Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19610/2018

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On Monday 20 December 2021	**On Wednesday 12 January 2022**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

STEVEN KABAMBI KABAMBI

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant challenges the decision of First-tier Tribunal Judge Hoffman promulgated on 21 August 2019 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 4 September 2018 refusing his human rights claim made in the context of an application for entry clearance as the child of a refugee.

2. The hearing to determine whether there is an error of law in the Decision came before me first on 31 August 2021 via Microsoft Teams. I was on that occasion not satisfied that the Appellant and his mother (hereafter

"the Sponsor") had notice of the hearing. I therefore adjourned the hearing of my own motion and relisted it on a face-to-face basis. Although the Appellant remains abroad, the Sponsor resides in the UK. She has an address in Croydon. The Sponsor attended the hearing before Judge Hoffman with her brother who assisted her to make submissions. In any event, the Tribunal has no e-mail address for either the Appellant or the Sponsor and therefore a hearing could not be conducted remotely.

3. My earlier adjournment decision and directions is appended to this decision for ease of reference. My directions provided a further opportunity for the Appellant and/or the Sponsor to contact the Tribunal in relation to the appropriate forum for determination of the appeal and to file further evidence. They also allowed the Respondent to file further evidence. I considered that to be particularly important since at the heart of the error of law issue lies a factual dispute as I will come to. The Respondent filed evidence on 16 December 2021. Although that was filed out of time, I permitted the Respondent to rely on it as it is in the interests of justice that the Tribunal be appraised of the correct factual position.

4. The Appellant has not provided any e-mail address at which he may be contacted. He has not sought a remote hearing. The Sponsor has not contacted the Tribunal to ask for the hearing to be determined in any other way (whether remotely or on the papers). Neither she nor the Appellant have sought an adjournment. Neither she nor the Appellant have provided any further evidence.

5. The Appellant did not attend the hearing for obvious reasons since he is abroad. The Sponsor did not attend either. I am satisfied that my earlier decision and the notice of this hearing were given to her at the last known address which was provided to the Tribunal. This is now the third opportunity which the Appellant and Sponsor have had to participate in the hearing of their appeal (an earlier remote hearing having been adjourned by Upper Tribunal Judge Norton-Taylor on 16 April 2021). I was therefore satisfied that it was in the interests of justice that the hearing proceeds in the absence of the Sponsor and the Appellant.

6. Having heard submissions from Ms Isherwood on behalf of the Respondent, I indicated that I would reserve my decision in case there were any late contact from the Sponsor or Appellant. There has been none. Three weeks have now passed since the hearing which is ample opportunity to make contact if there were any reason for non-attendance. I therefore issue my decision.

DISCUSSION AND CONCLUSIONS

7. The Appellant's appeal is against the decision of the Entry Clearance Officer dated 4 September 2018 refusing his application for entry clearance as the child of a refugee. The Appellant is a national of Democratic Republic of Congo ("DRC") where he remains. According to

his application, the Sponsor entered the UK on 18 January 2004 and was granted indefinite leave to remain on 1 December 2009.

8. The Respondent refused the Appellant's application on the basis that he is unable to satisfy paragraph 352D of the Immigration Rules ("the Rules") as the Sponsor is not a refugee. The Respondent did not accept that there was evidence that the Appellant was related to the Sponsor as claimed or that he maintained contact with her.

9. Having refused an application for an adjournment, and following submissions made and evidence given by the Sponsor's brother, Judge Hoffman accepted that the Appellant is related to the Sponsor as claimed. However, he upheld the Respondent's rejection of the application within the Rules as it was clear that the Sponsor did not have refugee status (although she is settled in the UK). Indeed, the Sponsor's brother conceded as much ([21] of the Decision). Outside the Rules, Judge Hoffman found that the Appellant and Sponsor have maintained remote contact since 2004 and therefore there was "limited family life" ([38] of the Decision). He also accepted that the inability to develop family life in person amounted to an interference with that family life ([39]). However, having regard to section 117B Nationality, Immigration and Asylum Act 2002, the Judge concluded that the interference was not disproportionate for the reasons given at [42] to [46] of the Decision.

