



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-004903

First-tier Tribunal No: HU/00458/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 14 January 2025**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**TESFALDET HAILU WERISH**  
**(No Anonymity Order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Toora, instructed by HS Immigration Consultants

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**Heard at Field House on 8 January 2025**

**DECISION AND REASONS**

**1.** It is agreed by all parties that this is a case where no anonymity order is required. No order was made by the First-tier Tribunal and in any event the appellant is now no longer a minor. There is no reason why his name cannot be publicised.

**2.** The appellant is a citizen of Eritrea born on 8 July 2006, currently resident in Uganda with temporary status as an applicant for refugee status. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for entry clearance to the UK as a child joining a non-parent relative with protection status under Appendix CNP of the Immigration Rules.

**3.** The appellant applied on 8 January 2024 for entry clearance to the UK on the basis of his family life with his elder brother, Samuel Werish, an Eritrean citizen born on 5 October 2001 who had been granted leave to remain as a refugee in the UK on 7 July 2023. The appellant fled Eritrea because of the threat of enforced military service and travelled to Sudan and then Uganda, where he applied for asylum and also applied for entry clearance to the UK.

**4.** The appellant's application was refused on 12 February 2024 on the grounds that it was not accepted that he met the eligibility requirements of Appendix CNP as a child joining a non-parent relative (protection). The respondent accepted that the appellant and the sponsor were related as claimed but did not accept that the sponsor had had continued financial or emotional responsibility for the appellant, since the evidence produced only dated back to the year before his application. The respondent therefore did not accept that the requirements of paragraph CNP 3.1(d) were met. The respondent, further, did not accept that there were serious and compelling family or other considerations which made the appellant's exclusion from the UK undesirable, for the purposes of paragraph CNP 3.2 (c), since he had not stated what his circumstances in Uganda were, other than that he was living with a cousin who was caring for him, and had not stated why that could not continue in the future. The respondent went on to consider whether there were exceptional circumstances, for the purposes of CNP 3.3 and, given the lack of evidence provided, could not be satisfied that there were any exceptional circumstances. The respondent did not accept that the appellant had a family life with the sponsor but considered that, even if he did, the decision was not disproportionate for the purposes of Article 8.

**5.** The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Russell on 5 September 2024. The sponsor gave oral evidence before the judge. It was argued before the judge, in the appellant's skeleton argument, that there were serious and compelling circumstances which made the appellant's exclusion undesirable as he was at risk of being arrested or trafficked in Uganda as he currently had no status there, that he was living with a distant relative who was expecting to travel to the UK shortly and would not be able to continue looking after him in the long term in Uganda, that he could not return to Eritrea due to risks from forced military service, and that the sponsor had been granted care of him as their father was taken away by the military in 2012 and their mother had been taken to a mental asylum. It was further argued that the refusal of the appellant's application had resulted in unjustifiably harsh consequences and was disproportionate, given the family circumstances in Eritrea and given that the appellant was a child at the time of his application and that the sponsor had been supporting him financially and emotionally, and also given that the appellant's situation in Uganda was temporary and uncertain, and that it was in his best interests to be reunited with the sponsor in the UK.

**6.** The judge considered the issue of 'serious and compelling family reasons' with reference to the guidance in Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 88 (IAC), noting that the appellant was currently residing in Uganda with a distant cousin, Eden Woldu, and that the sponsor was making regular money transfers to Ms Woldu to help pay for the appellant's upkeep. The judge considered the appellant's case that his current living arrangements were precarious since he was awaiting an asylum decision in Uganda and Ms Woldu had made a family reunion application to join her husband in the UK. The judge found, however, that the focus of his considerations under the immigration rules had to be on the appellant's situation at the date of the decision, at which time he had limited leave to remain in Uganda and Ms Woldu was taking good care of him, such that there were no 'serious and compelling reasons' which made his

