



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

Appeal Number: HU/11543/2018

THE IMMIGRATION ACTS

Heard at Field House

On 11 April 2019

**Decision & Reasons
Promulgated
On 01 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**M.B.B.
(ANONYMITY DIRECTION MADE)**

Appellant

and

**ENTRY CLEARANCE OFFICER,
SHEFFIELD**

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Veloso promulgated on 24 January 2019 dismissing the appeal of MBB against a decision of the Respondent refusing entry clearance as a dependant of her father.
2. The appeal before Judge Veloso was considered without a hearing 'on the papers'.

3. The Appellant is a citizen of Guinea born on 12 October 2000. On 1 February 2018 she applied with her sister, ABB, for entry clearance to join their father ('the sponsor'), a British citizen, in the United Kingdom. Their mother was also living with the sponsor in the UK, and so in substance these were applications to join their parents.
4. The Appellant's sister was born on 18 November 2002, and so is approximately two years younger than the Appellant. It may be seen that the application was made at a time when both the Appellant and her sister were under the age of 18. Indeed, both were still under the age of 18 when their respective applications were refused on 24 April 2018.
5. The single basis of refusal for the Appellant and ABB was that the Respondent did not accept that the girls were related as claimed to the sponsor. Subsequent to the refusals DNA tests were conducted which established the relationships. The DNA tests (dated 30 May 2018) actually pre-date the Entry Clearance Manager's Review of the case (7 January 2019), but it seems the results had not reached the Entry Clearance Manager by the time of the Review.
6. The Appellant and her sister appealed to the First-tier Tribunal, indicating that they wished the appeals to be decided 'on the papers' without a hearing.
7. Both appeals were considered as linked cases by First-tier Tribunal Judge Veloso, (ABB's case with the reference HU/11545/2018). The Judge concluded that the DNA evidence was sufficient to establish the relationship as claimed in each of the applications. However, quite properly, the Judge recognised that these were appeals on human rights grounds, and the mere fact that the requirements of the Immigration Rules were met was not inevitably a reason for allowing the appeals.
8. The Judge went on to consider the family life as between each of the appellants and their father in the UK. Seemingly primarily on the basis that she was still a minor, the Judge concluded that ABB enjoyed family life with the sponsor, and found that the Respondent's decision represented a disproportionate interference when evaluated at the date of the consideration of the First-tier Tribunal.
9. However, a different view was reached in respect of MBB, seemingly on the sole basis that she was no longer a minor. The Judge noted that the Appellant "*is now 18 years old and therefore an adult*" (paragraph 28). I pause to note that by the date of the hearing she would have been 18 years and 3 months old.
10. The Judge then said this:

“Whilst applying common sense, [MBB’s] family life with the sponsor would not have simply ended on the very day of her 18th birthday” (paragraph 29),

before noting that the Appellant’s appeal bundle did not provide any particular information as to the nature of the Appellant’s relationship with either of her parents.

11. However, it is to be noted that the same was the case in respect of the evidential material as it related to ABB - yet this did not prevent the Judge from reaching a conclusion favourable to her. In reality the only distinguishing feature was that the Appellant had recently passed the age of majority.

12. I find the Judge’s observation at paragraph 29 that as a matter of common sense family life could not be considered to have simply ended upon the Appellant reaching her majority is irreconcilable with the Judge’s conclusion at paragraph 31 that Article 8 was not engaged.

13. In my judgment, the First-tier Tribunal Judge was also in error in stating:

“It is not known who the [MBB] currently lives with and whether it is with [her sister]” (paragraph 30).

14. A perusal of the visa application forms makes it adequately clear that both applicants lived together with their grandmother. This is not only apparent from the fact that they both made use of the same address in their respective application form, but also because the response at question 84 of each form refers specifically to them being in the care of their maternal grandmother, and being financially supported by the sponsor who sends money to Guinea to that end. There was no basis to infer that circumstances had changed since the application.

15. It seems to me that the First-tier Tribunal Judge singularly failed to have regard to the evidence of the application form. In so doing the Judge also failed to have regard to the fact that there was plainly family life as between the Appellant and her sister. The impact of allowing one daughter to come to the United Kingdom and leaving the other daughter behind would necessarily interfere with that relationship.

16. It is also appropriate to recall in this context that it has been a longstanding policy of the Secretary of State and of the entry clearance service with regard to applicants for entry clearance who are under 18 at the time of application but reach their majority either during the course of the application or during the appeal process, not to rely upon the reaching of the majority as a reason for defeating the application or appeal. Such a principled approach finds expression in, for example, Appendix FM of the Rules which so far as they relate to entry clearance for a child make it evident that the requirement in respect of age is only that the applicant be under 18 *at the date of the application* (paragraph E-ECC.1.2.). It would be

disproportionate to deny the Appellant the benefit of this principled approach because of the passage of time involved in listing the appeal.

17. In my judgement, in the context of Article 8 in circumstances where both these girls made applications as minors which should have succeeded, it would be entirely disproportionate now to allow one but refuse the other on the sole basis that by the date of consideration by the Tribunal she was three months past her 18th birthday.
18. In all such circumstances I find errors in the approach of the First-tier Tribunal amounting to errors of law. I set aside the decision of the First-tier Tribunal in respect of MBB. I re-make the decision and allow the appeal on Article 8 grounds.
19. For completeness I note that Ms Cunha, whilst initially indicating on behalf of the Secretary of State that the Appellant's challenge was resisted, upon further discussion acknowledged the matters indicated herein, and ultimately invited me to allow the appeal.
20. For the avoidance of any doubt, the favourable decision in appeal HU/11545/2018 is not the subject of any challenge, and accordingly the appeal of ABB remains allowed. Because ABB is a minor and because some of the discussion herein touches upon her case, I continue the anonymity order that has been made in these proceedings.

Notice of Decision

21. The decision of the First-tier Tribunal contained material errors of law and is set aside.
22. I remake the decision in the appeal. The appeal is allowed on human rights grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: 26 April 2019

Deputy Upper Tribunal Judge I A Lewis

To the Respondent

Fee Award *(This is not part of the determination)*

I have allowed the appeal and accordingly I give consideration to making a fee award.

I note that Judge Veloso declined to make a fee award in favour of ABB notwithstanding that he allowed the appeal, on the basis that the appeal had only succeeded in consequence of the DNA evidence that had been produced after the Respondent's decision.

It is not for me to interfere with Judge Veloso's decision in respect of the fee award in ABB's case. However, I take a different view. The Appellant and her sister provided supporting evidence of their relationship to the sponsor with the application. The Respondent rejected that supporting evidence. The consequence of the DNA evidence is to demonstrate that the Respondent was wrong so to do. In those circumstances it seems to me that had the Respondent accepted the evidence at face value, it would not have been necessary to pursue an appeal at all. In such circumstances I find a fee award is appropriate.

I make a full fee award in favour of the Appellant.

(However, this does not affect the decision of Judge Veloso not to make a fee award in favour of ABB, in respect of which I have no jurisdiction to interfere.)

Signed:

Date: 26 April 2019

Deputy Upper Tribunal Judge I A Lewis
(*qua* Judge of the First-tier Tribunal)