IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004376

First-tier Tribunal No: HU/54873/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 2nd of October 2024

Before

UPPER TRIBUNAL JUDGE HOFFMAN

Between

DA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M Thirumaney of Shervins Solicitors
For the Respondent: Ms S Mackenzie, Senior Home Office Presenting Officer

Heard at Field House on 24 September 2024

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.

DECISION AND REASONS

1. The appellant, who is a citizen of Eritrea, appeals the decision of First-tier Tribunal Judge Peer ("the judge") promulgated on 31 August 2023 dismissing his appeal against the decision of the respondent dated 12 July 2022 refusing his application for entry clearance.

Background

2. On 8 October 2021, the appellant, who is currently residing in Ethiopia, made an application for entry clearance to the UK under the family reunion rules as the child of a refugee. His application was considered under paragraph 352D of the Immigration Rules (which has since been deleted) but in a decision dated 12 July 2022, the respondent refused him entry on the basis that the appellant's sponsor was his half-sister ("the sponsor") and not a parent. The respondent went on to consider whether there were any exceptional circumstances or compassionate factors to the appellant's case that would warrant a grant of leave to enter outside of the Rules, but she found that there were none. In particular, the respondent was not satisfied that the appellant and his sponsor enjoyed any family life together for the purposes of Article 8 of the European Convention on Human Rights ("ECHR"). The respondent took into account the best interests of the appellant because he was a child at the date of application and she found that he could be expected to continue living in Ethiopia with the woman currently looking after him.

3. The appellant exercised his right of appeal to the First-tier Tribunal. In dismissing that appeal, the judge accepted the following:

    a. that the appellant grew up in the same household as his sponsor and that following the death of their father, the sponsor, who is 10 years older than the appellant, assumed responsibility for his care;
    b. that the sponsor and the appellant fled Eritrea in 2015 and travelled to Sudan where, after two months, the sponsor continued her journey to the UK while the appellant remained in Sudan under the care of the sponsor's sister-in-law;
    c. that the sponsor undertook the journey to the UK alone because she believed that the journey was too dangerous for a child; and
    d. that the sponsor had no contact with the appellant for a period of over five years until 2021.

4. However, the judge also found *inter alia* that the sponsor's claim to have a close relationship with the appellant was undermined by her failure to mention the appellant during her asylum screening interview and her failure to take steps to trace or contact the appellant until 2021. She found that since May 2021, the appellant had been cared for by a woman in Addis Ababa; that, by the date of the hearing, the appellant was a healthy adult; and there was no evidence that the appellant's needs were not being met. The judge did not accept that the appellant had been harassed or beaten by the Ethiopian authorities for being an undocumented migrant and she also found that there was no evidence to suggest that the appellant could not obtain refugee papers from the UNHCR. In conclusion, the judge found that the decision to refuse entry clearance did not amount to a disproportionate interference with the appellant's rights under Article 8 ECHR.

Appeal to the Upper Tribunal

5. Permission to appeal the decision of the First-tier Tribunal was granted by Upper Tribunal Judge Blundell on 9 July 2024 on two bases:

(1) That it was not arguably open to the judge to conclude that the sponsor had intended to "obfuscate the actual nature of the relationship" between her and the appellant when she submitted the family reunion application.

(2) It was arguable that there was no evidence before the judge which justified the conclusion that the appellant could regularise his status in Ethiopia.

6. Judge Blundell did not, however, restrict the grant of permission to those two grounds. At the hearing before me, Ms Thirumaney, representing the appellant, confirmed that she would only make submissions on the two grounds identified by Judge Blundell, although the appellant did continue to rely on the other grounds, which I summarise below:

(3) The judge erred in finding that the sponsor made a choice to leave the appellant behind in Sudan.

(4) The judge erred in finding that the sponsor did not mention the appellant during her asylum interview.

(5) The judge failed to have regard to the evidence of the appellant's temporary guardian.

(6) The judge erred when finding that there was no evidence as to when the photograph of the appellant's injuries was taken and in finding that the appellant had not demonstrated to the relevant standard that he was beaten by the police for being an undocumented migrant.

(7) The judge erred in failing to give any or adequate reasons for finding that the evidence did support a finding that the sponsor had registered with the Red Cross in an effort to trace the appellant.

(8) The judge erred in finding that the appellant can manage in Ethiopia because she failed to have regard to the fact that he has no status in that country and risked deportation to Eritrea.

(9) The judge erred when considering the appellant's family life by failing to have regard to the fact that he had lost his parents and was entirely dependent on the sponsor at the time of application and during the time he was living with the sponsor in Eritrea and Sudan.