exclusion from the UK undesirable for the purposes of paragraph CNP 3.2(c). The judge found further, with regard to paragraph CNP 3.3, that the appellant met the requirements of CNP 3.3 (a) and (c), but did not accept that the requirements of paragraph CNP 3.3 (b) and (d) were met, since Ms Woldu could reasonably be expected to support him in Uganda and given that, in view of the limited evidence of money transfers, he was not satisfied that the appellant was dependent on the UK-based sponsor. The judge accordingly did not accept that there were exceptional circumstances for the purposes of paragraph CNP 3.3. Neither did the judge accept that refusal of entry clearance would lead to unjustifiably harsh consequences for the appellant amounting to a disproportionate interference with his Article 8 rights. He noted that, whilst the sponsor was granted guardianship of the appellant by an Eritrean court on 20 February 2020, he had not seen him in person for nine years, whereas both Eden Woldu as well as Haregu Tsegay described themselves as the appellant's "legal guardian" and further that there was only limited evidence of telephone contact between the appellant and his sponsor from October 2023 to March 2024 and that the appellant was now 18 years old and no longer a minor. In the circumstances the judge concluded that the respondent's decision was not disproportionate. The appeal was accordingly dismissed, in a decision promulgated on 10 September 2024.

**7.** The appellant sought permission to appeal against Judge Russell's decision on four grounds. Firstly, that the interpretation of 'serious and compelling family or other considerations' as laid down in Mundeba was specifically applied to paragraph 297 of the immigration rules and had not been determined by the UT to apply in cases under Appendix CNP which were different, since paragraph 297 was for general sponsors who were settled or had indefinite leave to remain, whilst Appendix CNP was for sponsors who held protection status. Secondly, that when considering 'serious and compelling family reasons', exceptional circumstances, and leave outside the rules, the judge failed to place appropriate weight upon the fact that at the date of application the appellant was a 17 year old Eritrean national who could not be expected to return to his country of origin and was stranded in Uganda. Thirdly, that the judge's determination that the appellant's current carer fell within the definition of "family" under paragraph CNP 3.3.(b) was unlawful, as Ms Woldu was a distant relative. Fourthly, that the judge's assessment of dependency under paragraph CNP 3.3.(d) of Appendix CNP was unlawful, as there was no legal definition for 'dependent' in the immigration rules for the purpose of paragraph CNP3.3.(d) and the judge had erred by failing to consider 'dependence' beyond financial dependence. Further, with regard to financial dependence, the judge had failed to consider the reason for the limited evidence of such, namely that the sponsor had only been entitled to work, and thus provide financially for the appellant, once granted refugee status on 7 July 2023, and that the judge had also failed to consider the evidence of third-party facilitators.

**8.** Permission was granted in the First-tier Tribunal on all grounds. The respondent did not produce a rule 24 response.

**9.** The matter came before me for a hearing.

**10.** Mr Toora made his submissions, relying and expanding upon the grounds of appeal. With regard to the first ground, he relied upon the changes in the immigration rules in Appendix CNP from 10 September 2024 which removed altogether the 'serious and compelling family or other considerations' requirement and which, albeit post-dating the respondent's decision in this case, ought to be taken as an implicit recognition by the respondent that that requirement was not appropriate in protection cases. Mr Toora submitted that it was therefore disproportionate for the 'serious and

compelling family or other considerations' requirement to have been applied in the appellant's case, and that the judge had erred in applying the guidance in Mundeba. With regard to the second ground, Mr Toora submitted that the judge had failed to distinguish between the case of an applicant residing in his own country and an applicant residing in another country with precarious immigration status, and had therefore given insufficient weight to the appellant's particular circumstances. As for the third ground, Mr Toora submitted that the judge had erred by finding that the appellant's relationship with a distant cousin amounted to 'family' for the purposes of paragraph CNP 3.3 (b). He submitted that had it been the other way around, with the appellant applying to join that person in the UK, he would not have succeeded on the basis of that relationship given the distant family connection and the lack of any legal process confirming the stated guardianship. For the fourth ground, Mr Toora reiterated the assertions made in the written grounds. With regard to the disposal of the matter in the event of the judge's decision being set aside, Mr Toora suggested that the respondent may wish to consider the proportionality of pursuing this case, in light of the new immigration rules.

**11.** Mr Diwnycz was in agreement with Mr Toora's submissions and accepted that, whether inadvertent or not, the judge had erred in law in his consideration of Appendix CNP. He also agreed with the last point made by Mr Toora when considering the onward disposal of the case. He indicated that he was content for the decision to be re-made by myself without a further hearing and without the need for the matter to go back to the respondent.

