



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003082

First-tier Tribunal No: HU/60943/2023
LH/01457/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 12 August 2024**

Before

**UPPER TRIBUNAL JUDGE KEBEDE
UPPER TRIBUNAL JUDGE MEAH**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SAFWANE SALIM
(No anonymity order made)**

Respondent

Representation:

For the Appellant: Ms H Gilmour, Senior Home Office Presenting Officer
For the Respondent: Mr D Hayes of D Hayes Public Law Practice

Heard at Field House on 2 August 2024

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Safwane Salim's appeal against the respondent's decision to refuse his human rights application for entry clearance to the UK.
2. For the purposes of this decision, we shall hereinafter refer to the Secretary of State as the respondent and Safwane Salim as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Morocco, born on 17 November 2019. He applied for entry clearance as the dependent child of his sponsors, both of whom are British citizens resident in the UK. He provided a letter from his legal representatives in support of his application, stating that he was in the care of his sponsors by way of a Kafala process as an abandoned child.

4. The respondent refused the appellant's application on 15 August 2023 on the grounds that he could not meet the requirements of the immigration rules and that the refusal would not have unjustifiably harsh consequences for himself and his family. The respondent considered that the appellant did not meet the requirements of paragraphs 310-315 of the immigration rules, the Adoption Rules, as Morocco was not a signatory to the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and was therefore not a country from which adoptions were legally recognised in the UK. Additionally, the respondent considered that the appellant was not the subject of a *de facto* adoption as per the definition in paragraph 309A of the immigration rules as both of his prospective parents had not been living with him overseas for the 12 months period prior to the date of his application and therefore his application did not meet the requirements of paragraphs 310-315 of the rules. With regard to alternative routes, the respondent noted that the appellant's sponsors had not obtained recognition of the appellant's Kafala placement under the 1996 Hague Convention and did not have consent from the UK signatory, and as such he did not meet the requirements of paragraph 316A of the immigration rules. The respondent considered that there were no exceptional or serious and compelling or other considerations. The respondent considered that there was no evidence to suggest that the appellant's current care arrangements were not suitable and could not continue. He had previously been living in the care of his sponsor's mother, his prospective grandmother but, owing to her health issues and inability to continue caring for him he was currently in the care of his sponsor/prospective mother, and his prospective father continued to maintain a relationship by travelling to visit him. The respondent considered that, although the appellant may have family life with his sponsors, the decision was proportionate under Article 8(2).

5. The appellant appealed against that decision. His appeal came before First-tier Tribunal Judge O'Garro on 23 May 2024. At the hearing, the Home Office presenting officer made an application to withdraw the respondent's decision in order to reconsider it. Mr Hayes, for the appellant, opposed that course and wanted the appeal to proceed. The judge considered that there were good reasons for the appeal to proceed and the appeal therefore proceeded. The judge noted that in a Kafala placement the carer was deemed to be the child's guardian but did not have parental responsibility for the child. The carer of a child in a Kafala placement would not, therefore, meet the definition of 'parent' for the purposes of the immigration rules. It was accepted before the judge, in any event, that the appellant could not meet the requirements of the immigration rules. The judge went on to consider Article 8. She accepted that the appellant had a family life with the sponsor and went on to consider proportionality, finding that it was not reasonable to expect the sponsors to give up their settled life in the UK to move to Morocco in order to enjoy family life with the appellant. The judge found that the appellant's best interests were to be in the care of the sponsors and she concluded that it was disproportionate to refuse entry to the appellant. She accordingly allowed the appeal on Article 8 grounds.

6. The respondent sought permission to appeal the decision on the grounds that the judge had failed to give adequate reasons for her finding that the appellant's prospective grandmother could not provide the love, affection and emotional security the appellant would feel living with his prospective mother; that the judge had failed

to give adequate reasons for finding that the sponsor had family life with the appellant whom she had met for only a few brief visits rather than with his adoptive grandmother; and that the judge had failed to acknowledge that the sponsors could live in Morocco with the appellant and had failed to consider why family life had to take place in the UK.

7. Permission was granted in the First-tier Tribunal. Mr Hayes filed a rule 24 response opposing the appeal. The matter then came before us.

8. Ms Gilmour advised us, with regard to the attempt made by the presenting officer at the hearing before the First-tier Tribunal, to withdraw the decision, that the withdrawal had been proposed with a view to granting entry clearance to the appellant, although that had unfortunately not been made clear to Judge O'Garro. She advised us that she was not withdrawing the grounds of appeal but that she had nothing to add.

9. We did not consider it necessary to hear submissions from Mr Hayes as we had had the benefit of reading his rule 24 response. We indicated that we were satisfied, in all the circumstances, that Judge O'Garro had not erred in law in her decision and that her decision ought not to be set aside. We accordingly advised the parties that we would dismiss the Secretary of State's appeal.

10. In light of Ms Gilmour's indication there is no need for us to provide detailed reasons for dismissing the appeal. We agree with Mr Hayes that the Secretary of State's grounds are little more than a disagreement with Judge O'Garro's decision. The judge had the benefit of a lengthy skeleton argument and detailed submissions from Mr Hayes as well as a significant amount of documentary evidence showing the relationship between the appellant and the sponsors and the role that they played in his life, and she made her decision on the basis of that information and evidence.

11. We agree with Mr Hayes that nothing material arises from the judge's finding that the appellant's prospective grandmother could not provide the love, affection and emotional security he would feel living with his prospective mother. That was a finding which was fully and properly open to the judge on the basis of the evidence before her. The judge was not relying upon particular ailments suffered by the appellant's grandmother but was simply pointing out that there were concerns about her age and ability to provide care on a long-term basis. In any event, the relevant issue before the judge was the relationship between the appellant and his prospective carers, which the judge addressed at length, having regard to relevant caselaw and to the evidence before her. She provided cogent reasons for concluding that family life had been demonstrated. In so far as the grounds seek to challenge the judge's findings in that regard, it is relevant to note that the refusal decision did not, in fact, dispute the fact that family life existed, but rather focussed on the proportionality assessment. As for the assertion in the grounds that the judge had failed to consider why family life had to take place in the UK rather than in Morocco, that is not the case as it was a matter specifically considered by the judge at [52]. The judge conducted a careful proportionality assessment, giving appropriate weight to the best interests of the child, the appellant, and was entitled to conclude as she did.

12. In the circumstances we do not consider the grounds to be made out. The judge's decision is a full and comprehensive one, with careful consideration being given to all relevant issues. The judge undertook a careful analysis of the evidence and applied the relevant legal provisions. She provided full and cogent reasons for the findings made and she reached a decision which was properly open to her on the basis of the

evidence before her. The grounds do not identify any material error of law in her decision.

13. Accordingly we dismiss the Secretary of State's appeal and uphold the judge's decision.

14. We would add at this point that the matter has been delayed by the respondent not making clear, before Judge O'Garro, what was the intention behind the withdrawal of the decision. Had that been made clear the proceedings may well not have had to reach this stage. We would hope, therefore, that the respondent can now issue the appellant with the relevant visa without further delay.

Notice of Decision

15. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The Secretary of State's appeal is dismissed and Judge O'Garro's decision to allow the appellant's appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 August 2024