



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001251
First-tier Tribunal No:
HU/52225/2023
LH/00430/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 October 2024

Before

UPPER TRIBUNAL JUDGE LANDES

Between

J L
(ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr K L, appellant's father, in person
For the Respondent: Ms Simbi, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 6 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and members of his family are 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 or members of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals, with permission granted by Judge Saffer, the decision of Judge Russell promulgated on 3 February 2024 dismissing the appellant's appeal against the respondent's refusal of 18 January 2023 of the appellant's application for entry clearance for family reunion with his father made on 22 October 2021.

2. Judge Russell made an anonymity order. I have considered the terms of the Presidential Guidance Note 2022 no 2 – Anonymity Orders and Hearings in Private. Restrictions on open justice must be justified and proportionate and not more extensive than necessary to protect the interests of justice. Nevertheless, I consider it appropriate to continue Judge Russell’s order and extend it to members of the appellant’s family so that the appellant is not identified through jigsaw identification. Mr L, the appellant’s father is a recognised refugee in the UK. Judge Russell accepted the appellant’s mother had been killed by the Ugandan government and the appellant himself had difficulties caused by Mr L’s political activities. Mr L is so fearful for the safety of the appellant, indeed anyone he contacts in Uganda, that he limits contact with the appellant and with other family members. In the circumstances I consider that concerns for the safety and welfare of the appellant if his identity is publicly known outweigh the public interest in open justice.

Error of law

3. The appellant was born in November 2003. He was born after Mr L had an extra-marital affair. Mr L then returned to live with his wife and their two daughters, although he maintained contact with the appellant and supported him and his mother financially. Mr L came to the UK on a student visa in 2005 and was joined by his wife and daughters in 2008. He returned to Uganda in 2013 intending to live there permanently, but suffered persecution as a result of his political opinions, so returned to the UK and was granted asylum in 2015. Mr L now has indefinite leave to remain as a refugee.
4. Judge Russell found at [19] and [20] that the appellant ceased being part of the sponsor’s family unit in 2004 when the sponsor returned to his wife. *“Whilst it is possible for a child to be part of two family units, I find the limited contact and financial support provided by the sponsor was insufficient to make him part of the appellant’s family unit. The appellant was certainly not part of his sponsor’s family unit by the time he left Uganda to seek asylum in 2013. By that point the sponsor had not been living with the appellant for 9 years. The sponsor gave evidence that he had in fact only seen his son once since 2005, on a visit in either 2010 or 2011.”*
5. Mr L argued that the judge had too narrowly defined the concept of family unit. He said in his grounds that the continuous financial and emotional support provided by him to the appellant, including support for his education indicated an ongoing familial relationship. He told me at the hearing that the judge had overlooked the cultural issues. He explained that in his culture a child is initiated into the clan of his father when he is born, and it is the responsibility of the father to take care of his son, or the clan will be shamed. The elders would know whose son a child was and if he died, he would have to be taken back to the clan ancestral home. Your son was always your responsibility even if you lived distant from them through circumstances.
6. I consider Judge Russell clearly appreciated the circumstances. He had all the papers [6], which included detailed explanation from Mr L about the cultural norms (see document G in particular). He accepted that despite the limited contact, there was family life albeit limited between the appellant and sponsor [23], [26].
7. Whether the appellant and sponsor were part of the same family unit for the purpose of the family reunion rules in the immigration rules is a question of fact. The respondent in the review in this case referred to BM and AL (352D(iv));

meaning of “family unit”) Colombia [2007] UKAIT 00055 at [25] ... “Whether they form part of a family unit will depend very much on the facts. A so-called nuclear family is highly likely to be a family unit. The child of divorced parents who spends the bulk of his time with his mother and otherwise has regular contact with his father is certain to be part of the mother’s family unit. Whether at the same time he can be regarded as part of the father’s family unit will depend very much on the particular facts of the case.” Being part of the same family unit is therefore different from sharing family life, and of course it looks back to the time the sponsor fled the country to claim asylum.

