



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005547

First-tier Tribunal Nos: HU/55826/2022
IA/08397/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 8th of March 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Bethel Mehari Kifle
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr F Yaqoob, of Fountain Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 23 February 2024

DECISION AND REASONS

1. By the decision of the First-tier Tribunal (Judge Elliott) dated 20 December 2023, the appellant, a national of Eritrea, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Farrelly) promulgated on 3 October 2023 dismissing her appeal against the respondent's decision of 24 August 2022, to refuse her application for entry clearance as a child dependent relative of her claimed brother, the sponsor EM, who had limited leave to remain as a refugee pursuant to paragraph 319X of the Immigration Rules.
2. The respondent refused the application, being not satisfied of the claimed relationship, but noted that as the sponsor had been granted indefinite leave to remain (ILR) in 2019, he no longer held the necessary leave to remain required under paragraph 318X. The refusal decision was maintained in the respondent's review of 4 April 2023.

3. The dispute as to the claimed relationship was resolved by DNA testing and was no longer a live issue at the First-tier Tribunal appeal. Mr Yaqoob accepted before me that the appellant could not succeed on the basis of the Immigration Rules, at least in part because the sponsor now has ILR.
4. In summary, the grounds assert that in dismissing the appeal the First-tier Tribunal erred in law by failing to provide adequate reasoning and reaching a conclusion without considering all the evidence. It is submitted that at paragraph 44 of the decision the judge provided no reasons for finding no exceptional circumstances and there was no reference to any of the evidence in the appellant's bundle. It was further submitted that in the finding at paragraph 46 of the decision Article 8 ECHR was not engaged. The First-tier Tribunal gave consideration to irrelevant issues and in particular too much weight was given to the absence of evidence of a relationship between the appellant and the sponsor prior to 2016.
5. In granting permission, Judge Elliott considered it:

“... arguable the judge erred at paragraph 44 of his determination in failing to explain why, from the evidence before him that there were no exceptional circumstances that would result in a breach of the appellant's Article 8 rights. If there are none then the appellant deserves an explanation why the judge formed that view from the evidence, that he had recited earlier in his determination. It is also arguable that the judge erred in failing to explain why he found no evidence of the existence of family life between the appellant and the sponsor. Whilst his conclusion about that may have been correct, there is no explanation from the judge as to why the evidence that was supplied in support of the appellant's claim is not establish the existence of family life”.
6. Mr Yaqoob accepted before me that the issue of exceptional circumstances and family life stand or fall together. The judge's reference to GEN.3.2 of Appendix FM does not create an independent right on the basis of exceptional circumstances, as that is parasitical on Appendix FM and article 8 ECHR. If there was no Article 8 family life then the judge would not be able to find exceptional circumstances.
7. As to the complaint of absence of reference to the evidence in the appellant's bundle I bear in mind that the Court of Appeal in R & Others v the Secretary of State for the Home Department [2005] EWCA Civ 982, Lord Justice Brooke held that there was no duty on a judge in giving his reasons to deal with every argument and that it was sufficient in what was said demonstrated to the parties the basis upon which the judge had acted. I am satisfied that the impugned decision did meet those requirements and for the reasons I am going to outline that the findings were open to the judge on the evidence and cogent reasons provided.
8. Unarguably, given the sponsor acquisition of ILR, the appellant could not succeed under paragraph 319X and the appeal could only proceed on article 8 family life grounds, or, according to the judge, on exceptional circumstances under GEN 3.2 of Appendix FM of the Immigration Rules. This applies where “there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably

harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.” GEN.3.3 requires that “the decision-maker must take into account, as a primary consideration, the best interests of any relevant child.”

9. The judge found for the reasons set out from [45] of the decision that there was no evidential basis to find family life between the appellant and her sponsoring brother, referring to the absence of evidence of their relationship prior to his arrival in the UK in 2016. At [46] the judge stated, “I would accept the normal ties of love and affection between siblings exist. However, article 8 requires more than this. The appellant sponsor has been in the United Kingdom since at least 2016. I do not have information about his situation before that and whether family life existed. There is little information about contact between them in the intervening years.”
10. I am satisfied that this conclusion was rationally open to the judge on the limited evidence of the relationship between the appellant and her brother and that the conclusion is adequately reasoned. Whilst the threshold for engagement of article 8 is low, there must be evidence of something more than the normal ties to be expected between siblings. At [29] of the decision the judge was also not satisfied, as was the respondent, as to the appellant’s family’s circumstances. At [36] of the decision, the judge was unable to find information about the appellant’s parents beyond the assertion that her father was deceased, that there was no information about her other siblings. At [42], the judge was unable to confirm that her father was deceased and made a finding to that effect.
11. Also, the judge was not able to say when and where the sponsor and the appellant had lived together. Whilst it is true that the Tribunal had to take the circumstances as at the date of hearing, the judge was entitled to look back to see what evidence there was of family life between the appellant and the sponsor prior to the sponsor coming to the United Kingdom, by which time there has only been limited contact between him and the appellant with limited evidence of contact after that date. I am satisfied that the findings were rationally open to the judge and adequately reasoned on the evidence.
12. It was not required of the judge to refer to every single item of evidence and it is quite clear, to the reader of the decision, why the appeal had been dismissed. Whilst the threshold for engagement of family life under Article 8 is quite low, Mr Yaqoob accepts that there must be something more than the normal ties to be expected between the siblings. The judge raised a number of concerns about that evidence. I am satisfied that the judge was entitled to reach the views that he did. Essentially, the appellant’s argument is about weight given to various aspects of the evidence. However, weight is a matter for the judge. I have to consider whether the conclusions reached is within the range of conclusions a properly directed judge could reach. I am satisfied that it cannot be said that no properly self-directed judge could reach the same conclusions. I am satisfied the decision was rationally open to the Tribunal and that the reasons are adequate, even though relatively brief.
13. Mr Yaqoob has referred me to an application to admit further evidence and has identified what that evidence relates to, but it is evidence that was not before the First-tier Tribunal and therefore I cannot consider it in deciding whether there was

an error of law in the First-tier Tribunal. If the appellant wishes to rely on that subsequent evidence, she may have to make another application, taking care to address the concerns that have been raised by the respondent, and myself in this decision.

14. I also do not accept the argument that the judge should have gone on to make a proportionality assessment in the alternative. Mr Yaqoob argues that if the judge had made a proportionality assessment that would have been in favour of the appellant, given the evidence of money transfers, the relationship and his ability to maintain and accommodate her. It is said that there was no issue about the sponsor's financial circumstances and also said that there was no Section 117B assessment of public interest considerations. Whilst that is right, it is because the judge found that the appellant's family life was not sufficient to engage article 8 ECHR that the public interest considerations and the proportionality assessment, indeed the exceptional circumstances, were entirely unnecessary. It was not necessary for the judge to provide an assessment of those factors in the alternative.
15. For the reasons outlined above, I am satisfied there is no error of law in the decision of the First-tier Tribunal. It follows that this appeal cannot succeed.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order as to costs.

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 March 2024