



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/20620/2016

THE IMMIGRATION ACTS

Heard at Field House
On 29 May 2018

Decision & Reasons Promulgated
On 27 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

JOAN KAYITESI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - KAMPALA

Respondent

Representation:

For the Appellant: Miss Judith Celestine Kanjeru, Sponsor

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Rwanda, born on 25 July 1998, who appeals with permission against a decision of Judge of the First-tier Tribunal Sullivan, who in a determination promulgated on 10 January 2018 dismissed her appeal against a decision of the Entry Clearance Officer to refuse her entry clearance to come to Britain to join her aunt, the sponsor, Judith Celestine Kanjeru who is a British citizen. The application was made online on 11 May 2016 two and a half months before the appellant's 18th birthday and was refused on 29 July 2016.
2. The application was refused because it was not accepted that the appellant had no family support in Rwanda or in Uganda where she was attending school and there was insufficient evidence that the sponsor had made financial provision for the

appellant, there was no evidence of compelling circumstances and the appellant had failed to provide a TB certificate with her application.

3. The appellant had made a previous application in 2007 which had been unsuccessful. Although the basis of that application was that her parents were dead. It was because there was insufficient accommodation for the appellant and the sponsor's two other nieces. In 2012 the sponsor had to decide which of the children to bring to Europe and decided to bring the two nieces. In this application it was the appellant's case that she had no family to support her and that she had become depressed, particularly after the departure of her other relatives to Britain. It was said that her brother was a dropout and his whereabouts were unknown and that she had become institutionalised and was vulnerable as a consequence. It was stated that she should be allowed to resume family life with her cousin, her sister and the sponsor in the United Kingdom under the provisions of Article 8 of the ECHR.
4. The judge heard evidence from the sponsor noting that it was claimed that the sponsor, who had sought asylum in Britain in 2001, had been responsible for the appellant since the appellant's mother and father had died when she was a baby. The sponsor had been appointed the appellant's guardian in October 2007.
5. In paragraphs 13 onwards the judge set out her assessment of the evidence and her findings of fact. These were:
 - "13. I found the sponsor to be an honest witness. I accept that she feels a keen sense of responsibility for the Appellant and that she is genuinely concerned for the Appellant's welfare.
 14. I find that the Appellant did not provide with her application the TB certificate she had been asked to provide. Refusal would normally be appropriate in those circumstances. Although the TB certificate is dated 20 May 2016 there is no evidence to show whether it was sent to the Respondent prior to the Refusal. I find that there was nothing in the information available to the Respondent at the date of Refusal to cause him to depart from the normal approach. I find that the Refusal under paragraph 320(8A) of the Rules was justified.
 15. In relation to the rights to respect for family and private life I begin by assessing the situation under the Rules.
 - a) I am satisfied that the Appellant's parents died in 2007 and that the sponsor is a British citizen and consequently present and settled in the United Kingdom.
 - b) I am satisfied that having been appointed the Appellant's guardian in 2007 the sponsor made provision for her in terms of education and financial support and by arranging supervision either at a boarding school or (more recently) with a family known to the sponsor. I am

satisfied that the sponsor has been exercising parental responsibility for the Appellant.

- c) The Appellant was 17 years old at the date of application; paragraph 27 of the Rules applies. I accept that she is unmarried and not yet fully independent of the sponsor.
- d) I am satisfied that the sponsor has sufficient accommodation and income to maintain the Appellant adequately without recourse to public funds: her pay statements have been filed in evidence and I regard her oral evidence as reliable.
- e) There were long gaps between the applications for entry clearance for the Appellant. I am satisfied that the sponsor carefully made arrangements for the Appellant's care in Rwanda and education and care in Uganda having failed in an entry clearance application for her in or about 2007. Those arrangements diligently having been made, I am not satisfied that there were serious and compelling considerations making the Appellant's exclusion undesirable and I find that she failed to satisfy paragraph 297 of the Rules.

16. I accept that the Appellant shared family life with her own sister Immaculate Kabanyana (born in 1997) until Immaculate moved to the United Kingdom in or about 2012. I accept that the Appellant also shared family life with the sponsor from the time in 2007 when the sponsor became the Appellant's approved guardian following the deaths of the Appellant's parents. I find that the family relationships continued notwithstanding geographic separation because there has continued to be contact between the Appellant on the one hand and her sister and sponsor on the other and because I am satisfied that the sponsor has continued to make financial provision for the Appellant, including by making payments to the Appellant's previous school and to a family friend Rose Kabanyana who provided some assistance. I am satisfied that family life continued after the Appellant's 18th birthday on 25 July 2016 because she has not become independent of the sponsor. The right to respect for family life is engaged."

6. In paragraph 18 the judge accepted that the refusal interfered with the right to respect for family life and stated that it also denied the sponsor the opportunity to carry out in person the duties she felt she owed to the appellant in terms of care and support. She accepted that this was something that the sponsor feels very keenly. However, the judge found that the refusal was in accordance with the law in that it served the economic interests of the country through immigration control, the maintenance of effective immigration control was in the public interest. She stated that the remaining issue was that of proportionality and in paragraphs 20 and 21 she wrote as follows:-

"20. The Appellant is no longer a child. She has provided no evidence of having passed any recognised English language examination. I am not satisfied as

to her English language skills and thus her ability to integrate in British society. I am satisfied that the sponsor, who has earned £20,328.91 in the tax year to 1 November 2017, has the resources to ensure that the Appellant is financially independent. I take these factors into account.