8. So, Judge Russell being evidently aware of the contentions, simply decided the point against the appellant and sponsor. Whilst understanding why Mr L disagrees with Judge Russell, there is nothing to indicate that the judge erred in law in respect of his conclusions. He had explained how limited the contact was between the appellant and sponsor during the time the sponsor was in the UK with his wife and daughters and of course the sponsor then returned only briefly to Uganda before he claimed asylum. The decision was open to the judge on the facts and sufficiently reasoned.
9. There is therefore no error of law in the judge’s conclusions as to family reunion.
10. As far as Article 8 ECHR is concerned, the judge questioned the respondent’s consideration of the best interests of the child “*This was based on an erroneous birth date for the appellant entered by the sponsor during his asylum application. The appellant was in fact born on 25 November 2003. He was 18 at the date of his application on 22 October 2022 and s.55 does not apply.*” It is accepted that the judge, inexplicably, made a mistake. The application was on 22 October 2021 when the appellant was 17, so he was a child at the date of the application.
11. It was accepted in the rule 24 response that Judge Russell was mistaken, but averred that the error was not material. The rule 24 response explained that section 55 did not apply as the appellant was not present in the UK, but the respondent accepted that Article 3 of the Convention on the Rights of the Child required the child’s best interests to be considered. The rule 24 response said that the best interests had been applied, the judge had noted that the appellant’s life might be difficult because of his father’s political activities but he had the continued support of his family in Uganda, he was receiving medical treatment and his father could continue to provide financial support from him from the UK. It was said that the spirit of the convention had been applied. Ms Simbi also submitted that the decision would not have been any different if the judge had properly considered that the appellant had applied as a child.
12. Whilst initially those submissions seemed attractive, I have considered the question of materiality carefully. In the case of ASO (Iraq) v Secretary of State for the Home Department [2023] EWCA Civ 1282 the Court of Appeal confirmed (at [43]) that the test for immateriality was “*whether it is clear on the materials before the F-tT any rational tribunal must have come to the same conclusion*”.
13. I do not consider it is at all clear. There is a significant difference between the approach taken to an application made at the time an appellant is a child, and one made at the time the appellant is an adult. For an application made when an appellant was a child, it would be significant to consider that as a starting point the best interests of a child are usually served by being with both or at least one of their parents – see, albeit in the context of a different immigration rule – Mundeba (s.55 and para 297 (i) (f)) [2013] UKUT 88. This is significant because

Mr L is the appellant's sole surviving parent. A judge properly directing themselves would need to note that in the context of the approach taken under the immigration rules to applications for settlement made by a child, rule 297 of the immigration rules provides that where only one parent is alive and is settled in the UK, there is no need for the surviving parent to have had sole responsibility for the applicant. Of course this was not an application under rule 297 immigration rules, but it highlights the recognition given by immigration rules to the importance of reunion with a sole surviving parent, even if that parent was not previously significantly involved in the child's upbringing.

14. Given the very different approach to an application made at the time the applicant was a child, I consider that Judge Russell's unfortunate mistake as to the date of the application was a material error of law. I indicated the same and the nature of my reasoning to Ms Simbi and Mr L at the hearing.
15. The material error of law meant that Judge Russell's decision had to be set aside. There was no error with respect to his findings on the family reunion rules not being met and the engagement of Article 8 ECHR. Those findings are preserved. It is simply that part of his decision relating to the proportionality balance which needs to be set aside and remade. Ms Simbi submitted that the remaking could be in the Upper Tribunal, and I agreed, as there needed only to be limited fact finding.
16. The sponsor indicated that he was prepared to give evidence immediately to update me as to the position in the last 7 months and he proceeded to do so.

