



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001018
First-tier Tribunal No:
HU/02287/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 April 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

Entry Clearance Officer

Appellant

and

MN

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Bates, Senior Presenting Officer

For the Respondent: Ms Khan

Heard at Manchester Civil Justice Centre on 20 February 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant as they appeared respectively before the First-tier Tribunal.
2. The appellant is a male citizen of Ethiopia who was born on 28 December 2004 (not 2014 as stated in the First-tier Tribunal decision [1]). He applied for family reunion with HNN (hereafter the sponsor) also an Ethiopian citizen who has

indefinite leave to remain in the United Kingdom. By a decision dated 6 March 2021, the Entry Clearance Officer refused the appellant's application. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 13 December 2021, allowed the appeal on Article 8 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. The circumstances are unusual. The appellant and the sponsor are not blood relatives. The appellant had been abandoned as a baby on the doorstep of the sponsor's family home. Thereafter, the sponsor's family had cared for the appellant. The sponsor herself undertook care of the appellant until she was arrested in Ethiopia and had to flee the country in 2014. The appellant currently lives with a friend of the sponsor who states that caring for the appellant is problematic and cannot continue indefinitely. The First-tier Tribunal judge did not find [41] that the appellant was, as claimed, the adopted son of the sponsor. Consequently, the relevant requirements of the Immigration Rules could not be met. The judge found Article 8 ECHR to be engaged [44] stating at [49]: 'Taking the available evidence together, I conclude that that the relationship here is more akin to that of an older sister, albeit one who has over time taken over the lions share of responsibility for the Appellant.'
4. Mr Bates, who appeared for the Secretary of State at the Upper Tribunal initial hearing, did not dispute that finding as to family life. He did, however, submit that the judge had fallen into error for the following reasons.
5. First, he submitted that the judge had failed to have proper regard to the appellant's age. The appellant is now an adult. The judge had failed to take account of the fact that the appellant had been approaching the end of his childhood and that the sponsor's friend would not have to care for him for very long before he achieved his majority. Secondly, the judge had failed to consider whether the appellant has a private life or family life (with his current carer) in Ethiopia which he would forfeit if he were to join the sponsor in the United Kingdom.
6. For the appellant, Ms Khan submitted that the appellant had been only 16 years old at the time of the First-tier Tribunal hearing; the judge had been correct to take account of the possibility that the current care arrangements would cease before the appellant reached the age of 18 years. In any event, that age did not represent a bright line in the appellant's life after which he would need no care whatever. Further, there was no evidence that the appellant enjoys family life with the carer in Ethiopia or that his private life ties are so strong as to outweigh the acknowledged bond with the United Kingdom sponsor.
7. I find that I prefer the submissions of Ms Khan to those of Mr Bates. The judge's findings at [50] (*'Without becoming the Appellant's mother, I find the sponsor has taken on a maternal role. I note the Appellant remains a child. For a not insignificant period of his formative years, the sponsor has been the only clear maternal figure in his life ; she is also the only relative.'*) were open to him on the evidence. The judge did not attach excessive weight to the possibility that the current care arrangements might cease but, equally, he weighed this as a relevant factor, which, given the unchallenged evidence of the sponsor on this matter, he was entitled to do. The judge did not expressly consider the Article 8 factors set out in section 117 of the 2002 Act but his approach to and analysis of the Article 8 factors for and against the appellant is not, in my opinion, perverse, irrational or otherwise wrong in law. Moreover, what mattered was a sustainable assessment of the Article 8 ECHR rights which the appellant claimed exist with

the sponsor; the judge was not required to speculate about other family or private life ties which neither the appellant nor the respondent had raised before the First-tier Tribunal but which might conceivably trump those relationships which are known to exist. Moreover, the judge has dealt at length with the question of adoption/*de facto* adoption [33-41]. In the light of his findings on that issue at [41], there was no question that the appellant would meet the adoption requirements of the Immigration Rules. However, that is of marginal relevance given that both parties accept that the family life of the appellant and sponsor engages Article 8 ECHR and that the judge did not err by proceeding to carry out a proportionality assessment.

8. Mr Bates did not challenge the judge's decision to take into account the best interests of the appellant notwithstanding that he is resident abroad but he did note that (albeit in the fees section of the decision) the judge had considered the appeal to be 'finely-balanced'. I am not sure how that observation advances the respondent's case. Many cases may be finely-balanced but the judge is still required to make a decision. The Upper Tribunal should interfere with such a decision only if it wrong in law and not because a different outcome could have been reached on the same evidence. For the reasons I have given, that is not case here. Another judge in this 'finely-balanced' case may have reached a different outcome but that is not the point. The arguments advanced in the Secretary of State's grounds of appeal to do not establish that the judge made any errors of law. Accordingly, his decision should stand and the appeal is dismissed.

Notice of Decision

The Secretary of State's appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 23 February 2023