



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-004494
First-tier Tribunal No:
HU/59519/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

29th February 2024

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SOLOMON TEMESGEN ZEREMRIAM
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M McGarvey, Counsel, instructed by Crowley & Co Solicitors

For the Respondent: Ms A Ahmed, Senior Presenting Officer

Heard at Field House on 19 February 2024

DECISION AND REASONS

Introduction

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Swinnerton (“the Judge”), promulgated on 28 July 2023 following a hearing on 25 July of that year. By that decision the Judge dismissed the Appellant’s appeal against the Respondent’s refusal of his human rights claim.

2. The Appellant is a national of Eritrea born in December 2008; thus at all material times he has been a young teenager. He left Eritrea essentially in order to avoid military service (older siblings had been conscripted). He went from Eritrea to Sudan where it seems he resided until the outbreak of war in 2023. Thereafter he moved to Uganda, where it seems he remains to date.
3. By an application made on 31 May 2022 (whilst in Sudan), the Appellant sought entry clearance to join his brother (“the Sponsor”) who resides in the United Kingdom as a refugee. The application (deemed to constitute a human rights claim) relied on paragraph 319X of the Immigration Rules (“the Rules”)¹. In essence the claim was that the Appellant - as a child without family or other stable support - should be permitted to join his brother in the United Kingdom. The Respondent refused the claim by a decision dated 17 November 2022 and the Appellant appealed to the First-tier Tribunal.

The Judge’s decision

4. Having heard the Sponsor give live evidence, the Judge made a number of adverse credibility findings which are set out at [13] to [20]. The Judge did not accept the Sponsor’s claimed ignorance of arrangements which had been made to move the Appellant from Eritrea to Sudan and then from Sudan to Uganda. The Judge did not accept the claimed lack of knowledge about the whereabouts of other siblings: the Judge seemed to find that those siblings were still in the Eritrean military and that the Appellant and Sponsor knew of this. Aside from regarding the Sponsor as an unreliable witness, the Judge also found that the individual who had apparently been looking after the Appellant in Uganda for some time, Ms W, was not in fact about to leave that country for Switzerland, as claimed.

¹ Paragraph 319X of the Rules was deleted and replaced by Appendix Child staying with or joining a Non-Parent Relative (Protection). This took place in April 2023, prior to the hearing before the Judge, but after the Appellant's entry clearance application was made. It has not been suggested that anything of substance arise out of the change to the Rules as regards the issues in the present case.

5. In light of the adverse findings, the Judge stated at [21] that:

“Taking account of all of the circumstances of the case, I do not find that there are serious and compelling family or other considerations which make exclusion of the Appellant undesirable”.

That was apparently the conclusion relating to paragraph 319X of the Rules (although this is not made clear in the decision).

6. In respect of Article 8 on a wider basis, a single short paragraph followed, stating that the facts of the case did not support a finding of any exceptional circumstances which would have rendered the Respondent’s decision disproportionate.

7. The appeal was accordingly dismissed.

The grounds of appeal and grant of permission

8. The lengthy grounds of appeal essentially make the following points. *First*, that the Judge failed to make a clear finding of where the Appellant actually was. *Secondly*, it would have been irrational for the Judge to have found that the Appellant was in fact in Eritrea. *Thirdly*, the Judge had failed to consider relevant documentary evidence, particularly relating to the Appellant’s whereabouts. *Fourthly*, the Judge had failed to have regard to the case of Mundeba (s55 and para 297(i)(f)) Democratic Republic of Congo [2013] UKUT 88 (IAC). *Fifthly*, the Judge had failed to engage with and reach conclusions on paragraph 319X together with paragraph 319XAA of the Rules.

9. Permission was granted by the Upper Tribunal on all grounds.

The Appellant’s composite error of law bundle

10. Since the introduction of the Upper Tribunal’s new standard directions requiring the party appealing to it to provide a composite bundle containing specified documents and in a specified format, I have had occasion to criticise both the timing and contents and/or format of

such bundles. However, this case is an example where the Appellant's solicitors have provided a first-rate example of how the bundles should be presented. The appropriate "UI" reference number is used, the index is clear and in appropriate format, the order of the documents is appropriate and, importantly, the bookmarks inserted are exemplary, taking the reader straight to all of the relevant documents, not simply those contained in Part A. Beyond that, they identify relevant materials contained in the Appellant's First-tier Tribunal bundle. I commend the solicitors for their work and can only hope that bundles as good as this become the norm in this jurisdiction.

