Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: OA/07327/2012
OA/07368/2012

THE IMMIGRATION ACTS

Heard at Field House, London
On 17th July 2013
Prepared

Determination Promulgated
On 29th July 2013

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MISS EMAN MOHAMMED
AND
MASTER REMZI MOHAMMED
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Stevens of Duncan Lewis and Co
For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are citizens of Eritrea. They are sister and brother. The first Appellant Eman was born on 30th December 1993 and the second Appellant Remzi was born on 11th November 1995. They are now aged 19 years and 17 years respectively.

2. This is their appeal against the decision of Judge Glenn made following a hearing at Hatton Cross on 18th October 2012.

Background

3. The Appellants applied for entry clearance to come to the United Kingdom in December 2011, to join their sister Leila who had been granted refugee status here. Leila has been present in the United Kingdom since September 2006 and gained recognition as a refugee (five years leave granted until 3rd January 2012).

4. The Entry Clearance Officer considered the Appellants' applications under paragraph 319X Dependant Relatives (Family Reunion) and refused both applications. There was no Article 8 consideration.

5. When grounds of appeal were submitted it was claimed that the Entry Clearance Officer should have also considered paragraph 352D of the current Immigration Rules as what was being said in essence, was that Leila had assumed sole parental responsibility for the Appellants.

6. By the time of the hearing before Judge Glenn however, it was conceded by the Appellants (through their representative) that neither could succeed under the Immigration Rules and what remained for the First-tier Tribunal Judge to decide, was a consideration of Article 8 ECHR. The First-tier Tribunal Judge dismissed both Appellant's appeals finding that there would be no Article 8 breach in either case. The Appellants sought and were granted permission to appeal those decisions. Permission was granted as DJ Barton found the First-tier Tribunal Judge had erroneously stated that both Appellants were aged over 18 years at the date of the hearing, when in fact the second Appellant was just shy of 17 years of age (both Appellants were under 18 years of age when their applications were made – a point which the Judge recognised).

7. DJ Barton concluded that the Judge's determination contained an error of law. in coming to that conclusion he stated,

> *"I find that the determinations were both tainted by the Judge's error in finding Remzi to be an adult at the date of the ECO's decisions. It will be necessary for the Appellants' Article 8 ECHR position to be reassessed at a remake hearing before the Upper Tribunal. Mr Stevens sought leave for further oral evidence to be given at the second stage hearing and this was given".*

Thus the matter comes before me as a resumed hearing.

The Hearing

8. Mr Stevens appeared on behalf of both Appellants and Mr Avery on behalf of the Respondent. At the commencement of the hearing I reaffirmed with both parties that what was before me was an Article 8 hearing as per the terms of DJ Barton's conclusions of 8th February 2012. Both parties agreed.

9. The evidence before me consisted of the same bundle as that before the First-tier Tribunal Judge served under cover of Duncan Lewis's letter of 12th October 2012, save that an additional transcript email from the second Appellant was submitted together with an Amnesty International public statement entitled 'Sudan must end

forced returns of asylum seekers to Eritrea' and dated 14th August 2012. I confirm that I have taken into account all the documentary evidence. The Sponsor Leila Mohammed Adgoy gave evidence before me through the Tigrinya interpreter.

10. The Sponsor told me that she lives at 44 Forsyth Gardens London SE 17 3NE. Her date of birth is 11th November 1988. She relied upon her witness statement signed and dated 10th October 2012. In that, she states she left Eritrea in August 2006 fleeing first of all to Sudan. She left because of the threat of National Service. She arrived in the United Kingdom in September 2006 and was granted refugee status in 2007. She now has refugee settlement granted May 2012.

11. She told me that in 2006, when she left Eritrea both Appellants formed part of her family unit and she was their sole carer – her father had died and her mother was paralysed by a stroke in September 2003.

12. When the Sponsor fled to Sudan she said that the following people were left at home- her mother, her sister Aziza and the two Appellants Eman and Remzi. She said that the two younger siblings Remzi and Eman left Eritrea in July 2011 and travelled to Sudan. By this time her mother had died and when the two Appellants arrived in Sudan they contacted her.

13. She arranged for a friend to look after them and for the Appellants to live with a lady called Sara Haile. The Sponsor said that she sends money to Sudan and this is used to pay for the Appellants rent and upkeep.

14. When asked about the email transcript which had been produced, she said that her brother Remzi had written it. She and the Appellants keep in contact through Skype and email. When asked to clarify when extra difficulties the Appellants faced in Sudan, she said that her sister is asthmatic and that she had to send money for a hospital treatment and medicine.

15. In cross-examination the Sponsor revealed that when she left Eritrea, her sister Aziza was looking after the family. She stated that the family were supported from money which she the Sponsor had forwarded from her benefits that she received in the UK. She was asked to explain how she forwarded the money. She responded by saying that people going back to Eritrea took the money for her. She was very vague as to when and how much she had sent. At this point the Sponsor was referred to her asylum interview. It was put to her that her claim that she was the one who was responsible for her family back in Eritrea was not credible. She was referred to question 55 which states,

    Q: Earlier you said that you cared for your mother now you say your uncle looked after the family. Can you explain?