## **Legal Framework**

**12.** The relevant parts of the immigration rules in Appendix CNP, as at the date of the respondent's decision, are as follows:

### **"Eligibility requirements for a child to stay with or join a non- parent relative**

CNP 3.1. The applicant must:

- (a) be aged under 18 on the date of application; and
  - (b) meet the independent life requirement for dependent children in Appendix Children;
- and
- (c) DELETED.
  - (d) have an existing, genuine family relationship with the UK based relative; and
  - (e) have satisfactorily established their identity and nationality.

CNP 3.2. The decision maker must be satisfied that:

- (a) the applicant can, and will, be accommodated and maintained adequately by the UK based relative, without access to public funds and in accommodation which the relative owns or occupies exclusively; and
- (b) the application meets the care requirement for dependent children in Appendix Children; and
- (c) there are serious and compelling family or other considerations which make exclusion of the applicant undesirable.

CNP 3.3. Where an applicant does not meet the eligibility requirements of CNP.3.1. and CNP 3.2., the decision maker must consider whether a grant of permission to stay or entry clearance is appropriate based on exceptional circumstances which include where:

- (a) the applicant has no parent with them; and
- (b) the applicant has 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 the applicant and the UK-based relative; and
- (d) the applicant is dependent on the UK based relative. “

**13.** The relevant parts of the immigration rules in Appendix CNP following the changes subsequent to the respondent’s decision, are as follows:

**“Eligibility requirements for entry clearance or permission to stay with or join a non-parent relative**

CNP 3.1. The applicant must meet the following requirements for a dependent child in Appendix Children:

- (a) independent life requirement; and
- (b) care requirement; and

CNP 3.2. The decision maker must be satisfied that the applicant has no family other than the non-parent relative in the UK that could reasonably be expected to support or care for them.”

**“Relationship requirements for entry clearance or permission to stay with or join a non-parent relative**

CNP 4.1. The decision maker must be satisfied that the applicant has an existing, genuine family relationship with their non-parent relative in the UK.

CNP 4.2. The non-parent relative must be a close relative of the applicant.”

**14.** The relevant related parts of the immigration rules in Appendix Children are as follows:

**“Independent Life Requirement**

CHI 1A.1. The applicant must not be leading an independent life.”

**“Care Requirement**

CHI 2.1. If the applicant is under the age of 18 on the date of application, there must be suitable arrangements for the child’s care and accommodation in the UK which must comply with relevant UK law.”

**Analysis**

**15.** In light of Mr Diwnycz’s helpful concessions I accept that Judge Russell’s decision must be set aside and the decision re-made. Given those concessions, there is no need to provide detailed reasons for doing so, but I make the following points.

**16.** It is indeed the case, as Mr Toora submitted, that Appendix CNP created a category of rules which specifically applied to protection cases, where an applicant was seeking to join a non-parent relative with protection status in the UK. That was clearly different to the cases falling under paragraph 297 of the immigration rules where the sponsor was a British citizen or was settled in the UK, and there was therefore no protection element to the case. Whilst it is not entirely clear if the case was argued before Judge Russell as it is now by Mr Toora (and certainly the skeleton argument before the First-tier Tribunal does not suggest that it was), Mr Diwnycz agreed that the judge had erred in law, whether inadvertently or not, by considering the requirements of Appendix CNP on the basis that he did, in the context of the guidance in Mundeba. Further, as Mr Toora submitted, the judge failed to make any

distinction between the case of an applicant making his application from his country of origin and the appellant's case, where he was residing in a third country on a temporary basis with only a precarious immigration status. Although at [16] the judge referred to the appellant's living arrangements as precarious, he did not appear to accord any proper weight to that distinction, and neither did he accord weight to the appellant's particular circumstances, being a minor who had fled his country of origin and could not be expected to return to his country of origin, in accordance with relevant country guidance authority, and who was living in a third country without the support and care of parents or direct family members. By failing to give full and proper consideration to these matters, the judge clearly erred in law in his assessment of 'serious and compelling family or other considerations'. Indeed, if he had given full and proper consideration to these matters, it seems to me that he ought to have concluded that there were 'serious and compelling family or other considerations' which made the appellant's exclusion from the UK undesirable.

