judge's conduct at the hearing, there was no witness statement from Ms Hassan and no counsel's note provided. Ms O'Mara could not help as to when the skeleton argument was submitted although I can see it was dated 26th April 2023. It is clear that counsel before the FtT was able to make submissions orally.
25. Further there is a suggestion that the judge failed to consider the country background evidence in any detail. Again, it is submitted that the judge made comments during the hearing which is not the subject to any transcript or counsel's note. As Mr Basra indicated the judge did state at [24] of the decision that she had considered all the evidence. Having reviewed the evidence it consists largely of newspaper articles which make general reference to Eritreans being unwelcome in Ethiopia but references are largely the to Tigray and northern region of Ethiopia and there was no indication that the appellant was in the Hitsats or Shimelba camps. The appellant is resident in Addis Ababa located in the central part of Ethiopia and is already registered as a refugee in Ethiopia. As stated in the country background material 'Eritrean refugees in Ethiopia are protected by international human rights and humanitarian law.'
26. Moreover, the judge specifically asked what problems the appellant had personally encountered in Ethiopia living with the friend or distant relative and the only issue raised was that the appellant's telephone had been taken. Apart from that the judge recorded 'nothing else has happened to him' [27]. On that basis it was open to the judge to find that the appellant is safe living in Ethiopia. The criticisms in relation to the ASA are not borne out and despite the country context it is the appellant's personal experience which the judge found telling.
27. Ground (3) asserted that the judge's findings on credibility were irrational. I note much was made in the documents submitted for the FtT appeal on behalf of the appellant of the fact that the carer was not a relative. It transpired in the FtT hearing however and during oral evidence that the carer was a relative. It is not clear that the argument raised in the grounds was even put to the judge (once again there is no counsel's note) and it was open to the judge and far from irrational.
28. The judge criticises the fact that any enquiries as to the parents' whereabouts were not produced. That is very different from proving a negative of disappearance. It is not irrational and reasonable to expect, particularly as this appellant is represented, enquiries being made to find the parents bearing in mind the importance of this factor in the appeal.

29. As the judge recorded at [30], the sponsor was asked whether he had made enquiries from his parents' relatives, to which the sponsor said he had not because he did not 'have any contact with them before'. As reasoned 'Even if the sponsor did not have any contact with them before , there is no reason for why he would not contact them to find [out] about the whereabouts of his parents.'
30. It was open and cogent to find at least the effort to enquire was a reasonable issue to be addressed in credibility. The threshold for irrationality is very high and it is not made out here. The matter was clearly raised by the ECO and was going to be considered by the judge. In this instance it was not merely a matter of proving that the parents had disappeared but of producing evidence to show the efforts made to attempt to locate them which is different.
31. Thirdly, the weight to be attached to the evidence is a matter for the judge and in the context of the evidence overall it is not irrational for the judge, bearing in mind the same refugees appeared to have assisted the appellant and his carer in managing to locate the sponsor, to enquire as to whether they could locate the parents.
32. The judge stated that the appellant was 'possibly' living with his parents. The judge noted that the appellant's sponsor gave different evidence as to his parents in his asylum claim and that was not challenged in the grounds. Overall, the credibility findings made against the sponsor at [24], [29] and [30]-[33] were open to the judge.
33. Ms O'Mara conceded that the anonymity direction challenge at ground (4) could not constitute a material procedural error of law. I am not persuaded that the failure to grant anonymity in this instance can undermine the decision of the FtT such that it should be set aside.
34. Of note in this case is that the appellant could not succeed under paragraph 319X (vi) and (vii) of the immigration rules in relation to accommodation and maintenance. At the date of decision as noted by the ECO the sponsor himself was in the care of Newham Council. The judge also identified that the sponsor had not been given permission by the landlord for the appellant to live there. That was not challenged. The judge then specifically found at [37] that the appellant had not demonstrated serious and compelling family or other considerations which makes his exclusion from the UK undesirable. The judge then noted that the appellant is now an adult and in terms of the article 8 position he was capable of leading 'an independent life' [37]. The appellant is registered as a refugee in Ethiopia and as the judge found, without error in my view, nothing in the evidence (even in the background information which I have already addressed above), demonstrated serious and compelling circumstances or unjustifiably harsh consequences on refusal.
35. Having carefully considered the grounds I find no merit in the suggestion that the errors individually or cumulatively amounted to a materially flawed decision. On inspection of the documentation, fundamental assertions in the grounds were either not supported by concerns raised at the time, not substantiated by counsel's witness statement or counsel's notes or abandoned and the case of the various factual errors asserted actually mistaken. The remainder of the criticisms disclose no material error of law.

Notice of Decision

36. The decision of the First-tier Tribunal does not disclose a material error of law and will stand. The appellant's appeal remains dismissed.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

1st February 2024