IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-002119
UI-2024-002121
First-tier Tribunal Nos:
HU/55927/2023
LH/06374/2023
HU/55928/2023
LH/06373/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MR AHMED BADRI ABDULMUKHTAR YAHYA
MR RIZWAN BADRI ABDULMUKHTAR YAHYA
(NO ANONYMITY ORDER MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr M Mohzam of Counsel instructed by Citadel Immigration Lawyers Ltd
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard via CVP from Birmingham at Field House on 11 September 2024

DECISION AND REASONS

Introduction

1. The appellants are brothers, and citizens of Yemen born on 8 May 2005 and 12 November 2008 respectively. The appellants applied on 3 November 2022, for leave to enter the United Kingdom to join their aunt, Badra Abdulmukhtar Yahya Saleh, the sponsor and a British citizen living in the UK, under paragraph 297 of the Immigration Rules.

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2. At the date of application both appellants were children and claimed their parents were deceased. The respondent refused the appellants' applications, refusing the first appellant on 28 March 2023 and the second appellant on 11 April 2023. The appellants' linked appeals against those refusals were dismissed by First-tier Tribunal Judge Joshi ("the judge") on 10 January 2024, after a hearing on 21 December 2023.

3. Permission to appeal was initially refused by Judge of the First-tier Tribunal Rhys-Davie. Application for permission was then renewed to the Upper Tribunal and granted by Upper Tribunal Judge Canavan on 10 June 2024, on the basis that although the grounds of appeal were of poor quality and tended towards general submissions, and the judge took the case at its highest in relation to the claimed death of their mother, it was arguable in failing to make a clear finding relating to the death of the appellants' mother, the judge might not have had a proper starting point to consider whether there were "serious and compelling family or other considerations which make the exclusion of the child undesirable".

4. Although it was open to the judge to observe that there was little supporting evidence, it was at least arguable that if the judge rejected the sponsor's oral evidence, insufficient reasons might have been given for doing so, given the potential vulnerability of the appellants. On this basis it was arguable the First-tier Tribunal Judge had erred in law. Given the poor quality of the grounds however, Judge Canavan noted that the decision to grant permission was borderline.

5. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and thus whether the decision should be set aside.

Submissions – Error of Law

6. In the grounds of appeal and in oral submissions by Mr Mohzam it was argued in short summary for the appellants as follows.

7. It was argued that the judge did not consider the children's living conditions and the risks the appellants will face on return to Yemen. Mr Mohzam submitted that the judge at [43] had not made proper findings on whether or not the parents were dead. Mr Mohzam submitted that there should be a clear finding, and it was not enough for the judge to say that there was insufficient evidence as stated by the respondent. This did not justify the lack of proper findings. Mr Mohzam submitted that the judge could have said that she was not satisfied but simply saying that there was insufficient evidence when there were documents was not adequate. It was submitted that this was material because the judge went on to make findings. Even though these findings considered at its highest whether the appellants' mother was deceased it was not an accurate reflection of the appellants' situation.

8. Mr Mohzam also submitted that there was oral evidence before the judge from the sponsor, which was not properly taken into consideration, with the judge

finding that there was insufficient evidence to support the claim that the sponsor was responsible for the appellants' care whether in Yemen or in Egypt.

9. Mr Mohzam submitted that paragraph [4] accepted that the sponsor and her husband sent the appellants funds but that the refusal noted that it was not accepted the parents were deceased with the judge going on to set out what the respondent did not accept. It was submitted that [4] noted that it was argued that the appellants were fed by their neighbour. Although this was not accepted by the respondent Mr Mohzam submitted that there was evidence before the Tribunal and the judge should have made findings in relation to the appellants' circumstances.

10. Mr Mohzam submitted that it was crucial to the judge's findings in relation to whether there were compelling reasons which made exclusion undesirable in relation to [45] and [46] of the decision. The judge was not correct in finding that there was no mention made of the appellants living in Egypt prior to the sponsor giving oral evidence. The visa application clearly stated that the appellants would apply for their visa when they got to Egypt. It was submitted that the judge fell into a material error of law therefore in stating that there was no evidence prior to the oral evidence that the appellants were in Egypt, and it was submitted the judge placed emphasis on this point with no detailed consideration or why the judge rejected the oral evidence.