Remaking

17. Mr L told me that since the decision, the appellant's uncle I, who had been looking after him had died. The appellant had not been living with I, but I had directed his moving around and had found somewhere for him to live and would take him to his medical appointments. The appellant had contacted Mr L because he could not get in touch with I. Mr L had tried to contact his mother, who had dementia, and the helper who looked after her told him that I had died. Mr L said that I had cancer, and he presumed that was why he died. He did not die through the actions of the authorities. Mr L had no direct way to contact the appellant, the appellant would contact him through an internet café. He had last had contact with the appellant 3 days ago by an audio call. The appellant had been filled with anxiety and feelings of being let down by I and his mental state was not the best. Mr L did not want to tell him about I's death as he did not want to upset him.
18. In cross-examination, Mr L said that his son was born in 2003 so he must be 21 now. The appellant had never worked, and Mr L would send money for his education. He would be regularly arrested or falsely accused, and he would be kept until a bribe was given and then he would be released, this would happen every 3 months or so, the last time he had heard that the appellant had been arrested was April. He had never stayed with his grandmother, Mr L's mum, only visited when he was taken by I, probably the last time he was taken to visit was more than a year ago. The appellant told Mr L that his friends were helping him, helping him with food, helping him spiritually and helping him use his mobile phone. Mr L said he needed to find a secure way of sending the appellant money now he could not send it through I. He thought the appellant was not safe as he had a child's mind, he had missed a lot of education, and he was not making decisions properly in the way an adult would. He had only attended school until 2013 as then he went into hiding with his mother after Mr L's persecution and he did not attend school further until he was found in 2019. It was I who had been

looking for him, found him and helped him move around locations. There was contact from 2019 until 2021 when the application was made. Mr L said he tried to limit as much as possible the people he was in contact with in Uganda to avoid causing difficulties for them, he had 8 siblings, but he could not contact them. That was why he waited for the appellant to contact him, because he did not want direct contact to cause problems for the appellant.

19. Mr L was asked why the appellant could not remain in Uganda and he said the only people he had to help him now were not family. The appellant was telling him they were church members, but Mr L did not trust them. The appellant had siblings in this country, and he would get better treatment in the UK, he was Mr L's family and he wanted him to be educated and to have help with his issues, he Mr L had resources and private health care.
20. Mr L said the appellant did have a relationship with his half-siblings when they were young, because when he Mr L was in the UK and his family were in Uganda the two families lived near each other. After that when the appellant's half-siblings were in the UK the appellant and his half-siblings would ask after each other and pass messages to each other through I, but they did not call each other directly. Mr L said when he was granted refugee status in 2015, he was not in contact with the appellant and his mother, as the appellant's mother had fled to Kasese before her death in the massacre in 2016. Now the appellant's mother was dead, he had to take full responsibility for the appellant. He had always intended to bring him to the UK since he found the appellant in 2019 but it took a while to make the application because they had to find a way to get the appellant into the city to get documents and do interviews and get the medical clearance and there were many hoops to jump; also getting the documents was expensive because of everything involved so the finances took time to sort.
21. Ms Simbi submitted that the decision was proportionate; the public interest should be given more weight than the limited family life. The status quo was being maintained as the appellant had not lived with the sponsor after 2004 and they lost contact altogether from the sponsor entering the UK to claim asylum until 2019. The appellant was being supported by I until he had passed away. Ms Simbi said she noted that there was limited evidence of I's passing away, but she would not stress that point. She appreciated that the sponsor thought the appellant was at risk in Uganda as his son and there were concerns about his mental health but the appellant was now an adult, he and his father had limited contact indeed his father was not even right about how old he was and that went to the limited engagement they had; there was limited engagement even with his half-siblings as they had not kept in direct contact. They had never enjoyed a real family life at any point in time. It was right that at the time of application the appellant was a child whose mother had passed away, but he was living with his grandmother and uncle with whom he was more familiar than his own father. Bearing in mind the very limited relationship the appellant had with his father the decision was not disproportionate.
22. Mr L submitted that the limited contact with the appellant was for a very good reason because the government killed everyone he tried to contact. He described the status of his persecutor and how they would know if the appellant was in contact with him; they were very high in government, and he said he did not even want his wife and the appellant to be in touch because of that. He said he deliberately made the decision not to be in direct contact with the appellant in order to save his life. His political opponents would punish anyone connected with him. His brother I had cancer from 2019 so he could not have remained with the

appellant permanently, his mother had dementia. Mr L now did not have anyone he could trust in terms of the appellant's healthcare needs and to try to ensure he had a normal life. As his surviving parent he wanted the appellant to join his family.

