



Upper Tribunal
(Immigration and Asylum Chamber)

Appeals: HU/19018/2018
HU/18799/2018
HU/18805/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 10 October 2019

Decision & Reasons Promulgated
On 16 October 2019

Before

UT JUDGES MACLEMAN & DAWSON

Between

THI [B]
[T P N]
&
[T M N]

Appellants

and

ENTRY CLEARANCE OFFICER, VIETNAM

Respondent

Representation:

For the Appellant:

*Ms Stein, Advocate, instructed by Warwick Vesey, Solicitors,
Birmingham*

For the Respondent:

Mr Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are a mother and two daughters. The husband of the first appellant, and father of the second and third, is [TN] ("the sponsor"). They are all citizens of Vietnam. The sponsor is recognised as a refugee in the UK.
2. The appellants appeal to the UT against the decision of Designated FtT Judge Murray, dismissing their appeals against refusal of entry clearance based on their family life with the sponsor. Their grounds are set out in the attachment, dated 5 August 2019, to their application for permission.
3. The first point in the grounds (at paragraphs 3 and 4) is that the judge went wrong by finding that family relationships which had broken down could not be rekindled. We indicated at the hearing that we found that ground misconceived. The judge made no such finding. The crux of her judgment was that relationships had not in fact been rekindled.
4. It has been accepted throughout that the first appellant and the sponsor, had married, and their marriage had not been dissolved.
5. The live question for the FtT was whether at the date of application, or at the date of the hearing, in terms of immigration rule 352A (v) "*each of the parties intends to live permanently with the other as their partner and the relationship is genuine and subsisting.*"
6. The second point in the grounds (at paragraphs 5 and 6) is that the judge overlooked evidence of many communications from 2016 onwards which supported the subsistence of family relationships.
7. In course of submissions Mr Govan accepted that the FtT had gone astray in its approach to rule 352A (v) and had not given adequate reasons, given the evidence founded upon in the grounds, for finding there to be no genuine and subsisting relationship.
8. In our view, that concession was correctly made. The FtT did not say what it made of that evidence, which required evaluation.
9. There is also some force in paragraph 7 of the grounds, which contends that there was a failure to apply *Devaseelan* principles to the evidence of the sponsor, who was found credible in his asylum appeal. The prior decision was primarily about other matters, but the favourable finding extended to what he said about his family life.
10. We do not think the rest of the grounds would have led anywhere, but no further analysis is required.
11. Ms Stein asked us to remake the decision, based on the evidence which had been before the FtT and upon submissions. Mr Govan concurred. We proceeded accordingly.
12. Mr Govan invited us to find from the evidence that family relationships had lapsed over the years, and had not been rekindled. There were inconsistencies in the

appellant's account, as the FtT had observed, and we should find that there had been no contact between 2007 and 2012. Little of the evidence of communications was in English, none of the rest was translated, and although some pages did appear to be dated in 2016 and 2017, most of it had no clear dates. The evidence did not show who was talking to whom, or about what. There were photographs of the three appellants, together, separately, and with others, but that established nothing.

13. Mr Govan reminded us of rule 352D, relating to the second and third appellants - *"... (ii) is under the age of 18; and (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and (iv) was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of their habitual residence in order to seek asylum ..."*.
14. He submitted that the second appellant is now over 18, a matter we were bound to take into account; there was no up to date evidence about her in relation to (iii); and neither of the children were part of the sponsor's family unit when he left Vietnam.
15. Mr Govan asked us to dismiss all three appeals.
16. Ms Stein submitted that there might have been periods when family relationships had weakened or even lapsed, for which there could be many explanations, but there was a wealth of evidence of telephone calls, screen shots, text and internet messages over at least two years up to the date of application. Although mostly not in English, there was obviously the interchange of photographs and information typical of family relationships. There was no reason not to think that the first appellant and the sponsor were not in a genuine marital relationship. It was accepted that the second and third appellants might be in difficulty over the terms of rule 352D but the appeals were on human rights grounds. If the first appellant were to be admitted to the UK the third, as a child now twelve years of age, had a right to be with both parents. As to the second, a bright line should not be drawn at the age of majority, and she should not be left stranded as the only family member in Vietnam.
17. We reserved our decision.
18. Family relationships have had their ups and downs. The sponsor's evidence has been inconsistent, particularly over periods when there was little if any contact. However, he has said since he arrived here that he has rekindled those relationships. The evidence of communications might have been better presented, but we also have the statements of the parties. While the criticisms made by Mr Govan were reasonably taken, it is clear that family members have been regularly in touch over the last few years.
19. The evidence satisfies us that it is more likely than not that the first appellant, if she enters the UK, intends to live permanently with the sponsor as his partner and that their relationship is genuine and subsisting. Rule 352A is designed to comply both with the Refugee Convention and with the ECHR, so the first appellant establishes her human rights grounds.

20. It takes strong circumstances to extinguish family life between a parent and a child who have lived together. We think the evidence shows that although ties may then have been at their low point, the third appellant was part of a family unit with the sponsor when he left Vietnam; but even if she was not, as her mother succeeds on human rights grounds, her right to family life, and her best interests, entitle her to live with both parents.
21. The position of the second appellant is not as strong. We are bound to take into account that she is now an adult. However, we note that at the date of application and at the date of the FtT hearing, she ought to have been found to have a right to entry clearance. We give that some weight. She is not far into adulthood. We have no reason to think that she has begun to lead a life independently from her mother and sister, has married or become a civil partner, or has formed an independent family unit. We find it more likely that she has continued to live with her mother, as she has done throughout her life, and with her younger sister. We are not persuaded, for reasons given above, by the submission of Mr Govan that she has formed, with her mother and sister, a family unit independent of the sponsor. We do not think that this is a case where she ceased on her 18th birthday to have family life, for purposes of article 8 protection, with the other parties. We find that it would be disproportionate to deny her entry to the UK with the other appellants.
22. The decision of the FtT is set aside. The three appeals, as brought to the FtT, are allowed.
23. No anonymity direction has been requested or made.



14 October 2019
UT Judge Macleman