



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

Appeal Number: HU/05304/2016

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham

**Decision & Reasons
Promulgated
On 2nd May 2018**

On 4th April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**MISGANA TEKLEAB GEBREMICHAEL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellant: Mr Chohan of Citadel Immigration Lawyers Limited

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Eritrea born on 8th August 1999. She applied to the British High Commission in Pretoria for entry clearance as the dependent daughter of her father, the Sponsor Tecklab Hidru Gebremichael, a British citizen. That application was refused for the reasons given in a Notice of Refusal dated 25th January 2016, which decision was confirmed by an Entry Clearance Manager on 24th May 2016. The Appellant appealed and her appeal was heard by Judge of the First-tier Tribunal Hussain (the Judge) sitting at Birmingham on 13th June 2017. He

decided to dismiss the appeal for the reasons given in his Decision dated 4th July 2017. The Appellant sought leave to appeal that decision and on 9th January 2018 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal under the provisions of paragraph 297(i) (e) of HC 395 on the basis that he was not satisfied that the Sponsor had had sole responsibility for the Appellant. That decision has not been challenged in this appeal. The Judge also dismissed the appeal under Article 8 ECHR outside of the Immigration Rules. The Judge took into account the best interests of the Appellant as a minor and treated those as a primary consideration. However, he found that there were no serious and compelling circumstances relating to the Appellant and that on balance the public interest outweighed any consideration due to the Appellant. The decision of the Respondent was therefore proportionate.
4. At the hearing before me, Mr Chohan argued that the Judge had erred in law in coming to this conclusion. He submitted that the Judge had used the wrong test in assessing the Article 8 ECHR issue. He had applied a serious and compelling test rather than the correct test of proportionality. The Judge had further erred by referring to South Sudan whereas the Appellant had never lived there. Further, the Judge had failed to consider the best interests of the Appellant as a child.
5. In response, Mrs Aboni argued that there was no such material error of law. She conceded that the Judge's reference to South Sudan was an error, but the Judge had directed himself appropriately concerning the Article 8 ECHR issue and had considered all the relevant circumstances. He had made findings of fact open to him on the evidence before him and had been entitled to find that the public interest outweighed any other consideration.
6. I find no material error of law in the decision of the Judge which I therefore do not set aside. It is true that the Judge erred by referring to South Sudan, but this is not a material error since all of the Judge's comments concerning the Appellant's life before she came to the UK are equally applicable to Eritrea. I agree with the submission of Mrs Aboni that the Judge took into account all relevant circumstances and gave adequate reasons for his decision at paragraph 26 of the Decision. The Judge demonstrated in that paragraph that he had carried out the balancing exercise necessary for any consideration of proportionality, and came to a decision open to him. I find it is not the case that the Judge applied a wrong test. He did find that there were no compelling or exceptional circumstances allowing him to consider the Appellant's Article 8 ECHR rights outside of the Immigration Rules, but in the same paragraph he clearly carries out the balancing exercise referred to above and makes a

decision concerning the Appellant's Article 8 ECHR rights outside the Immigration Rules. At paragraph 25 of the Decision the Judge referred to the best interests of the Appellant as a child and took them into account as a primary consideration. However, the Judge was entitled to attach considerable weight to the public interest particularly as the Appellant had failed to satisfy the criteria of the relevant Immigration Rule. It was said by Mr Chohan that the Judge had erred in law by taking into account the expense to the Appellant's father of supporting the Appellant in Eritrea, but this was not a matter argued before the Judge in the context of Article 8 ECHR.

7. For these reasons I find no material error of law in the decision of the Judge.

Notice of Decision

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

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Date 2nd May 2018

Deputy Upper Tribunal Judge Renton