23. At the conclusion of the hearing I reserved my decision.
24. Judge Russell accepted the account given by Mr L and I see no reason to doubt what Mr L has said. He could easily have sought to suggest that he was in much greater contact with his son the appellant as it would have helped his case. Whilst he does not have documentary proof that his brother I has died, I note from I's statement that he wrote that he had been suffering from cancer since 2019 and accordingly it is perfectly credible that I has passed away. As Mr L noted, he was not trying to suggest that I's death was a result of action from the authorities.
25. Judge Russell accepted that the appellant's mother had been killed by the government, that the appellant was being treated for PTSD and that his father's political activities had made his life in Uganda difficult.
26. It is worth analysing in rather more detail the appellant's position when considering the proportionality balance.
27. The medical report dated 19 January 2024 (document C) explains that in 2014 (so when he would have been 10 or 11) the appellant witnessed his mother experience rape and torture at the hands of the security forces looking for Mr L. He and his mother then fled. It explains that the appellant has been diagnosed with PTSD exhibiting symptoms such as nightmares, flashbacks, and severe anxiety, compounded by ongoing persecution.
28. Mr L's account, the documents and the article he has produced evidence that the appellant's mother was killed in Kasese in November 2016 when the Ugandan army attacked the royal palace after tension between the government and the kingdom of Rwenzururu, an incident in which Human Rights Watch suggests at least 153 people were killed. After the death of his mother the appellant remained living in Kasese with a friend of his mother's for about 3 years until he was found by his uncle I towards the end of 2019. The appellant's paternal family (that is his uncle I and grandmother) organised for him to stay in Kampala with his maternal grandmother but he was moved again when it was thought the government was snooping around. After that although his address was given as his paternal grandmother's he was moved around to different villages whenever it was thought it was not safe because government agents seemed to be around. I can see from the exchange of what's app messages between Mr L and his brother I that the appellant was moved to different villages several times and there is also reference to his being detained on a couple of occasions and the need to pay a bribe for his release. Release quickly leads to the need to move the appellant again. The what's app trail shows that Mr L and his brother I were trying to get the appellant to safety in Kenya, but this did not prove possible as the border was watched more closely than they thought.
29. The medical report details that the appellant's unstable living situation has meant his formal education has been disrupted and he is facing challenges in academic and social development. It concludes that he requires specialised support and parental care to address his complex trauma and that it is crucial he receives comprehensive mental health care including therapy and counselling. It indicates that a stable and nurturing environment is vital for his recovery and

that his prognosis is contingent on a multidisciplinary approach which includes mental health support, stable housing and educational opportunities. There are reports from a psychologist of various therapy sessions with the appellant, including evidence that he had deteriorated after an arrest and suggestions at various points that he might need hospital care or at least consultations with a psychiatrist for review and possible adjustment of medication.

30. The appellant is now on his own in Uganda albeit with the support of some church friends. I is not around to be the conduit for the funds from Mr L which are the source of the appellant's support or to organise taking the appellant to therapy sessions. His grandmother has dementia (this is not a new development, that she had early-stage dementia was noted in the papers before Judge Russell), and she has a helper to care for her.
31. The appellant has had limited direct contact with Mr L. Although when he was young, before his half-sisters left in 2008, he saw them relatively frequently (he is close to them in age, being two years and a year respectively younger than them) he and his half-sisters have not seen each other since then and they are not in direct contact, although the what's app record between Mr L and I shows that good wishes messages are passed on and the sending of a video message is organised for occasions such as Christmas and birthdays.
32. At the time of the application, when the appellant was still 17, I find that it would have been very much in his best interests to go to the UK to live with his father and half-siblings. I refer to the case of Mundebe, which emphasises that as a starting point the best interests of a child are usually best served by being with both or at least one of their parents. It is right that the appellant and his family in the UK have had limited direct contact but I am entirely satisfied that since the death of the appellant's mother and finding the appellant again, the only reason why contact has been limited has been due to Mr L's concerns for keeping the appellant and his family safe. Mr L would not be able to live in Uganda with the appellant or even to visit him in Uganda, due to his fear of persecution. Mr L of course has been financially supporting the appellant. The only realistic place in which family life between the appellant, his father and half-siblings could develop is in the UK.
33. I appreciate that Mundebe also refers to continuity of residence being important and change in the place of residence where a child has grown up for a number of years when socially aware is important. The appellant has always lived in Uganda, but he has not lived in a stable environment since the death of his mother. Although, as Judge Russell found, the appellant had the support of his uncle and grandmother in Uganda, I consider that the appellant's living arrangements were not stable due to the fact he was moved whenever the authorities seemed to take an interest in the village where he was staying.
34. The appellant now is a young adult but still has family life with his father. Although the extent of that family life is limited, the reason it has not been further developed since the death of his mother is due to persecution. The appellant has been a victim of persecution by witnessing his mother's abuse and is suffering with his mental health as a result. He no longer has I to look after him and he is particularly vulnerable to arrest, detention and extortion, which occurred even when I was able to look after his interests. He is at risk of harm in Uganda. Whilst Mr L has been paying for the appellant's PTSD treatment there is now no family member around to take him to treatment. The medical report