Conclusions – Error of Law

Ground 1: Whether the sponsor had sought to obfuscate her relationship with the appellant

7. At [25], the judge made the following findings in the context of submissions made by the respondent (recorded at [24]) questioning the closeness of the relationship between the sponsor and the appellant:

"The respondent's submission about reference to the appellant has some merit. The sponsor does not mention the appellant at all during the screening interview and does not mention him by name during the AIR. I accept she is only asked about husband or children at the SCR on 9

> November 2017 and not directly asked the brother's name during the AIR and so do not consider this goes directly to credibility. I do however consider that if the sponsor was as close to the appellant as is being suggested to the extent she was a de facto parent that the appellant would be forcefully in mind and therefore I have taken account as to how information evolved and as to the less than forthright way in which the application was presented. The appellant is not the sponsor's child although the appellant made his application in 2021 on the basis that he was the sponsor's child and the sponsor's covering letter for the application is headed 'application for my adopted child'. In the circumstances, this does give the impression of consciously trying to improve the prospects of the application and obfuscate the actual nature of the relationship." [Underlining added]

8. I am satisfied that the judge was mistaken in finding that the sponsor sought to obfuscate the nature of relationship with the appellant. While it is correct that the application for entry clearance was made on the basis that the appellant was the child of someone in the UK with refugee status (which is in line with the heading to paragraph 352D of the Rules: requirements for leave to enter or remain as the child of a refugee), it is clear from reading the visa application form dated 8 October 2021 that there was no attempt to hide the fact that the appellant was the sponsor's half-brother. Firstly, the sponsor was not named as the appellant's mother on page 4 of the form where he was required to provide details of his parents. Secondly, in the "Additional information" section on page 7, the appellant writes, "I wish to be reunited with my sister who has refugee status in the UK." Thirdly, in an accompanying letter addressed to the British Embassy in Ethiopia, the sponsor referred to the appellant as a her adopted son but goes on to explain that he was brought home by her father when he was a couple of days old and was brought up by her own mother. Fourthly, the DNA test report dated 12 August 2021 relied upon by the appellant confirmed that the appellant and his sponsor were half-siblings.

9. I am not, however, satisfied that this amounts to a material error of law. It is clear from reading [24] to [31], [33] to [38] and [43] to [44] that the judge gave careful consideration to the various forms of evidence before the tribunal, including the witness evidence of the sponsor and the documentary evidence, and she gave several detailed reasons for reaching her findings at [45] to [47] that the sponsor did not have parental responsibility for the appellant after she left Sudan in 2015 and why his needs were being met in Ethiopia. For example, the judge found that there was no evidence that the sponsor had sought to trace the appellant until 2021, and the timing of the guardian's letter saying that she could no longer look after the appellant was self-serving. She also found it to be important that the appellant had not been brought up by the sponsor during his formative teenage years and that the evidence of remittances from the sponsor to the appellant only began in June 2021. Furthermore, the judge found that little weight could be attached to the written evidence of the sponsor's friend that she took gifts to the appellant in Ethiopia in 2019 on behalf of the sponsor on the basis that it contradicted the sponsor's claim that she had lost contact with the appellant between 2015 and 2021. Those findings were all open to the judge and were not challenged before me.

10. I am therefore satisfied that the judge's findings on the nature of the relationship between the appellant and the sponsor would have been the same even if she had not found that the sponsor tried to obfuscate the nature of their relationship in the visa application form.

Ground 2: Whether the appellant could regularise his stay in Ethiopia

11. It was the appellant's case before the First-tier Tribunal that he was living in Ethiopia illegally and, according to the letter written by his guardian, the appellant had been had harassed and beaten by the police due to his lack of status in that country. However, at [31] to [32], the judge made the following findings:

> "31. An email of 22 August 2022 from the sponsor to UNHCR (AB 27) is also relied on in relation to tracing the appellant. The email refers to registration of the appellant with UNHCR UK and requested refugee status in Addis Ababa on 26 May 2021 and sets out 'even though, the UNHCR in UK confirmed … file is transferred to Addis Ababa, Ethiopia for more than a year; …told to wait to be contacted for registration until now'. The email sets out that the appellant has been abused and attacked by police and always stays at home. The email ends asking for help 'by registering to get refugees status document'. Again, this is an email in isolation written by the sponsor with no other documentary evidence of communications with the UNHCR or from the UNHCR. As such this evidence is not independent corroboration but further assertions of the sponsor. Even if accepted as accurate, the information does not indicate any attempts to trace the appellant prior to 2021 and suggests that registration of the appellant with the UNHCR in Ethiopia had not occurred as at August 2022. The email is not independent evidence of the timing or manner of any contact by the sponsor with UNHCR UK or of any steps taken to follow up or progress registration of the appellant with the UNHCR in Ethiopia.
>
> "32. I accept the information in the sponsor's covering letter that there were difficulties and the UNHCR office in Addis Ababa was closed for a period in 2021/2022 as this is externally consistent with the known situation in Ethiopia at that time but there is no evidence to suggest there are ongoing difficulties or that refugee identity documents would not be issued for Eritreans in Ethiopia now. There is no evidence before me to suggest that the appellant could not secure refugee identity documentation in Ethiopia through the UNHCR if active steps are taken to progress this."