10. The Appellant appealed the Decision (with the benefit of legal representation) on grounds described by First-tier Tribunal Judge Davidge as "incoherent". Judge Davidge refused permission to appeal on 7 August 2020 with the following observations so far as relevant:

> "... 3. In summary this was a case where the Sponsor, who had obtained indefinite leave to remain in 2009, supported a refugee reunion application for her then 17-year-old son to enter the United Kingdom. As she did not have refugee status that was plainly the wrong application. However, the judge was looking at Article 8 ECHR and so considered the substance of the right rules relevant to dependent children at para 297. The Appellant was represented. The judge noted that this was not a case where the evidence showed the sponsor as having sole responsibility or that the Appellant was living in exceptional or compelling family or other circumstances. In short, the Appellant's family life was with his grandmother with whom he lived in the DRC, rather than with the Sponsor. Although she was now 85, and had some health issues, the Appellant was 17 and able to help her, and his living situation was not such that exclusion was undesirable.
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> 4. The decision followed correct self-direction and shows a conclusion which was reasonably open on the evidence. The grounds do not reveal any arguable error in the judge's consideration or reasoning."

11. The basis of the renewed application for permission to appeal to this Tribunal was that the Sponsor did in fact have refugee status. It was said that a person recognised as a refugee would initially be granted five

years' leave to remain and then, following review, indefinite leave to remain ("ILR"). It is asserted that the grant of ILR does not however preclude such a person from relying on their status as a refugee thereafter for the purposes of family reunion. That appears to be correct as far as it goes. However, as I will come to, that begs the question whether the grant of ILR to the Sponsor was on that basis. It is said by the drafter of the grounds to be "frankly astonishing that the proceedings have come thus far without anybody noticing". As I will come to, it is "frankly astonishing" that a person with legal knowledge of the immigration position of refugees as the drafter of the grounds must have done, was willing to draft these grounds obviously without sight of the documents which had led to the grant of ILR to the Sponsor. The grounds are for reasons I will come to misleading as to the facts and should never have been submitted. The application has wasted the time of this Tribunal and doubtless the expense of the Appellant and the Sponsor. I have therefore made a "Hamid" direction against the solicitor who submitted the application for permission to appeal to this Tribunal, notwithstanding that the firm has come off the record since submitting the application.

12. Given the assertion that the Sponsor's ILR was obtained following a grant of five years' leave to remain recognising her refugee status, it is perhaps unsurprising that Upper Tribunal Judge Macleman was persuaded to grant permission to appeal on the basis that, if the grounds were correct factually (as he assumed they were), the Appellant's grounds were "at least arguable".

13. The Respondent filed a Rule 24 Reply on 15 October 2020 again asserting that the Sponsor was not a refugee. As she pointed out and as is recorded at [21] of the Decision, the Sponsor's brother accepted that she was not a refugee.

14. The appeal comes before me to determine whether there is an error of law and, if I conclude there is, to consider whether it is appropriate to set aside the Decision. If I set aside the Decision, it is then for me to re-make the decision or remit the appeal to the First-tier Tribunal to do so.

15. As I have already recorded, there is only one ground of appeal before me. That turns on a factual issue namely whether the Sponsor has ever been recognised as a refugee in the UK. I now have conclusive evidence from the Respondent that she was not. I summarise that evidence below.

16. First, there is a record from the Respondent's database ("CID") which shows that the Sponsor made a claim for asylum on 19 January 2004. That was refused on 8 April 2005 but not certified so that she was able to appeal. She was given notice of illegal entry on 22 April 2005. She lodged an appeal on 29 April 2005. Her appeal was dismissed on 13 July 2005. A review of the appeal decision was refused on 27 July 2005. She made further submissions on 24 July 2008. As the Sponsor was a failed asylum seeker whose case was not "completed" (in the sense of being

granted leave or being removed) before March 2007, she came within the Casework Resolution Programme (commonly known as "legacy") and, the CID record shows, was granted leave to remain outside the Rules in the form of ILR on the basis that her case had not previously been concluded.