**17.** Further, with regard to 'exceptional circumstances' under paragraph CNP 3.3, I find merit in Mr Toora's submission that, just as it was unlikely that the appellant could have demonstrated that Ms Woldu was 'family' if an application was being made to join her in the UK on such a basis, so too the judge erred by regarding her as family for the purposes of CNP 3.3(b), or at least in failing to give adequate reasons for so concluding, given in particular the absence of any evidence of a legal process appointing her as the appellant's guardian. Likewise, I agree with Mr Toora that the judge's findings on dependency, and on the limited evidence of financial dependency, for the purposes of CNP 3.3(d), failed to take account of the limited time in which the sponsor had been lawfully entitled to work in the UK and failed to take account of the evidence of support provided by the sponsor through the third party facilitators which was in addition to the funds remitted through money transfers.

**18.** For all these reasons, I agree that the decision must be set aside. I do not consider it necessary for there to be a further hearing. Mr Diwnycz agreed that the decision could be re-made on the evidence already available and indeed he indicated an acceptance that the appeal may ultimately succeed. It seems to me that the reasons for concluding that the judge made errors of law in his decision effectively dictate the outcome of the appeal and dictate that that outcome should be a positive one. Again, given Mr Diwnycz's indication, I do not need to provide lengthy and detailed reasons for so concluding, but simply say as follows.

**19.** For the reasons given at [16] above, namely that the appellant was a minor who had fled his country of origin and could not be expected to return there, that he was residing in a third country on a temporary basis with only a precarious immigration status without the support and care of parents or direct family members and that the sole person caring for him was unlikely to be able to continue doing so, I accept that, at the time of the respondent's decision, there were 'serious and compelling family or other considerations' which made his exclusion from the UK undesirable. Accordingly the appellant met the requirements of Appendix CNP 3.2(c) and, as such, there being no concerns as to his ability to meet the other provisions of Appendix CNP 3.1 and CNP 3.2, the public interest did not require that he be refused entry clearance to join his brother in the UK.

**20.** Even if that were not the case, I accept that the requirements of CNP 3.3 were met, in that there were exceptional circumstances which justified a grant of entry clearance. With regard to paragraph CNP 3.3(b) I accept Mr Toora's submission that the relationship between Ms Woldu and the appellant did not fall within "family", given in particular the unchallenged evidence of the appellant and sponsor as to the distant

nature of that relationship and the lack of any formal legal appointment of her as a guardian. As for paragraph CNP 3.3(d), I accept that there is sufficient evidence to show that the appellant was dependent upon the sponsor in the UK, both financially and otherwise. On that basis too, the requirements of the immigration rules being met, the public interest did not require the refusal of entry clearance.

**21.** In any event, even if it were the case that the requirements of the immigration rules in Appendix CNP 3.1 to 3.3, as they were at the time of the respondent's decision, were not met, Mr Diwnycz did not disagree with Mr Toora's submission that the decision to refuse entry clearance could be viewed as disproportionate when considered in light of the new immigration rules in CNP 3.1 and 3.2 which Mr Toora advised were introduced on 10 September 2024. Although those rules were not in force at the time of the respondent's decision, and whilst I note that the appellant was 18 years of age by the time of the change in the rules and therefore could not benefit from the changes, I accept Mr Toora's submission that the change can be viewed as an implicit recognition that the 'serious and compelling family or other considerations', which no longer featured in the revised version of the rules, was not appropriate in protection cases and is thus a significant consideration when assessing proportionality. The same can be said for the dependency requirement in CNP 3.3(d) in the previous version of the rules, which no longer formed part of the requirements in the revised CNP 3.3. Although the requirement in regard to family outside the UK survived the change in the rules and became CNP 3.2, as Mr Toora acknowledged, I refer to my findings above in regard to Ms Woldu's status as 'family'. Taking all of those matters together, and considering again the appellant's position and precarious situation in Uganda, his young age albeit no longer a minor, and the fact that he cannot be expected to return to his country of origin, I accept that the refusal of his application would result in unjustifiably harsh consequences for himself and that it would be disproportionate to refuse him entry to the UK to join his brother. As such, the respondent's decision is in breach of the appellant's Article 8 rights.

**22.** Accordingly, the decision can be re-made on the evidence and information before me, by allowing the appellant's appeal against the respondent's decision to refuse him entry to the UK, on Article 8 grounds.

### **Notice of Decision**

**23.** The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. First-tier Tribunal Judge Russell's decision is set aside. I re-make the decision by allowing the appellant's human rights appeal.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

Dated: 9 January 2025