11. It was submitted that the judge did not consider the children's living conditions and the risk the appellants would face on return to Yemen. It was submitted the children are Yemeni nationals and held only temporary visas to reside in Egypt with Yemen at war and it could not be said that it was a safe place for orphan children to reside.

12. It was further submitted that the judge failed to make adequate findings of fact in relation to the documentary evidence before him including whether he accepted that the appellants and their mother were related as claimed, given the birth certificates, and whether the judge accepted that the appellants' mother was deceased, as the death certificate was made available to the judge.

13. It was submitted there was no finding as to whether the parents were deceased which it was submitted it was crucial in assessing the sponsor's overall evidence in assessing the credibility of the sponsor. Without any finding or adequate reasoning it was submitted that it was unclear how the judge had reached the conclusion they did that the parents were not deceased.

14. Although the judge at [24] had made findings in the alternative that both parents are dead, it was submitted that the judge had reached those findings having already made negative conclusions against the sponsor by rejecting the sponsor's assertion that both parents were dead. It was submitted this undermined the judge's findings.

15. The second ground to the Upper Tribunal noted that at [45] the judge stated the appellants were now living in Egypt and at [46] the judge stated there was no

mention of them living in Egypt prior to the sponsor providing evidence, nor did the sponsor mention this in her witness statement completed in September 2023.

16. Again it was submitted that the judge was wrong to state that there was no mention with the appellants clearly mentioning that they were living in Egypt on a temporary visa at page 15 of the respondent's bundle headed current status:

> "What permission do you have to be in Egypt?
>
> I do not have a visa and I am not a permanent resident.
>
> Give more information about your status in Egypt
>
> The Applicant will apply for temporary permission in order to attend his Biometric Appointment."

17. It was submitted that what the appellants stated in their application undermined the judge's findings at [46] and wrongly undermined the credibility of the sponsor's evidence given that the appellants clearly stated that they will apply for temporary visas to enter Egypt.

18. The third ground to the Upper Tribunal argued that the sponsor and the appellants' evidence had been undermined at [46] and therefore the findings at [47] to [49] were unsustainable as the judge had already undermined the sponsor's evidence regarding where the appellants were living. The sponsor's evidence regarding the appellants' circumstances in Egypt and their status was also undermined by the judge's findings at [46] which wrongly damaged the sponsor's credibility.

19. In the Rule 24 response in oral submissions by Ms Nolan for the respondent it was argued in short summary as follows.

20. The respondent submitted that the judge of the First-tier Tribunal directed himself appropriately. The Judge of the First-tier Tribunal had assessed the position of the appellants. He had structured his factual enquiry using the factors set out in **Mundeba (s.55 and para 297(i)(f) [2013] UKUT 00088**.

21. At paragraphs [47] to [49] of the determination, the judge explained there was very little evidence to demonstrate the level of contact between the sponsor and the appellants. With this in mind, he concluded that there was insufficient evidence to support any claim to dependence on the sponsor. There was no independent evidence to show that the appellant and his brother were living in an unacceptable social and economic environment.

22. Ms Nolan submitted that the claimed failure of the judge to make a finding whether the mother was deceased was not material as the judge considered [44] the appeal at its highest that even if deceased the judge was not satisfied that an accurate reflection of the circumstances being provided in evidence.

23. The judge correctly directed himself that the only issue to consider, at [38] was whether there were serious or compelling or other circumstances which made exclusion undesirable. Ms Nolan pointed out that paragraph (f) of paragraph 297 deals with serious and compelling family circumstances, so it was not material as to whether or not the judge had made findings about the mother's death. Ms Nolan submitted, taking into account Judge Canavan's points, that the judge had assessed all the circumstances in line with **Mundeba** with the judge setting out what should be looked at, whether there were any unmet needs, stable arrangements for care etc. Ms Nolan submitted the judge had looked at all these factors and therefore not making a finding as to whether the appellants' mother was deceased was not material.

24. In relation to the claimed evidence that it was stated was before the respondent that the appellants were living in Egypt, the judge went on to say that this evidence "is not in other written evidence". Ms Nolan said this was not the same as what was said by the sponsor at the hearing. The judge did not fall into error. What was in the application form at page 74 was in relation to temporary admission for biometric appointment; neither the appellants nor the sponsor had revealed prior to the hearing that the appellants had six months' leave in Egypt. Therefore there was no error in the judge's finding at [45].