    Reply: At home I was doing all the work like kitchen work like cooking and washing clothes and externally my uncle was the one who was providing us with food and money.

It was put to the Sponsor that in fact her uncle was the one who was looking after the family not her. The question then had to be repeated and the Sponsor then gave the information that her father had owned a shop and that the shop had been sold and that money from the proceeds was used. She also said that her uncle became "our guardian the absence of our father".

16. She then qualified this by saying that when she came to the UK, it was her responsibility to support her siblings. She agreed however that she had not been informed and nor did she know that the two Appellants were going to leave Eritrea. She said that neither of them work in Sudan nor do they go to school. She said no one will employ them as they are minors.

17. Concerning the email transcript which had been sent, she said it had been written by her brother Remzi who has access to email and Skype. He does not own a computer but goes to a coffee shop and is able to keep contact with her that way. That concluded her evidence.

Findings and Conclusions

18. What is before me is an Article 8 ECHR claim to family life – it having been conceded that neither Appellant could succeed under the Immigration Rules.

19. In assessing whether family life exists between the Sponsor and her two siblings I take into account that at the date of the applications, both Appellants were minors. Eman was just shy of 18 years of age and Remzi was almost 17 years of age. Both Appellants are now refugees living in Sudan. In considering whether the Appellants' rights under Article 8 are engaged I need to consider the five questions set out and posed in the case of **R v SSHD ex parte Razgar [2004] UKHL 27**. The essential object of Article 8 is to protect the individual from arbitrary action by public authorities. Therefore the first question posed is will the decision be an interference by a public authority with the exercise of the applicant's right to respect for his private or family life? I find it is not. I say this for the following reasons. The Sponsor left Eritrea in 2006. She left behind in the family home, the two Appellants, their older sister Aziza and their mother. It has been accepted that their mother was the victim of a stroke. However the Sponsor tried to tell me that before she left she was the sole carer for her siblings and that she is now the only family member who can take care of them. This I do not accept.

20. When the Sponsor left Eritrea her mother was alive. In addition I am drawn to the Sponsor own evidence in her asylum interview. In that interview she stated that she helped with household chores but that food and money were provided by her uncle. She also said, to me, that on the death of her father, her uncle became their guardian. When pressed by Mr Avery on this point, she conceded that the family had owned a shop and that the shop had been sold after her father's death and this provided money. On balance I am satisfied that there was money available from the sale of the shop and from her uncle and that this was the main financial provision for the family in Eritrea.

21. The finding above is reinforced by the Sponsor's own evidence when asked to try and quantify however much financial help she sent to Eritrea, following her arrival in the UK. Her answers were vague and whilst I accept that it is difficult to forward money to Eritrea, the amount that she suggested came to no more than saying sometimes £50 sometimes £60.

22. Further I note and make a finding, that the Sponsor was not told about nor consulted when the two Appellants left Eritrea for Sudan. I conclude therefore that their welfare did not depend upon the Sponsor, but upon others. The Sponsor has not lived with the Appellants for several years, although I accept that they have kept in touch as siblings would.

23. If I am wrong about the existence of family life, I go on to consider the other questions posed in **Razgar**. In essence what was put forward on behalf of the Appellants was one of proportionality. What was urged upon me was that the Appellants were minors at the time of their applications, they were in Sudan and it was claimed in fear of being returned to Eritrea. I keep in mind **ZH (Tanzania)** – that the best interest of a child is a primary consideration and **Beoku – Betts** that I should look at the family unit holistically.

24. I understand that both Appellants are recognised as refugees in Sudan and there is some form of documentation afforded them. It was put on their behalf, that they may be in danger of being returned to Eritrea, as there is some evidence of refugees being returned from Sudan to Eritrea in the past. There was no further evidence put before me on this point and no cogent evidence that the two Appellants had in any way been approached by the authorities in Sudan as potential returnees.

25. There is evidence that the first Appellant has suffered medical problems with her breathing. However that amounts to one documented incident of a five day stay in hospital and fortunately no further incidents are reported. I am told that neither Appellant goes to school but I keep in mind that at the date of application both Appellants had reached 16 years of age. Nothing was said to me about what education they had received in Eritrea and whether or not they reasonably expected to continue their education.

26. The Appellants live in rented accommodation which is paid for by the Sponsor, who sends £50 a month to support them. They are looked after by a lady called Sara Haile.

27. There was nothing put forward before me to show why this position should not remain in the future.

28. Were the Appellants to be granted entry clearance they would of necessity be reliant upon UK public funds and certainly at present there is no accommodation available for them. Taking all these factors into account I conclude it is not disproportionate under Article 8, to refuse them entry clearance.

DECISION

29. The decisions made by the First-tier Tribunal contained an error of law. I therefore remake the decisions.

30. These appeals are dismissed.

No anonymity direction is made

Signature **Dated**

Upper Tribunal Judge Roberts