The hearing

11. It is right to record my view that Ms Ahmed's defence of the Judge's decision was skilful and has led me to reflect on, and indeed change, my preliminary position in respect to certain aspects of the Appellant's case. I am also grateful to Mr McGarvey for his assistance.
12. At the end of the hearing I reserved my decision.

Paragraphs 319X and 319XAA of the Rules

13. The two provisions which are featured in the Appellant's challenge read as follows:

319X. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the child of a relative with limited leave to remain as a refugee or beneficiary of humanitarian protection in the United Kingdom are that:

 - (i) the applicant is seeking leave to enter or remain to join a relative with limited leave to enter or remain as a refugee or person with humanitarian protection; **and**:
 - (ii) the relative has limited leave in the United Kingdom as a refugee or beneficiary of humanitarian protection and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; **and**

(iii) the relative is not the parent of the child who is seeking leave to enter or remain in the United Kingdom; **and**

(iv) the applicant is under the age of 18; **and**

(v) the applicant is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; **and**

(vi)(a) the applicant can, and will, be accommodated adequately by the relative the child is seeking to join in the UK without recourse to public funds and in accommodation which the relative in the UK owns or occupies exclusively; **or** (b) there are exceptional circumstances (as defined in paragraph 319XAA); **and**

(vii) (a) the applicant can, and will, be maintained adequately by the relative in the UK without recourse to public funds; **or** (b) there are exceptional circumstances (as defined in paragraph 319XAA); **and**

(viii) if seeking leave to enter, the applicant holds a valid United Kingdom entry clearance for entry in this capacity or, if seeking leave to remain, holds valid leave to remain in this or another capacity.

319XAA. **Where the requirements of paragraph 319X (vi)(b) or (vii) (b) apply**, the decisionmaker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which may justify a grant of leave to enter or remain, for the same duration as the sponsor (“leave in line”).

Where the applicant is a child under the age of 18 years who is seeking to join a relative with refugee status or who is a beneficiary of humanitarian protection in the UK, relevant factors when considering whether there are exceptional circumstances include: (a) they have no parent with them; and

(b) they have no family other than in the UK that could reasonably be expected to support them; and

(c) there is an existing, genuine family relationship between them and the UK based relative; and

(d) they are dependent on the UK based relative. In the event of a refusal of leave to enter or remain if the decision maker is not satisfied there are exceptional circumstances, consideration will also be given to whether refusal of the application would be a breach of Article 8 ECHR

[Emphasis added]

14. I will return to the proper approach to these provisions, below.

Conclusions

15. It is incumbent on me to read the Judge's decision sensibly and holistically and to exercise appropriate caution before interfering in respect of the error of law jurisdiction.

16. I am not satisfied that the Judge erred in respect of the assertion that he either failed to make a finding on the Appellant's whereabouts, or that he had made an irrational finding that the Appellant was still in Eritrea. I appreciate that the wording employed in [20] of the decision ("the claimed movement of the Appellant from Eritrea to Sudan and then on to Uganda ...") is perhaps somewhat unfortunate and apt to lead to possible uncertainty. However, reading the Judge's decision sensibly, including everything that preceded [20] and in light of the issues identified by the parties in advance of the hearing, it is clear to me that the Judge had accepted the basic fact of the Appellant's movements from one country to another. What he had rejected were the particular circumstances surrounding those movements. This is tolerably clear to the reader when the adverse findings set out between paragraphs [13] and [19] are taken into account. The first ground of challenge therefore fails.

17. When this particular issue is resolved, the third aspect of the Appellant's challenge (the alleged failure to consider relevant evidence) falls away because the evidence relating to the Appellant's presence in Sudan was implicitly taken into account and that evidence went to prove the Appellant's presence in Sudan for a period of time.