12. Furthermore, at [45] the judge found that "[t]here is no evidence that, if active steps are taken including through approach [sic] to UNHCR, the appellant will not be able to secure identity documentation in Ethiopia". And at [55]: "

> "I have found that the evidence doesn't demonstrate the appellant has faced beatings by the police for being undocumented. As above, I accept that there may have been disruption to UNHCR operations in Addis Ababa during 2021/2022 but there is no evidence that circumstances are such that the appellant cannot take steps now to be formally registered and given refugee identify documentation in Ethiopia supported by the UNHCR akin to many other Eritreans who have refugee status in Ethiopia given the circumstances faced by many Eritreans in their own country."

13. The appellant argues that this finding is based on supposition. However, I am satisfied that based on the evidence before her, the judge was reasonably and rationally entitled to find that it was in principle open to the appellant to approach UNHCR in Addis Ababa so that he could register as a refugee. If it was the

appellant's case that the UNHCR would be unable or unwilling to issue with him refugee papers, the burden was on him to establish this on the balance of probabilities. In the circumstances, it was reasonably and rationally open to the judge to find that there was insufficient evidence before her as to why, as of the date of the hearing, he could not obtain status documents from the UNHCR.

14. I therefore find that this ground is not made out.

15. Having addressed the two grounds identified by Judge Blundell, I turn to consider the remaining grounds of appeal which were not subject to oral submissions by Ms Thirumaney.

Ground 3: The judge erred in finding that the sponsor made a choice to leave the appellant behind in Sudan

16. I am satisfied that this ground amounts to no more than a disagreement with the judge's findings at [23]. It is clear from reading [23] that the judge accepted the sponsor's evidence that she did not take the appellant with her because the journey to the UK would be difficult and dangerous for a child, and she acknowledged that the decision was a difficult one for the sponsor to take. Ultimately, as a matter of fact it was correct that the sponsor did leave the appellant behind in Sudan and it was reasonably and rationally open to the judge to find as she did that the sponsor must have felt able to leave him in the care of her sister-in-law.

Ground 4: The judge erred in finding that the sponsor did not mention the appellant during her asylum interview

17. The appellant argues that at [25] the judge failed to take into account that in her corrections to the screening interview transcript dated 21 January 2019, the sponsor did mention the appellant by name. However, I am not satisfied that the judge's finding that the appellant had not mentioned the appellant in her screening interview amounts to a material error of law. Regardless of the relationship between the appellant and the sponsor before the sponsor left Sudan and came to the UK, for the purposes of her Article 8 ECHR assessment, the judge was nevertheless of the view that the sponsor was not responsible for the appellant's upbringing during his formative years and, indeed, they were not even in contact between 2015 and mid-2021, during which time their relationship was disrupted. During that period, the appellant was cared for by others and there was a lack of evidence to show that the sponsor had sought to trace the appellant through the Red Cross before 2021. Furthermore, the judge was satisfied that, by the date of the hearing, the appellant was a healthy adult whose needs were being met in Ethiopia and that he could apply to the UNHCR for refugee status. Those were the points that ultimately informed her consideration under Article 8 ECHR.

Ground 5: The judge failed to have regard to the evidence of the appellant's temporary guardian

18. There is no merit to this ground. The judge did have regard to the letter from the guardian at [39] and at [44] she found that given its timing, little weight could be attached to it on the basis that it was self-serving. That was a finding that was reasonably and rationally open to the judge.

Ground 6: The judge's approach to the evidence that the appellant was beaten by the police

19. The judge took into account the photographs of the appellant's injuries at [39] along with the medical evidence and the letter from the guardian and, in fact, she found that the evidence appeared to show that the appellant had been attacked not once but twice given that the letter of the sponsor mentioning a beating pre-dated the medical evidence of the attack. The judge then gave clear reasons as to why she did not accept the evidence demonstrated that the appellant had been attacked by the police for being undocumented.