17. The CID record is confirmed by the decision letter refusing asylum dated 8 April 2005. The Respondent has also produced the letter to the Sponsor dated 1 December 2009 granting her ILR which reads as follows:

> "**GRANT OF INDEFINITE LEAVE TO REMAIN**
>
> Your case has been reviewed. Having fully considered the information you have provided, and because of the individual circumstances of your case, it has been decided to grant you indefinite leave to remain in the United Kingdom. This leave has been granted exceptionally, outside the Immigration Rules."
>
> [my emphasis]

The Appellant's minor children born to her in the UK were granted leave in line with their mother. The letter is issued by a caseworker in "Legacy CRT – Liverpool 14, Case Resolution Directorate".

18. I do not need to go into detail about the basis on which cases were reviewed and leave was granted by the Casework Resolution Directorate. If it were necessary to have regard to that process, it is fully summarised by King J in the cases of Geraldo and others v Secretary of State for the Home Department [2013] EWHC 2763 (Admin) (see in particular [39] to [54] of the judgment). As I say, though, I do not need to deal with the detail of this, first because the letter granting the Sponsor ILR makes clear that it was outside the Rules and based on the individual circumstances of her case and not as the result of recognition of refugee status. Second, I do not need to do so because the Sponsor's brother himself accepted before Judge Hoffman that the Sponsor has never been recognised as a refugee.

19. The Sponsor is not and never was recognised as a refugee in the UK. As a result, Judge Hoffman was plainly correct to find that the Appellant's application under paragraph 352D of the Rules was rightly rejected. As Judge Davidge noted when refusing permission to appeal below, the Judge did go on to consider the essence of any other rule which might apply (albeit not expressly) when considering whether there was dependency of the Appellant on his mother. As Judge Davidge concluded, the Judge made no error in relation to the central question before him, whether the decision breaches the Appellant's human rights. That is not something I need consider further for that reason and because it was not a ground of appeal before me.

20. The Appellant has failed to show that there is any error of law in the Decision. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

21. The Appellant's grounds to this Tribunal are, on the face of it, misleading. For that reason, I have made a "Hamid" direction below against Anupamah Huneewoth of Huneewoth solicitors requiring her to explain the basis on which the grounds were drafted as they were.

DECISION

The Decision of First-tier Tribunal Judge Hoffman promulgated on 21 August 2019 does not involve the making of an error on a point of law. I therefore uphold the Decision. The Appellant's appeal remains dismissed.

NOTICE TO SHOW CAUSE

(ANUPAMAH HUNEEWOTH OF HUNEEWOTH SOLICITORS)

Further to the decisions in R (Hamid) v Secretary of State for the Home Department [2021], R (Sathivel & Ors) v Secretary of State for the Home Department [2018] EWHC 913 and R (Shrestha) v Secretary of State for the Home Department [2018] UKUT 00242, Anupamah Huneewoth of Huneewoth Solicitors 14 Suffolk House, College Road, Croydon, Surrey, CR0 1PF, England is directed to file, within 28 days from the date when this decision is sent, a signed, written statement containing a statement of truth and responding to the following points:

(1) Explaining how and why she came to draft grounds seeking permission to appeal submitted under cover of an application made in this appeal on 21 August 2020 asserting that the Appellant's mother and sponsor had been recognised as a refugee in the UK when it should have been evident that she did not have and never had such status (not least because her brother had informed the First-tier Tribunal Judge that she did not as recorded at [21] of the First-tier Tribunal decision under appeal).

(2) What evidence Ms Huneewoth had before her to support the assertion made to the above effect.

(3) If that assertion was made without evidence, why the grounds should not be regarded as an attempt to mislead this Tribunal.

Failure to respond to these directions will lead to the matter being referred to the Solicitors Regulation Authority.