18. I agree with Mr McGarvey that one of the adverse findings appears to have little or no relevance to the core issues with which the Judge was actually concerned. This finding, stated at [18], was that the Appellant and the Sponsor in fact knew of their siblings' whereabouts and that those family members were in the Eritrean military. In light of the second element of that finding, there is no conceivable way in which those siblings could have provided any support to the Appellant (because they were in the army) and thus their whereabouts was, in effect, beside the point.
19. However, it was open to the Judge to regard other aspects of the adverse findings to be relevant to the overall evidential picture. The Judge was in my view entitled to reject a number of aspects of the Sponsor's evidence relating to his claimed lack of knowledge as to the circumstances surrounding the movements of the Appellant. Given that it appeared to have been the Sponsor who made a number of the arrangements, it was open to the Judge disbelieve the professed ignorance.
20. In light of the general unreliability of the Sponsor's evidence and the evidence as a whole, it was open to the Judge to also reject the evidence from Ms W (who did not appear as a witness) to the effect that she was having to leave Uganda to relocate to Switzerland imminently, thus leaving the Appellant behind in Uganda: [19]. The Judge was entitled to find that the absence of any relevant documentary evidence relating to Ms W's claimed travel arrangements was relevant. I have not been referred to any evidence before the Judge which was capable of showing that the Appellant was living in particularly difficult circumstances whilst under Ms W's care in Uganda.
21. With the above in mind, it was open to the Judge to conclude at [21] that the Appellant had failed to show that there were "serious and compelling family or other considerations" making his exclusion from the United Kingdom undesirable under paragraph 319X(ii) of the Rules. It

was for the Appellant to prove his case and, on the evidence provided, the Judge was entitled to conclude that he had failed to do so. A different judge might have come to the opposite conclusion on the same evidence, but that does not go to demonstrate an error of law.

22. It follows that there is no material error in respect of the Judge's failure to have specifically engaged with what was said in Mundeba because that case related to the issue of serious and compelling or other family reasons (albeit in the context of paragraph 297 of the Rules), a test which the Judge had sustainably found was not met. There was no submission from Mr McGarvey to the effect that Mundeba included any other relevant propositions which the Judge had failed to engage with.
23. The remaining aspect of the Appellant's challenge relates to paragraph 319X and whether the Judge erred by failing to consider whether there were exceptional circumstances within the meaning of that provision, in conjunction with paragraph 319XAA.
24. There is a problem here. I had asked the representatives for their position on the correct approach to paragraph 319X. Mr McGarvey submitted that the exceptional circumstances provision under paragraph 319X(vi) and (vii) operated as a discrete alternative to a finding on whether there were serious and compelling family or other considerations under paragraph 319X(ii). Ms Ahmed accepted that there had been no separate assessment of exceptional circumstances, but there was no concession on either the correct legal position or the facts.
25. Having looked at paragraph 319X with care, I conclude that the exceptional circumstances provision is not a discrete alternative to the need to demonstrate serious and compelling family or other considerations. When one works through the requirements set out at paragraph 319X(i)-(viii), it is clear that they are all conjunctive (employing the word "and" between each sub-paragraph).

26. The exceptional circumstances provision is in truth only an alternative to the ability of an applicant to be accommodated ((vi)) and/or maintained in the United Kingdom ((vii)). The use of the word “or” in those sub-paragraphs shows that the alternative in (vi)(b) is to the requirement in (vi)(a) and the alternative in (vii)(b) is to the requirement in (vii)(a). Neither are alternatives to the requirement contained in (ii). There was no dispute as to the Sponsor’s ability to accommodate and maintain the Appellant in United Kingdom and thus the alternative exceptional circumstances provision simply did not arise.
27. The effect of this is that the Judge’s sustainable finding that there were no serious and compelling family or other considerations was fatal to the Appellant’s ability to satisfy paragraph 319X. This aspect of the Appellant’s challenge must fail.
28. The grounds of appeal do not raise any free-standing Article 8 argument. They do not assert that the judge erred in law in respect of the briefly-stated wider assessment outside of the Rules. It is not for me to introduce new grounds of appeal.
29. The Appellant’s appeal to the upper Tribunal falls to be dismissed.
30. At the hearing, Mr McGarvey indicated that there was relevant new evidence in relation to the Appellant’s circumstances in Uganda. I did not enquire as to what this evidence was and in any event it could not have been relevant to the error of law issue. However, it is open to the Appellant to make a new application, supported by updated evidence relating to his circumstances. On the face of it, there might seem to be factors weighing in his favour: he is still a child living in a country other than that of his nationality; he appears to have no status in Uganda; and it seemed as though he has been and remains financially dependent on the Sponsor. All of this is a matter for the Appellant, the Sponsor, and their legal representatives.

Anonymity

31. The Judge did not make an anonymity direction and I was not asked to make one. I recognise that the Appellant was and remains a child. However, that is not of itself sufficient reason to make a direction. I do not make a direction in this particular case.

Notice of Decision

The decision of the First-tier Tribunal does not contain an error of law and that decision stands.

The appeal to the Upper Tribunal is dismissed.

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 21 February 2024