



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: OA/03638/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 22 May 2014**

**Determination Promulgated
On 2nd June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**SALLAYMED KAIKAI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Parkin of David Wyld & Co Solicitors

For the Respondent: Mr G Jack Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not deem it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Grimes after a paper appeal decided on 17 February 2014, which dismissed the Appellant's appeal on all grounds .

Background

3. The Appellant was born on 23 July 1995 and is a citizen of Sierra Leone.
4. On 5 September 2012 when the Appellant was 17 years old she applied for entry clearance to the United Kingdom as the child of Kadiatu Kargbo a British Citizen.
5. On 5 April 2013 the Entry Clearance Officer in Accra refused the Appellant's application on the basis that the Appellant did not meet the requirements of paragraph 297(i) (e) of the Rules on the basis that she had not established that the sponsor had sole responsibility for her upbringing.

The Judge's Decision

6. The Appellant appealed asserting that her mother had supported her significantly throughout her life and therefore had sole responsibility but also stated that her father had died during the rebel war and therefore her case should also have been considered under paragraph 297(i)(d) of the Rules which is the requirement whereby the applicant is seeking ILR as the child of a parent settled in the United Kingdom and the other parent is dead .
7. The Appellant appealed to the First-tier Tribunal and First-tier Tribunal Judge Grimes (hereinafter called "the Judge") determined the case on the basis of the papers. He dismissed the appeal against the Respondent's decision. The Judge found that the Appellant did not meet the evidential burden of establishing that her father was dead and did not accept that the sponsor had sole responsibility for her.
8. Grounds of appeal were lodged and on 10 March 2014 Upper tribunal Judge Martin gave permission to appeal stating that it was '*arguable...that the Judge erred in failing to give any consideration to the Sponsor's statement concerning the death of the Appellant's father when finding that he is not dead.*'

9. At the hearing I heard submissions from Mr Parkin on behalf of the Appellant that in essence:

(a) In paragraph 10 the Judge referred to the affidavit of the Affidavit and the witness statement of the sponsor who both said that the Appellant's father was dead. What else could they have produced?

(b) While dismissing the Appellant's evidence because she was a child he failed to have regard to the fact that the sponsor was an adult at the time of her husband's death.

(c) The Judge failed to explain why he was giving the statement no weight.

(d) The absence of a death certificate was not a complete hurdle.

10. On behalf of the Respondent Mr Jack submitted that in essence:

(a) The Judge made reference to both the affidavit of the Appellant and the witness statement of the sponsor and he did not accept this established that the Appellant's father was dead.

(b) The burden of proof is on the Appellant to establish that her father was dead.

(c) The evidence before the Judge was extremely limited thus there was no evidence for example of what happened to his business, evidence from other family friends, whether any court order was made.

(d) It is easy to say that someone has died but the tribunal must exercise great care when moving children cross borders to establish the facts underpinning that movement.

The Law

11. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law.

Finding on Material Error

13. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

14. The Appellant made an application for entry clearance to the United Kingdom as the child of a person present and settled in the United Kingdom namely the sponsor Kadiatu Kargbo. The grounds of appeal challenge the decision only in relation to paragraph 297(d) and permission was given on that sole ground.

15. The Appellant through her mother the sponsor chose to have the case determined on the basis of the papers and that was a matter of choice for them: they could have elected to have an oral hearing which may have given them the sponsor the opportunity to explain their circumstances more fully and have her account tested. They did not choose this option and I am satisfied that the Judge cannot be criticised for not deciding this case on a basis that was never argued before him.

16. The Judge set out a fair summary of the Appellant's case at paragraph 4 of the determination including the fact that the Appellant's father '*went missing during the rebel invasion of Freetown on 6 January 1999 and is presumed dead.*' The only evidence placed before the Judge to meet the evidential burden of establishing that the Appellant's father was dead was set out in the Judge's findings at paragraph 10 of the determination. There was an affidavit dated 7 January 2013 from the Appellant confirming that her father died in 1999. The Appellant was of course 3 years old at that time and the Judge confirms that fact. The Judge also makes reference to the skeleton argument which '*submits that background evidence is consistent with this account.*' The Judge also makes clear that he took into account the witness statement of the sponsor who also

confirmed that the Appellant's father went missing and that as '*nothing was functioning in Sierra Leone at that time there is no death certificate available.*'

17. The Judge therefore had before him what were in effect self serving statements confirming that the Appellant's father was dead: neither author was witness to the father's death and the Appellant was a child of 3 at the time. There was no other documentary evidence either from other family members or any government department which confirmed the assertions made in the affidavit and witness statements. I am satisfied therefore, given that the Appellant bears the burden of proof for establishing this fact, that the Judge was entitled to give very limited weight to such evidence as he stated:

"Although I appreciate that a death certificate may not have been available I do not accept that further evidence could not have been obtained to establish that the appellant's father is dead."

18. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

19. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

20. The appeal is dismissed.

Signed

Date 2 June 2014

Deputy Upper Tribunal Judge Birrell