



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/19718/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15 August 2019**

**Decision & Reasons Promulgated
On 22 August 2019**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**EMILY CHIPO PIKI
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellant: Mr George Tizirai-Chapwanya, principal solicitor with
CB Solicitors

For the Respondent: Mr Esen Tufan, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge O'Hagan who dismissed her appeal against the decision of the Entry Clearance Officer in Pretoria, refusing her entry clearance under paragraph 352D of the Immigration Rules HC 395 (as amended) as the child of a parent who currently has refugee status granted under the Immigration Rules in the United Kingdom.
2. Paragraph 352D requires the appellant to meet specified requirements as follows:

“352D. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with the parent who currently has refugee status are that the applicant:

- (i) is the child of a parent who currently has refugee status granted under the Immigration Rules in the United Kingdom; and
- (ii) is under the age of 18; and
- (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
- (iv) was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of their habitual residence in order to seek asylum; and
- (v) the applicant would not be excluded from protection by virtue of paragraph 334(iii) or (iv) of these Rules or Article 1F of the Refugee Convention if they were to seek asylum in their own right; and
- (vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity.”

3. The definition of an eligible sponsor is clarified in the respondent’s policy guidance *Family reunion: for refugees and those with humanitarian protection* Version 3.0 published on 19 March 2019:-

“Sponsors who have indefinite leave to remain and refugee status or humanitarian protection, but have not yet obtained British citizenship, are eligible to sponsor family reunion applications”.

Discussion

4. The First-tier Judge found as a fact that the sponsor left Zimbabwe to seek asylum, and that the appellant was part of her pre-flight family unit. The appellant’s mother, the sponsor, has indefinite leave to remain as a refugee but has not yet obtained British citizenship. At the date of application the appellant was (just) under the age of 18 and the respondent does not dispute that she meets the requirements in sub-paragraphs 352D (ii), (iii) and (v). Her ability to meet sub-paragraph (vi) depends on the outcome of the present appeal.
5. At the Upper Tribunal hearing, Mr Tufan suggested that sub-paragraphs 352D(i) and (iv) were not met, relying in particular on the sponsor’s having come to the United Kingdom for a wedding and claimed asylum later.
6. The First-tier Judge’s findings on the sponsor’s reason for leaving Zimbabwe, and the appellant’s forming part of her pre-flight family unit, were reached after hearing and seeing the sponsor give her oral evidence. They were not challenged by the respondent before today’s hearing, either in her Rule 24 Reply or by way of a cross-appeal.

7. I decline to reopen the First-tier Judge's findings of fact on these points. It follows that all the requirements of paragraph 352D are met and that the appellant is entitled to entry clearance to join her sponsor mother in the United Kingdom.

Conclusions

8. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision.

I remake the decision by allowing the appeal.

Signed **Judith AJC Gleeson**
2019

Date: 21 August

Upper Tribunal Judge Gleeson