



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004397

First-tier Tribunal No: PA/00074/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17th April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

B.M.B.
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Ambreen Mughal (Counsel), AMB Advocates

For the Respondent: Ms Sandra McKenzie (Senior Home Office Presenting Officer)

Heard at Field House on 20 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Thorne, promulgated on 18th August 2023, following a hearing at Birmingham on 3rd August 2023. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of the DRC, who has a disputed date of birth. He appeals against the decision of the Respondent dated 6th December 2022 which rejects his claimed age, his "Fear of the government", and his "Fear of being alone with no family" if returned to the DRC.

The Appellant's Claim

3. The essence of the Appellant's claim is that he claims to fear persecution because of his imputed political opinion due to his father's membership of the UDPS. He is from the Luba tribe and lived in Kinshasa with his father, at TM. His father worked full-time and was a delegate of the UDPS from about 2011 and possibly before that date also. His father used to attend political meetings, demonstrations, marches, meetings and other people's homes where he also held meetings, together with meetings at his own home as well. The Appellant claimed that his father had many altercations with the police and soldiers when he went to demonstrations and on one occasion around June 2015 his father was apprehended by the police and had to be bribed in order to be released. The last time that the Appellant saw his father, his father's wife, and her son, was sometime in November 2016, when soldiers came to their home during her father's party member meeting and they attacked his father and took him away. In the UK, the core of the Appellant (who the judge referred to a 'A') was the relationship that exists between A and his aunt and his step siblings. The Appellant 'A' claimed to play a key role in their lives.

The Judge's Findings

4. The judge had regard to the decision **PO (DRC - Post 2018 elections) DRC CG [2023] UKUT 00117** and noted that there had been a change in presidency, following the elections held on 30th December 2018, such that there had now been a durable change to the risk of persecution, faced by actual and perceived opponents of the former President Kabila (at paragraph 14). The judge observed that members or supporters and activists of the UDPS are no longer at risk upon return to the DRC. Against that background, the judge went on to conclude that the Appellant had "failed to establish even to the lower standard applicable that he has a genuine and well-founded fear of persecution in the DRC" (paragraph 18). Even if his father had been a supporter of the UDPS the country guidance case that had been cited suggested that the Appellant "would not now be at risk of persecution in the DRC" (paragraph 20).
5. With respect to the Appellant's Article 8 claim, the judge observed that given that the Appellant was an adult now, "and in the specific factual circumstances of this case it has not been established that there exists between A and his aunt and step siblings more than the normal emotional ties that one finds in such circumstances", so the appeal would be dismissed. This is because, "A does not live with his aunt and step siblings and only visits them at weekends", and that moreover, "it may be that he helps his step siblings generally and more

specifically helps G with washing etc.”, but that “However there is a lack of reliable expert or professional evidence of any sort of physical or emotional dependency between A and G” (paragraph 28). The appeal was therefore dismissed on the basis that given the decision in **Kugathas [2003] EWCA Civ 31**, all that one had here was simply a relationship that extended to no more than emotional ties.

Grounds of Application

6. The grounds of application state that the judge failed to carry out a proper Article 8 assessment, because he failed to properly weigh into the balance the health conditions of the Appellant, which included the effect that this had on his relationship with his siblings. The judge had also made a factual error (at paragraph 10) that his auntie received support from Social Services and misinterpreted the Social Services’ report. The judge also did not give proper weight to the challenges faced by the Appellant’s siblings and their dependency on the Appellant. There were, moreover, insufficient reasons given to explain the weight attached to the documentary evidence provided by the Appellant. The Section 55 consideration in relation to the best interests of the children had not been given proper weight either.
7. Permission to appeal was granted by Judge Dainty in the First-tier Tribunal on 20th September 2023 on the basis that the evidence plainly seemed to suggest that there was more than an ordinary closeness between the Appellant and his siblings, and in particular, “G” who was cleaned in relation to his personal hygiene by the Appellant himself.

Submissions

8. At the hearing before me on 20th November 2023, Ms Ambreen Mughal went carefully through the grounds of application. She submitted that what had been overlooked by the judge below was that the Appellant was currently under NASS support. He was being accommodated by NASS. This was far away from his three siblings and his auntie. Yet, the Appellant played an important part in his siblings’ life.
9. The judge made errors in this respect. The Appellant’s bundle contained NHS Royal Free London reports (at pages 33 to 34) which demonstrated in detail the health issues that G had. G was suffering from cardio episodes and was currently under investigation on the matter. The cardio episodes that G was undergoing appeared to be linked to G’s troubling childhood with PTSD as stated clearly in the report of 16th December 2022. The judge had not even considered the multiple health conditions of G in this respect. Yet, this was something that the Appellant himself was acutely aware of and attempted to deal with in his relationship with G.
10. The bond between the Appellant and G was therefore clearly more than what one would expect in an ordinary relationship. The Appellant’s aunt is in no position to look after G, and the judge wrongly stated here that Barnett Social Services were providing her with support, because there is no regular support offered by Social Services to the aunt for the care of G. This is where the Appellant came in. It was he who was caring for his brother G. In fact, the Barnett report for 26th July 2023 sets out the care that his needed for G’s learning difficulties. He has speech difficulties (see pages 51 to 54 of the Barnett report). There was no reference in the report to any support being offered by the aunt for

G. In fact, no carer comes to wash G, even though Social Services were aware that such care was needed, and because G was a teenager he was not comfortable with his aunt washing him, and so it was something that fell upon the Appellant to do, and yet this was not dealt with by the judge in the determination.

11. What was essential for the judge to have recognised was that G and the other siblings were coming from a troubled childhood and that G was suffering from PTSD. The Appellant was washing G, taking care of his personal hygiene, to the extent of even removing his pubic hairs, and if the Appellant did not undertake these duties then there was no alternative care that was available for G. In these circumstances, the issue of the application of Article 8 within this family set up could not be disposed of by a bland reference to the principle in **Kugathas**.
12. For her part, Ms Sandra McKenzie submitted that the judge had given a methodical account of how both the asylum claim and the Article 8 claim was considered. It was not that the siblings had been left out of the equation. It was not as if G had been left unconsidered. However, even if the Appellant was undertaking the duties as he thought fit for G, the fact remained that this was in the context of an adult relationship.

Error of Law

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. It is clear that the matters that have been highlighted in the grounds of application have not been considered in the decision with respect to what exactly it is that the Appellant is doing for G. In fact, the suggestion that the auntie is in receipt of Social Services' assistance is not correct. Whereas it may well have been possible to reject the claim on Article 8 grounds, the absence of sufficient reasons means that it was not so warranted to do in this decision, especially given that G had significant needs, and it appears to be admitted that the Appellant washes G and takes care of his personal hygiene in the way that was being suggested. The absence of a proper consideration of the Social Services' report means that proper regard was not had to relevant considerations. To reject family life in the way that the Appellant contended, on the basis of the reasons given, goes to disproportionality. The judge failed to carry out a proper balancing exercise.

Notice of Decision

14. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge and remit this appeal to the First-tier Tribunal pursuant to Practice Statement 7.2.(b) because the nature of extent of any judicial fact-finding, which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal to be heard by a judge other than Judge Thorne.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

16th April 2024