



IAC-FH-AR-V1

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

Appeal Number: OA/00338/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 August 2015**

**Decision & Reasons Promulgated  
On 21 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**ENTRY CLEARANCE OFFICER UKBA SHEFFIELD  
(SECRETARY OF STATE)**

Appellant

**and**

**MISS OI  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondent: Sponsor, Mr A Ogunkowa

**DECISION AND REASONS**

**The Appellant**

1. The application for permission to appeal was made by the Secretary of State but for the purposes of this decision I shall refer to the appellant and the sponsor as they were described before the First Tier Tribunal.
2. The appellant is a minor and a citizen of Nigeria born on 24 March 1999 and at the date of the decision was 14 years old. She applied for entry clearance to the United Kingdom as the adopted child of Mr AO, the

sponsor. The application was refused on 11 December 2013 as the respondent was not satisfied that she met the requirements of paragraph 310 of the Immigration Rules.

3. Judge of the First-tier Tribunal C Ferguson heard the appeal in the First-tier Tribunal on 21 January 2015 and allowed the appeal on 30 January 2015.
4. The background to the appeal was that the sponsor was said to have adopted the appellant on 11 May 2011 in Nigeria. The appellant lived in the sponsor's family home in Nigeria with his grandmother. After Mr AO's grandmother died in July 2010 he asked the appellant's grandmother if he could adopt her and she agreed because she was struggling to look after the children. The sponsor and his wife had three children, a girl aged 8, a boy aged 5 and a 1 year old girl and they wished to have the appellant live with the rest of the family.
5. In the Entry Clearance Officer's decision of 11 December 2013 it was stated that the appellant had failed to submit any documents to evidence his claimed adoption and the decision referred to the Adoption Act 2002 and the Adoptions with a Foreign Element Regulations 2005. A list of the documents that should be supplied with the visa application were identified but not submitted.
6. An Entry Clearance Manager reviewed the decision and stated that "No new documentary evidence whatsoever had been submitted with the appeal to address the issues raised in the refusal notice".
7. Judge Ferguson allowed the appeal and accepted documentation submitted at the hearing itself in answer to the challenges made in the Entry Clearance Officer's decision. These documents were recorded at paragraph 17 as follows:
  - (i) A Final Adoption Order from the Ondo State Court, stamped and dated 11 May 2011, which appears to confirm the appellant's adoption by Mr AO.
  - (ii) A document entitled "Bond by Adoption", also stamped by the Court and dated 11 May 2011, which appears to show that Mr AO bound himself to perform various obligations in respect of the appellant's care and welfare.
  - (iii) An Order by the Chief Magistrate of Ondo State, stamped and dated 11 May 2011, approved the adoption and confirming the consent of both the appellant's grandmother and the appellant herself.
  - (iv) A letter from the Ministry of Woken Affairs and Social Development dated 5 September 2011 confirming that as result by Mr AO to allow the appellant to reside with him in the UK has been approved.
  - (v) A letter from the Permanent Secretary of the Ondo State Government confirming the authenticity of the Order, Final Adoption Order and Bond."
8. There was a challenge by the Secretary of State on behalf of the Entry Clearance Officer in that the sponsor maintained that the adoption documents had been submitted with the entry clearance application but

the judge found that they had not [22] and [23]. This raised the question of the sponsor's credibility which the judge failed to resolve. These were important documents which went to the heart of the lawful adoption.

9. Further, the Entry Clearance Officer did not have the opportunity to scrutinise the adoption documents or to refer them for verification to the relevant Nigerian authorities and the judge accepted them as genuine but there was no evidence of his expertise in the field of document verification. In effect the judge had taken on the role of primary decision maker. The circumstances of the appeal were particularly important in the case of an appellant child.
10. Permission to appeal was granted by a Judge of the First-tier Tribunal Colyer who stated that the judge had failed to give adequate reasons for his findings with regard to the documentation. Further, that the judge gave inadequate reasons as to why he accepted the documents at the hearing and accepted them as genuine without the respondent having an opportunity to verify them.

### **Conclusion**

11. At the hearing Mr Avery submitted that the adoption papers were not submitted to the Entry Clearance Officer and there was a discrepancy between the judge's findings that the sponsor had not submitted the relevant documents [23] and yet the appellant's claim that he had indeed submitted them [18] and the judge finding him credible [22].
12. The appellant's sponsor at court stated that he had indeed submitted documents in relation to the adoption to the Entry Clearance Officer and he suggested that perhaps some of these had become detached.
13. I note from the file that the notice of hearing was issued on 12 June 2014 to the appellant at the sponsor's address as directed on the notice of appeal and that there was a direction that all documents be served on the Tribunal or the other party no later *than five days before the date of full hearing*. The Record of Proceedings also record that the Home Office Presenting Officer objected that the Rules had not been complied with.
14. The judge delivered apparently contradictory findings regarding the credibility of the sponsor. It is fundamental that the documentation should be viewed in the context of that credibility. On the one hand the judge found that the sponsor was a credible witness and yet on the other found that the evidence he had given at the hearing [18] that the documents had been submitted to the Entry Clearance Officer was incorrect. The judge found the documents submitted at the hearing were not submitted with the original application and that they were not before the Entry Clearance Officer. It may be correct that they are relevant to the circumstances appertaining at the time of the decision but the judge failed to give adequate reasons for admitting such important and fundamental documents, particularly when the Entry Clearance Officer had not had the

opportunity to consider those documents. It is also relevant that at paragraph 24 the judge stated that

“No evidence was submitted to the Tribunal about the adoption process in Nigeria and the law as applies to a dual national non-resident seeking to adopt a Nigerian national, but it appears from the documents that the authorities knew that Mr AO was resident in the UK.”

15. The judge stated

“His UK address is given in the bond and the letter from the Ministry of Women Affairs and Social Development approves Mr AO’s request for the appellant to live with him in the UK. In the circumstances I consider the documents are sufficient to establish that a lawful adoption took place.”

16. Mr Avery pointed out that as the relevant documents had not been submitted the Entry Clearance Officer would not have submitted expert evidence about the adoption process in Nigeria.

17. Although the judge recorded that Ms Ojo did not submit the documents were forgeries, she did make representations that the procedural rules had not been complied. The judge stated with regards the documents at paragraph 24

“I accept that they are genuine. The (sic) have the hallmarks of official court documents and there were no errors or other indicators that they might have been fabricated.”

18. The challenge was made on the basis that there was no indication that the judge had any expertise in the verification of the documentation. The judge proceeded to make his own analysis of the documentation which relates to a child adoption, which he may be entitled to do, but bearing in mind the failure to give the respondent proper opportunity to examine the documentation and the failure to explain his departure from the Tribunal direction that the documents should be served at least five days prior to the hearing, and the difficulties with the findings on the sponsor’s credibility, I find there is a material error of law.

19. In addition I also note that part of the decision notice is missing from the decision at a key point of the Entry Clearance Officer's objections to the validity of the adoption. The Entry Clearance Officer should submit a full copy of the entry clearance decision should be submitted to the Tribunal.

20. Mr Avery received the original documents from the sponsor which he agreed to forward forthwith to the Entry Clearance Officer for verification. The matter should be set down not before twelve weeks in the First-tier Tribunal.

21. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier

Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Rimington