25. In addition the judge went on at [47] to find that there was insufficient evidence as to how the sponsor was responsible for the appellants' care, either in Yemen or in Egypt with no evidence of communication. The judge had not disputed the remittances from the sponsor but there was no evidence of contact or communication. It was open to the judge to find as they did that it had not been shown that the sponsor was responsible for care. In particular, at [48] there was no evidence of visits to either Yemen or Egypt and at [49] the judge considered the relevant case law with no objective evidence of neglect, abuse or unmet needs. Ms Nolan submitted that the grounds of appeal were incorrect in stating that the judge had not taken into account oral evidence where the judge had clearly done so and had considered the relevant circumstances of the appellants.

Conclusions – Error of Law

26. There is no merit in the grounds of appeal. As I hearing, there is no error of law, and I do not set aside the decision of the First-tier Tribunal.

Ground 1

27. It was argued that the judge erred in not considering the children's living conditions and the risks the appellants would face on return to Yemen, with the children being Yemeni nationals with only temporary right to reside in Egypt. Yemen is at war and is not a safe place for orphan children.

28. It cannot be properly said that the judge did not properly consider the children's living conditions. The judge carefully recorded both the evidence before the First-tier Tribunal and the submissions including that the children were orphans living in compelling and compassionate circumstances. The judged was referred to evidence of the difficult country situation in Yemen.

29. The judge correctly identified, at [38] that the only issue in the appeal was whether there were serious and compelling family or other considerations which would make their exclusion undesirable under paragraph 297(i)(f) of the Immigration Rules and Article 8 outside of the rules. The judge, at [39], properly self-directed in relation to the guidance in **Mundeba** including that the focus needs to be on the circumstances of the child including an enquiry as to whether there is evidence of neglect or abuse; whether there are unmet needs that should be catered for and whether there are stable arrangements for the child's physical care

30. The judge accepted that the sponsor and the appellant were related as claimed and that Article 8 was engaged. The judge reminded that the burden was on the appellants and noted the concerns of the respondent. The judge found that even if the appellants' mother was deceased that the available evidence was not an accurate reflection of the appellants' situation. The judge went on at [45] to consider the oral evidence of the sponsor and at [46] made negative credibility findings as there had been no mention of the appellants' living in Egypt, in the sponsor's witness statement, prior to the sponsor giving oral evidence including. Whilst the visa application indicated that the appellant's would apply 'for temporary permission' in Egypt, the judge was not referring to the mention of an application for temporary permission in Egypt in the appellants' visa application, but rather to the total lack of evidence prior to the hearing, that the appellants were at the date of hearing in fact living legally in Egypt.

31. It is trite law that weight is a matter for the judge and it was open to the judge to make the negative credibility findings that he did, in the context of his findings, which are unchallenged, that although it was unclear what residency the appellants have in Egypt, it was legal and had been extended, yet this had not been mentioned prior to oral evidence.

32. It was further open to the judge, although he accepted that remittances had been sent to an individual she claimed was a family friend, to not accept the sponsor's oral evidence that she was responsible for the children's care, including the context of a lack of any evidence of communication or contact. The judge also took into consideration in the round, which were open to them, that the sponsor had not visited the appellants. There was no challenge to those findings.

33. It was in the context of these findings, that the judge found at [49] that there was no objective evidence of neglect or abuse or that there were unmet needs that should be catered for. There was no error in that approach including that the judge had found that the children were residing legally in Egypt and had had leave extended. The judge was entitled to reach the findings he did, at [44] that the appellants and their sponsor had not provided an 'accurate reflection' of the appellants' situation and was entitled to reach the findings he did at [45] to [49] for the reasons given, and to conclude that the appellants had not discharged the burden to prove their case.

Grounds 2 and 3

34. There was no merit in grounds 2 and 3 which argued that the judge erred in failing to make findings as to whether he accepted that the appellants and their mother were related as claimed and in failing to make a finding as to whether he accepted that their mother was deceased.

35. Whilst the judge did not specifically mention the appellants' birth certificates, the judge made findings on the appellants' case at its highest, that even if the appellants proved that the person said to be their mother was their mother, and also proved that she was deceased, their appeals still fell to be dismissed for the cogent reasons given from [44] to [51].

36. It was open to the judge to not be satisfied, for the adequate reasons given, that the appellants had discharged the burden on them.

Decision

37. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

38. I do not set aside the decision.

M M Hutchinson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 September 2024