**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/19474/2018

**THE IMMIGRATION ACTS**

| **Heard at Manchester Civil Justice Centre** | **Decision & Reasons Promulgated** |
|---|---|
| **On 20 December 2019** | **On 27 January 2020** |

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**BETELHEM TADEGE BELAY**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: No attendance by sponsor or on behalf of the appellant
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Birrell promulgated on 9 July 2019 dismissing her appeal against the decision of the Secretary of State dated 22 August 2018 to refuse her application made on 27 July 2018 pursuant to paragraph 319 of the Immigration Rules for entry clearance to the UK as a child and on the basis of family life with her sponsoring brother Muluken Tadege Belay who has limited leave to remain in the UK as a refugee valid until 21 August 2021.

2. First-tier Tribunal Judge Simpson granted permission to appeal on 4 November 2019.

3. At the hearing in the Upper Tribunal there was no attendance by or on behalf of the appellant or sponsor. The appellant of course is out of the country, this being an entry clearance application. I am satisfied from consideration of the Tribunal's case file that notice of today's hearing was sent to the appellant and to her representatives, Immigration Advice Service, by post on 15 November 2019, addressed to the appellant at the only address known for her in Manchester. On 10 December 2019 the appellant's representatives responded to the notice of hearing by informing the Tribunal and the Home Office that they no longer act as legal representatives for the appellant. They do not suggest that the appellant was unaware of the hearing and one might have expected them to have previously notified the appellant and the sponsor of the date of the hearing. It follows that the appellant now has no legal representation and the sponsor has failed to attend the hearing. However, I am satisfied that it is in the public interest to proceed with the hearing in the absence of the sponsor, and the appellant and the sponsor had been given adequate notice of the hearing and ample time to obtain alternative representation if desired. I am satisfied that therefore the sponsor has decided not to attend and that the appellant has decided not to obtain further representation. On the basis of the overriding objective to deal with cases fairly and justly I am satisfied that it is appropriate to proceed without representation or participation on behalf of the appellant.

*Error of Law*

4. For the reasons I will set out below I am satisfied that there was no material error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside.

5. The First-tier Tribunal Judge found that the appellant could not meet the requirements of paragraph 319X. She was not satisfied that there were serious and compelling family or other circumstances which made the appellant's exclusion as a child undesirable. The judge set out her careful consideration as to what was meant by "serious and compelling" and gave anxious scrutiny to the appellant's circumstances in Ethiopia. Neither was the judge satisfied that the appellant could be accommodated adequately in accommodation which the relative in the UK owns or occupies exclusively, as required by the Rules. The sponsor lives in a one bedroom flat and proposed that he would look for a larger flat after the appellant had arrived.

6. It is clear that the appellant could not meet the strict requirements of the Rules and therefore the key issue for the First-tier Tribunal was the proportionality of the decision, balancing the public interest in enforcing immigration control against the rights of the appellant to develop Article 8 family life in the UK with her sponsoring brother. Ultimately, the judge found no compelling circumstances to justify, exceptionally, a grant of entry clearance outside the Rules on the basis that the decision would be

otherwise unjustifiably harsh, and thus concluded that the decision was entirely proportionate.

7. Frankly the grounds are little more than a disagreement with the judge's decision and an attempt to re-argue the appeal. Such factual errors as there may have been within the decision were not, I am satisfied, material to the outcome of the appeal.

8. For example, it is argued that the judge misdirected herself on the issue of serious and compelling family or other considerations. However, whether or not the appellant's parents had passed away before the sponsor came to the UK was of marginal relevance. The focus in the grounds on alleged factual errors in this regard fails to demonstrate that the appellant could have met the requirements of the Rules. The important issue was not the appellant's family history but her circumstances in which she was currently living in Ethiopia. The grounds fail to identify any serious and compelling considerations in those circumstances.

9. I am also satisfied that there was no error as alleged, in relation to the maintenance requirement. The issue of adequate maintenance was not addressed by the First-tier Tribunal Judge because the respondent's representative at the hearing conceded both the biological relationship and the issue of maintenance. In the circumstances no error of law is disclosed in the judge's not dealing with that issue. What remained at issue was the issue of adequate accommodation, in respect of which the judge found against the appellant at paragraph 54 of the decision. The grounds entirely fail to address this issue at all. In the circumstances it is difficult to see how the appeal could have succeeded.

10. The focus in the grounds on alleged factual errors diverts proper attention from the key issue as to whether there were serious and compelling family or other considerations which made exclusion of the appellant from the UK undesirable. Merely to identify some factual errors in the decision is insufficient; to be material the appellant has to demonstrate that without those errors the appeal had a prospect of success. Considered as a whole, there was nothing in the appellant's circumstances that could even arguably amount to justification to grant entry clearance to the UK either within or without the Rules.

11. At paragraph 49 of the decision the judge considered the best interests of the appellant, a child at the date of application but now an adult, and did so taking the appellant's claim at its highest. This is also clear from paragraph 53 of the decision. At paragraph 55 of the decision the judge considered the Article 8 aspect of the appeal, bearing in mind that the only right of appeal is on human rights grounds. However, the appellant's representative was unable to identify any gap between the Rules and Article 8 in this case or any circumstances beyond those due for consideration under the Rules. It follows that the fact that the application did not meet the requirements of the Rules was a matter that was highly significant to any Article 8 proportionality assessment outside the Rules. In essence, the judge found that the Article 8 human rights consideration

stood or fell with those specific requirements under the Rules and thus the judge concluded that there was nothing disproportionate in applying the Rules in accordance with their terms with the effect that the appellant's application failed.

12. In the grant of permission I note that Judge Simpson suggested that there was an overall inadequacy of consideration of the evidence and internal reasoning on material matters. With respect I disagree. I also point to the decision of the Upper Tribunal in Durueke [2009] UKUT 00197 (IAC), where the Upper Tribunal gave guidance to the First-tier Tribunal in deciding whether to grant permission to appeal to the Upper Tribunal. At (ii) of the headnote the Upper Tribunal indicated it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. Further, at headnote (iii) of the decision the Upper Tribunal stated:

> "Particular care should be taken before granting permission on the ground that the judge who decided the appeal did not 'sufficiently consider' or 'sufficiently analyse' certain evidence or certain aspects of a case. Such complaints often turn out to be mere disagreements with the reasoning of the judge who decided the appeal because the implication is that the evidence or point in question was considered by the judge who decided the appeal but not to the extent desired by the author of the grounds or the judge considering the application for permission. Permission should usually only be granted on such grounds if it is possible to state precisely how the assessment of the judge who decided the appeal is arguably lacking and why this is arguably material".

13. This is such a case. Neither the grounds nor the grant of permission identify with any precision or particularity in what way the decision arguably displays an inadequacy of consideration or reasoning.

14. In all the circumstances it follows that I am driven to the conclusion that no material error of law has been identified.

*Decision*

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such as to require the decision to be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

No anonymity direction is made.

**Signed**
**Upper Tribunal Judge Pickup**

**Dated** 20 December 2019

**To the Respondent**
**Fee Award**

I make no fee award because the appeal has been dismissed.

**Signed**
**Upper Tribunal Judge Pickup**

**Dated** 20 December 2019