21. I take into account all of the evidence about the Appellant and her circumstances. She is no longer in education; the sponsor has secured a place for her with a family where she receives training in financial matters, accommodation, food and pocket money. She is moving towards independence. I accept that in 2016 the Appellant was noted by staff at school to be lonely following the departure of her sister. I am not satisfied that the Appellant suffers from depression or any mental ill health because there is no current medical record to that effect. Although the sponsor is a mental health nurse what she has said about the Appellant is very much coloured by personal concern and lacks the independence and rigour expected of medical reports in the jurisdiction. I am not satisfied that the Appellant has shown good reason to be excused compliance with immigration controls others would have to satisfy. I find that the Refusal is proportionate and does not breach Article 8 of the 1950 Convention."

The Judge therefore found that the appellant could not qualify for leave to remain either under the Rules or on human rights grounds.

7. Grounds of appeal argued that the decision was not adequately reasoned emphasising that the application had been made when the appellant was a child but stating the judge had failed to consider this. It was stated that the judge should have considered the determination of the appeals of the appellant's sister and cousin in 2013 as that judge having found that the appellant had not been included in the application made in 2012 for "pragmatic reasons" - simply that the sponsor could not financially afford the application. They stated that the circumstances of the appellant were the same as those of her sister and cousin who entered in 2013 and that it was unfair to consider otherwise. It was also unfair for the judge to have placed weight on her lack of English proficiency as that was not a requirement of the Rules. Given that the judge had stated that the sponsor had the resources to ensure that the appellant was financially independent, it was argued that the judge was wrong to find that the decision served the economic interests of the country and that that was irrational. It is asserted that the appellant did meet the requirements of the Rules and that the determination was not sufficiently reasoned, particularly with regard to the assessment of the appellant's rights under Article 8 of the ECHR.
8. Further grounds drafted by the sponsor stated that the sponsor had not been aware of the tuberculosis clinic at the time of the application but had a report from the Goodwill Polyclinic which had TB checks submitted. Moreover, a further TB certificate had been submitted to "the immigration in Uganda" before the refusal of the application. The sponsor went on to write that she was the only parent that the appellant had and that she was settled in Britain and that the appellant has been denied family life given that she was a child below the age of 18. She had been forced to grow up in a school

institution where she had spent most of her childhood including holidays while other children went to their homes. She had been denied face to face company and support of her sister and her cousin, who had been allowed entry in 2013. A medical certificate showed that she had been sickly for the last two and a half years.

9. It was argued that, given that the judge had accepted that there was sufficient accommodation and income to maintain the appellant without recourse to public funds, it was not proportionate to deny the appellant entry based on economic interest. Moreover, she needed her family for moral support. It was emphasised that she had been taught in Uganda where the education was in English and that she had merely taken a gap year in 2017, but was now back in education.
10. At the hearing of the appeal before me the sponsor repeated the grounds and emphasised the difficulties which the appellant was facing in Uganda without the other close members of her family. She argued that the decision was in effect disproportionate and emphasised that had she known that the TB certificate were required that would have been provided.
11. Mr Tarlow merely pointed out that the TB certificate had not been submitted and that therefore the application could not have succeeded under the Rules and further argued that the conclusions of the judge were fully open to her.

Discussion

12. Much is said in the grounds of appeal that the situation of the appellant is on a similar footing to that of her sister and cousin in 2012 and at the time their appeals were allowed in 2013. That of course is not the case, the reality is that the appellant's circumstances are different, not least because of the effluxion of time. Moreover, it appears that the appeals of the appellant's sister and cousin were allowed under the Immigration Rules. This appellant's appeal must fail under the Rules because of the lack of the correct TB certificate. Moreover, I consider that the judge was entitled to conclude that there were not serious and compelling family or other considerations which make exclusion of the child undesirable. The judge therefore finding that the appellant could not succeed under the Rules was entitled to proceed to consider her application under the provisions of Article 8. In doing so she was entitled to take into account the age of the appellant – although she was under the age of 18 she was only two and a half months under that age. She had spent all of her life either in Rwanda or Uganda. The face to face contact she has had with the sponsor must have been minimal given the date the sponsor was granted discretionary leave. Clearly the judge did have sympathy for the appellant and moreover accepted that she was depressed and missed her sister and cousin, but there was no evidence that she was unable to make a life for herself in Uganda or Rwanda or there were any factors that would mean that the decision was disproportionate. I consider therefore that the judge was entitled to dismiss this appeal and that there was no error of law in her determination.

Notice of Decision

This appeal is dismissed on immigration grounds. The appeal is also dismissed on human rights grounds.

No anonymity direction is made.

Signed

A handwritten signature in black ink, appearing to read 'A. McGeachy', written in a cursive style.

Date: 26 June 2018

Deputy Upper Tribunal Judge McGeachy