20. The judge considered the medical certificate dated 31 December 2022 evidencing an attack at [40]. While the judge correctly noted at [41] that there was no evidence as to when the photographs of the appellant with his injuries were taken, I accept that the injuries displayed in the photographs are consistent with the description of the injuries detailed in the medical certificate. However, the judge took into account that the medical certificate did not confirm that the appellant was attacked by the police, and she found that "[t]here are a number of reasons why a person might end up with injuries, be beaten or end up in a fight". At [42] the judge found that there was "no contextual evidence to demonstrate that the writer of the medical certificate is a doctor qualified to set out the matters therein such as the diagnosis" The judge also found it implausible that a doctor could diagnose the appellant as suffering from depression as a result of an attack that took place only hours before. In conclusion, the judge found that the evidence was "self-serving and designed to amplify the account that the appellant faces difficulties in Addis Ababa" and she found that she could attach little weight to it as evidence the appellant was attacked by the police because he was undocumented. I am satisfied that was a conclusion that was reasonably and rationally open to the judge.

Ground 7: Failure to give any or adequate reasons regarding the evidence that the sponsor had registered with the Red Cross in an effort to trace the appellant

21. There is no merit to this ground which amounts to no more than a disagreement with the judge's findings. At [27] the judge noted that the evidence of the sponsor was that she had been trying to trace the appellant through the Red Cross but the judge found that her evidence was lacking detail and specificity about the steps she had taken. Furthermore, at [28] the judge found that the only evidence that the sponsor had attempted to trace the appellant via the Red Cross was an email the sponsor had sent to that organisation on 26 April 2022. The judge did not find that to be independent evidence that the sponsor was trying to trace the appellant and, moreover, the email suggested that the sponsor had not taken steps to register with the Red Cross until 2021. Those findings were reasonably and rationally open to the judge based on the evidence before her.

Ground 8: The judge erred in finding that the appellant can manage in Ethiopia

22. This ground also amounts to no more than a disagreement with the judge's findings. It is not correct that the judge failed to have regard to the fact that the appellant was undocumented. [45] and [46] must be read in the context of the judge's decision as a whole, which includes her findings that little weight could be attached to the evidence of the guardian or the claim that the appellant had been

attacked by the Ethiopian police, and that it was open to the appellant to register with the UNHCR as a refugee. At [45], the judge accepted the evidence of the sponsor that she had not had contact with the appellant for five years from 2015 and she was entitled therefore to go on and find that the sponsor was not responsible for the appellant's upbringing during a formative part of his life. For the reasons discussed above, the judge was also entitled to take into account that the evidence suggested the sponsor had not sought to trace the appellant until 2021. The judge was also entitled to take into account that, by the date of the hearing, the appellant was an adult. At [46], the judge found that there was no evidence to show that the appellant was not in good health or that, as an adult, he would now be able to manage independently in Ethiopia if his guardian could no longer care for him. The judge also found that the sponsor could visit the appellant in Ethiopia, as she had done in the past. All of those findings were reasonably and rationally open to the judge.

Ground 9: The judge erred when considering the appellant's family life by failing to have regard to material facts

23. Again, there is no merit to this ground of appeal. The appellant argues that the judge failed to have regard to the fact that the appellant's parents died when he was young, and he had become entirely dependent on his sponsor while he was living in Eritrea and Sudan. He focuses on [53] but that paragraph cannot be considered in isolation. As is clear from [18], the judge accepted the evidence that after the death of the sponsor's parents she had assumed responsibility for the care of the appellant. However, as discussed above, the judge also took into account that after moving to Sudan in 2015, after two months the sponsor left the appellant behind while she continued her journey to the UK and she did not regain contact with him until 2021, during which time the appellant was cared for by others. At [53], the judge found that there was "no real or any detailed evidence as to the impact on the appellant of separation from the sponsor" and she took into account that, during their five-year separation, their relationship was disrupted. As of the date of the hearing, both the sponsor and the appellant were adults living in separate countries. At [54], the judge found that their relationship was conducted through calls and WhatsApp messages, the provision of some financial support and a visit by the sponsor to Ethiopia. The judge found that the relationship could continue on that basis if the appellant was refused entry clearance. At [56] the judge took into account the effect of separation on the sponsor. At [57] the judge acknowledged that there was no dispute that the appellant did not meet the requirements for entry clearance under the Rules and at [58] to [62] the judge correctly addressed the applicable law on Article 8 ECHR. The judge's subsequent findings that there was no family life between the appellant and the sponsor for the purposes of Article 8 and that the decision to refuse entry clearance was proportionate were reasonably and rationally open to her on the evidence.

Notice of Decision

There is no material error of law in Judge Peer's decision.

The appeal is dismissed.

M R Hoffman

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1st October 2024