indicates that a stable and nurturing environment is vital for his recovery, but he does not have that environment.

35. It is not right therefore to consider on the appellant's side of the balance simply that the appellant currently has limited family life with his father. What must be considered, given the appellant applied as a child, is the potential for the development of family life with his sole surviving parent and his half-siblings. That is a strong potential, and as I have said it must be noted that when the appellant was a child, it would have been strongly in his best interests to come to the UK.
36. Against that strong potential, is the public interest in the maintenance of immigration control because the appellant does not satisfy the requirements of family reunion immigration rules.
37. I also consider section 117B (2) of the Nationality, Immigration and Asylum Act 2002. It is not evident that the appellant can speak English, and this adds to the public interest against the appellant, albeit not strongly as I bear in mind that immigration rules do not require those who apply as children to pass an English language test. The appellant will however be financially independent upon entry as Mr L is able to support him – he will be living with Mr L and his family. Mr L works as a data architect and analytics expert which is a well remunerated profession and his employment package includes health insurance for family members. This means that the public interest will not be further increased by any dependence on the state.
38. The family reunion guidance (version 10) says that where a child applicant does not meet the relationship requirements (which in this case is because the appellant did not form part of the family unit of the sponsor when the sponsor left to seek asylum) of family reunion rules *“you must consider if there are any exceptional circumstances which would render refusal of ... entry clearance a breach of Article 8 of the ECHR because such refusal would result in unjustifiably harsh consequences for the applicant or their relevant family member..”*
39. I consider that refusal would result in such unjustifiably harsh consequences and is disproportionate. The appellant is a traumatised young man undergoing mental health treatment whose only surviving parent Mr L lives in the UK with the appellant's half-sisters he knew when he was young. Mr L has been financially supporting the appellant and the only reason the family has not had more direct contact is due to Mr L's fears about putting the appellant at risk by direct contact. Mr L wants his son to be with him. The appellant has already experienced problems due to being a family member of Mr L which has meant his life has lacked stability since his mother's death, the medical report indicating that stability is necessary for his recovery. He now has no adult in his home country to keep an eye on him and ensure all is well and he continues with his medical care. Family life with Mr L and his half-siblings can only continue and be developed in the UK. Whilst there is a strong public interest in the maintenance of effective immigration controls, there is little to add to that public interest because the appellant will be financially supported by Mr L and the appellant can improve his English and so better integrate living with his family who speak English. This is not an application under rule 297 of the immigration rules but it remains significant that the scheme of immigration rules permits a successful application for a young person, under 18 at the date of application, to come to the UK to live with their sole surviving parent settled in the UK if that parent can maintain and accommodate them even if that parent played little part in their life

previously. In this case as I have set out above there are weighty additional factors in the appellant's favour beyond Mr L simply being his sole surviving parent who can support him and has been supporting him (the appellant's mental health, his need for stability, his problems in Uganda, the lack of family support in Uganda, that reuniting with his family can only take place in the UK). Taking all those factors into account, I consider that refusal would result in unjustifiably harsh consequences for the appellant and his family so that the public interest is outweighed and the decision is disproportionate.

40. On remaking, I allow the appeal on human rights grounds.

Notice of Decision

The judge's decision involved the making of an error of law and is set aside.

The decision is remade by allowing the appeal on human rights grounds.

A-R Landes

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 October 2024

Fee award

As the appellant has succeeded, I have considered making a fee award, but I make no fee award as the material on appeal was significantly different from that presented to the entry clearance officer.

A-R Landes

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 October 2024