Signed: L K Smith Dated: 10 January 2022
Upper Tribunal Judge Smith

APPENDIX: ADJOURNMENT DECISION AND DIRECTIONS

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19610/2018 (V)

THE IMMIGRATION ACTS

Heard at Field House via Microsoft Teams	**Decision sent**
On Tuesday 31 August 2021	**2nd September 2021**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

STEVEN KABAMBI KABAMBI

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

ADJOURNMENT DECISION AND DIRECTIONS

1. The Appellant challenges the decision of First-tier Tribunal Judge Hoffman promulgated on 21 August 2019 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 4 September 2018 refusing his human rights claim made in the context of an application for entry clearance as the child of a refugee.

2. The Appellant is a national of Democratic Republic of Congo ("DRC"). He continues to reside there. His mother (hereafter "the Sponsor") resides in the UK. She has an address in Croydon. The hearing before Judge Hoffman took place in August 2019 and therefore prior to the Covid-19 pandemic. The Appellant did not attend as he is resident abroad and could only have joined remotely. The Sponsor attended with her brother who assisted her to make submissions.

3. Following the grant of permission by Upper Tribunal Judge Macleman on 10 September 2020, the error of law hearing was listed remotely on 16 April 2021. It appears that neither the Appellant nor the Sponsor attended. By directions given by Upper Tribunal Judge Norton-Taylor on that day, the Sponsor was directed to provide an e-mail address within seven days if she has one. There has been no response to that direction. She and the Appellant were also directed to provide any evidence they had about the central issue which is the basis on which the Sponsor was granted indefinite leave to remain in the UK. There has been no compliance with that direction either.

4. The error of law hearing was relisted before me again remotely on 31 August 2021. An interpreter was booked for the hearing and attended. There was no attendance by either the Appellant or the Sponsor. Attempts were made to establish contact via the mobile telephone number provided by the solicitors previously representing the Appellant but there was no answer.

5. Although the notice of hearing was sent out by post to the Appellant care of the Sponsor's address, because neither the Appellant nor the Sponsor had provided an email address, they would not have been able to join the hearing as they had not been sent a link.

6. Although this is the second opportunity which the Appellant and Sponsor have had to attend a hearing at this Tribunal and although they have failed to provide an email address or comply with directions, I was concerned that they might not be given a fair hearing if they did not have the opportunity to attend. For that reason, I decided to adjourn the hearing of my own volition. Although Mr Melvin submitted that the appeal was hopeless, he was content to leave the adjournment issue to me.

7. I assume since neither the Appellant or Sponsor has an email address which they are willing to provide that they do not wish to attend remotely. Accordingly, I have directed that the error of law hearing proceed on a face-to-face basis. That will enable the Sponsor to attend with, if she wishes, her brother who assisted her on the last occasion. If the Appellant wishes to join that hearing remotely, he is directed to provide an email address so that contact can be established from the hearing room. In that event, the hearing will proceed on a hybrid basis.

DECISION

The error of law hearing listed on 31 August 2021 is hereby adjourned. I make the following directions for the next hearing:

1. **The error of law hearing in this appeal is to be relisted on the first available date after 28 days before me at Field House on a face-to-face basis.**
2. **If the Sponsor does not wish to attend the hearing, she must notify the Tribunal accordingly within 7 days from the date when this decision is sent.**
3. **If the Appellant wishes to attend the hearing remotely, he is to provide the Tribunal with an email address for that purpose within 14 days from the date when this decision is sent.**
4. **If either party wishes to rely on further documentary evidence, that is to be filed with the Tribunal (electronically)and served on the other party within 14 days from the date when this decision is sent. The Tribunal notes that, although the Respondent has set out in her Rule 24 response the immigration history of the Sponsor, no evidence has been filed in that regard and the Respondent may wish to file the CID notes relating to that history and any further documents which she has to establish her case.**

Signed L K Smith Dated: 31 August 2021
Upper Tribunal Judge Smith