



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: OA/09943/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 2<sup>nd</sup> April 2014**

**Determination**

**Promulgated**

**On 11<sup>th</sup> Aug 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**OMOTOYOSI OLAJUNMOKE MAKANJUOLA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD**

Respondent

**Representation:**

For the Appellant: Mr Ume-Ezeoke (Counsel)

For the Respondent: Ms L Kenny (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Wyman, promulgated on 16<sup>th</sup> April 2014, following a hearing at Hatton Cross on 2<sup>nd</sup> April 2014. In the determination, the judge allowed the appeal of Omotoyosi Olajunmoke Makanjuola. The Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a female, a citizen of Nigeria, who was born on 26<sup>th</sup> February 1985. She appealed against the decision of the Respondent Entry Clearance Officer dated 27<sup>th</sup> February 2013, refusing her application for entry clearance as the child of a person present and settled in the UK, that person being her mother, Miss Omolara Makanjuola.

## **The Judge's Findings**

3. The judge heard evidence from the Appellant's sponsoring mother, Miss Omolara Makanjuola, that she was in regular contact with her daughter, the Appellant, by telephone, by email, and through Skype. She even visited her daughter in February 2013 when she travelled to Nigeria for her mother's funeral (paragraph 22). The sponsoring mother lived in a two bedroom property with her partner and her two other children who are aged 4 and 6 (paragraph 23). She had two jobs. She worked as a receptionist for Travel Lodge and she also worked as a hairdresser (paragraph 26). The sponsoring mother sent money to the Appellant daughter through friends who were going to and fro from London to Nigeria, rather than through Western Union transfers, because one had to pay a commission to Western Union and, "further, her daughter would have to go to the bank to pick up the money" so that "it was simply easier to give people money in cash" (paragraph 29). The judge had regard to paragraph 297 of HC 395 which was the applicable Immigration Rule in this case.
4. With respect to the judge's findings, it was noted that the sponsoring mother "has provided a birth certificate of the child which names the Sponsor as the mother of the child", although this birth certificate was only issued in 2009, some fourteen years after the birth of the child. However, the judge went on to say that, "I note in this case the Respondent has not alleged that the birth certificate is false or fraudulent in any way. I accept that the Appellant is a child of the Sponsor" (paragraph 47).
5. The judge also found, that during the time that the sponsoring mother was in the UK, it was the child's grandmother who was "the child's primary carer" and that the Sponsor did not visit the child over a lengthy period although, "I accept the Appellant spoke to her mother by telephone and more recently by Skype" (paragraph 49). Since the Sponsor could not provide evidence of remittances sent to support her daughter, and there had been no visits, the judge held that the Appellant could not satisfy paragraph 297(1)(e) of HC 395.
6. However, consideration was then given to paragraph 297(1)(f). Unlike the former provision, this does not deal with "sole responsibility" but deals with "serious and compelling family or other considerations which make exclusion of the child undesirable". Here the judge held that "the child's grandmother has recently died and this is a serious and compelling consideration that has occurred in this case". Indeed, the judge observed that, "I note that the death certificate of the grandmother has been

provided ...” (paragraph 53). Moreover, it was the death of the grandmother that led the Appellant to make this application in February 2013” (paragraph 54).

7. The issue of accommodation was then considered and it was held by the judge that there was no statutory overcrowding (see paragraphs 55 to 56). Particular attention was given to the fact that the sponsoring mother had a second job (paragraph 59) and the additional income that was coming in (see paragraph 59). The sponsoring mother’s current partner also had an income (paragraph 60). The appeal was allowed.

### **Grounds of Application**

8. The grounds of application state that the judge gave inadequate reasons for the findings on material matters. First, the judge wrongly accepted the relationship between the Appellant and the Sponsor in the absence of DNA evidence. Second, the judge wrongly failed to take into account the possible presence of other relatives in Nigeria who would be able to look after the Appellant. Third, there was an absence of evidence in relation to the receipt of earnings to satisfy the maintenance requirements. Fourth, the adequacy of accommodation was assessed without adequate proper proof.
9. On 22<sup>nd</sup> May 2014, permission to appeal was granted.

### **Submissions**

10. At the hearing before me on 14<sup>th</sup> July 2014, Ms Kenny, appearing as Senior Home Office Presenting Officer on behalf of the Respondent, stated that there were a number of flaws in the determination. There was no DNA evidence which although not a requirement under the Rules, would have been beneficial, given that the birth certificate was issued fourteen years after the birth. This was a matter raised by the ECO. It was not addressed at the hearing by the provision of DNA evidence. Second, there was a question of relatives (paragraph 53) who could provide care for a 14 year old child even where the grandmother had now passed away. Third, maintenance was not properly reasoned by the judge because, although evidence in relation to maintenance was provided in the Appellant’s bundle, it does not show that the Sponsor was in receipt of any of the earnings from the company (see paragraph 60). Fourth, the judge held that the Sponsor currently received a rebate from Greenwich Council “indicating she is the only adult living in the property” (paragraph 61). However, as the judge himself found this was incorrect because the Sponsor was living with a Mr Ogunbele and both have stated that they resided at the named address. Therefore, evidence in relation to accommodation should not have been accepted.
11. For his part, Mr Ume-Ezeoke submitted that DNA was not necessary. DNA evidence was costly. It is true that a birth certificate had been provided after fourteen years but it was accompanied by three photographs. There was no evidence from the Respondent that the birth certificate was false. The judge dealt with this point expressly. Second, the grandmother had

died (see paragraphs 53 to 54) and the judge found that the sponsoring mother had taken over responsibility in a way that the child had now been placed in the most exceptional, compassionate circumstances, thus necessitating the application of the child to come to the UK (see paragraph 54). With respect to the maintenance of the child, the sponsoring mother had two jobs and there was also her partner. As regards accommodation (at paragraph 55) details of the accommodation were expressly included in the bundle before the judge.

### **No Error of Law**

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision. This is because the Grounds of Appeal by the Respondent Entry Clearance Officer amount to no more than a disagreement with the findings of the judge. It is true that the birth certificate is fourteen years after the date of the birth. However, this is not unknown in developing countries. Official documentary evidence, such as in relation to matters of birth, is only produced when it is necessary in many cases.
13. It was for the Respondent to produce evidence that this was a false document. It was for the judge to assess its veracity. This the judge did. The judge found it to be a genuine document. Although the Sponsor had not visited the Appellant child over a number of years, because during this time she was without proper immigration status in the UK, she had remained in touch by telephone and by Skype, which the judge accepted as a fact (paragraph 49).
14. Furthermore, the judge was careful to exclude the possibility of “sole responsibility” having been satisfied as a test on the facts before him. But the judge then carefully went on to consider the other provisions of the rule and found that, in circumstances that the grandmother had now passed away, and the application in February 2013 arose only consequent upon the death of the grandmother, the Appellant child was placed in the most serious and compelling circumstances (paragraph 53) that was a finding which was open to the judge. Finally, in relation to matters of accommodation and maintenance, the judge considered the evidence (from paragraphs 57 onwards) in terms of the availability of the accommodation and the monies that were available and made a finding of fact which was entirely open to the judge.

### **Decision**

15. There is no material error of law in the regional judge’s decision. The determination shall stand.
16. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

11<sup>th</sup> August 2014

