



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/01214/2015

THE IMMIGRATION ACTS

Heard at Field House
On 5 July 2016

Decision & Reasons Promulgated
On 12 July 2016

Before

UPPER TRIBUNAL JUDGE WARR

Between

MASTER OBINNA NZERIBE BOKOLO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFO

Respondent

Representation:

For the Appellant: Mr A Kanu, instructed by League for Human Rights
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born in May 1997 and appeals the decision by the respondent to refuse his application for leave to enter the United Kingdom on the basis of family reunion on 1 December 2014. The sponsor, Mrs I Bokolo was granted indefinite leave

to remain in 2011. The sponsor was born on 16 May 1985 and the Entry Clearance Officer noted that she would have been only 12 when she gave birth to the appellant and the matter raised concerns about whether the appellant was related to her as claimed. The respondent then considered the issue of sole responsibility. The Entry Clearance Officer stated:

“Sole responsibility does not only amount to financial support but also to matters of emotional support and an abiding interest in a child’s upbringing, welfare and wellbeing over the period of separation. You have not provided any evidence that your sponsor supports you financially or has provided any emotional support during your upbringing. The letter provided with your application states that your sponsor communicates regularly with you via the telephone, WhatsApp and viber. No evidence has been provided to confirm contact by any of these methods. Although I note phone bills in your sponsor’s name have been provided, no itemised phone records have been provided to demonstrate actual contact with your sponsor....”.

2. The respondent did not consider that the evidence provided confirmed that the sponsor had had sole responsibility for the appellant’s upbringing and refused the application under paragraph 297(i)(e).
3. The respondent also found that the appellant had resided separately from the sponsor in Nigeria since 2000. The appellant had then been passed from one relative to another until the sponsor was reunited with the appellant when she returned to Nigeria in 2012. The appellant was then placed in the care of her cousin who suddenly died in February 2013. The Entry Clearance Officer observed:

“It is stated that you currently reside with a friend of the sponsor, however that the friend is not capable of looking after you. Furthermore you have not confirmed the whereabouts of your father. No evidence has been provided to confirm your current care arrangement or your care arrangements since your birth, I am therefore not satisfied that the evidence provided indicates your current arrangements cannot continue. I am therefore not satisfied that there are serious and compelling family or other considerations which make your exclusion undesirable and that suitable arrangements have been made for your care.”

4. The application was accordingly refused under paragraph 297(i)(f). In relation to Article 8 if a family life did exist there was no reason why the sponsor could not travel to Nigeria to care for the appellant. The decision was proportionate and justified by the need to maintain an effective immigration and border control.
5. The decision was reviewed by an Entry Clearance Manager who noted that no new, original or independent documentation had been provided. The decision of the Entry Clearance Officer was maintained.

6. The appellant appealed the decision and his appeal came before a First-tier Judge on 2 October 2015. The judge noted that the case had been decided under paragraph 297 of the Rules which was a harder test to satisfy than the Refugee Family Reunion route.
7. The judge summarised the history and reasons for refusal and confirmed that he had taken into account both the appellant's bundle and the respondent's bundle.
8. Having correctly addressed himself on the law and the burden and standard of proof and having reminded himself that he could only consider the circumstances appertaining at the time of the decision to refuse entry clearance, he set out the Rules and referred to the case of **TD (paragraph 297: "sole responsibility") Yemen [2006] UKAIT 00049**. The judge summarised the evidence before him as follows:

- "17. The DNA report was supplied to the sponsor on 23 February 2015. It shows a 99.9998% chance of maternity in connection with Ifeanyichukwu Kyle Bokolo and Bokolo Obinna Nzeribe. She is certainly his mother, asserts the representative.
18. The sponsor has produced evidence that she had been working as a night time receptionist in a hotel in London since 19 December 2011. She has shown HMRC papers recognising her income is £17,214 per annum. She can afford to support the Appellant. A tenancy agreement has been produced showing that she is a tenant.
19. There are receipts showing school fees paid for the college at Enugu. These are expressed in the terms: 'received from Bokolo Obinna N'.
20. The sponsor has signed and adopted the witness statement as her evidence in chief.
21. The Appellant gave a detailed and distressing account of the circumstances leading to the Appellant's birth. It was a stranger who followed her up an alleyway one night, she explained. Her mother took her to hospital after she started being sick. The hospital confirmed she was pregnant.
22. She did not know Nzeribe, the name of the father as completed on the birth certificate by the lady who took her to hospital.
23. She no longer has family residing in Nigeria, other than her son the Appellant. She said she had always wanted to reconnect with her son. Her son went to live with a Mr Johnson and now he is with her friend.
24. She is working and has a two bedroom property where the Appellant would live.

25. The school receipts are given to her son.
26. She was asked why there are no money transfers in the bundle. She sorted out a large pile of papers and handed them to Miss Ibe. Miss Ibe looked at them all and declared there were none there.
27. The sponsor said she usually speaks to her son every day using WhatsApp. Miss Ibe commented that there was no proof of those conversations in the bundle. The sponsor replied that she did not know how to print off WhatsApp messages."

Miss Ibe was the Presenting Officer. The appellant was represented before the judge by Mr Kanu, who represents the appellant before me.

9. In making his findings the judge commented that the appellant's birth certificate was "curiously dated" as made in 2010. This seemed to predate the rediscovery of the appellant by the sponsor. He accepted that as a working single parent the sponsor had the means to support and accommodate the appellant. He found the claim that she sent money every month by money transfer to the appellant was problematic. The issue was easily proven and she had failed to come up to proof and that was damaging for her credibility. In relation to paragraph 297 the judge found as follows:

- "33. There is no evidence of financial responsibility as per **TD Yemen**. That is because the school receipts are not in the name of the sponsor and no other transactions of any material kind are proven by evidence.
34. She has failed to produce evidence suggesting she had continual control from abroad over the Appellant's life. In particular there is no evidence before me of phone calls to or from anybody in Nigeria, or of contact between the Appellant's school and the sponsor or of payment of school fees by the sponsor.
35. There is simply a wide ranging lack of material evidence. So the sponsor has failed to show she exercised sole, or indeed any, responsibility for the Appellant.
36. The next test is under 297(i)(f) and that is also hard to satisfy. There is no statement provided by the current carer although that is highly material. The death certificate of the cousin adds little, given the lack of other proof.
37. The sponsor has completely failed to show that she had any kind (and there are several) of sole responsibility for the Appellant. There is no relevant information provided. There is no proof of communication shown."

10. The judge then considered the DNA certificate and sought a mathematical evaluation of the certificate which would rule out some other close family connection and he was unable to reach a final conclusion as to the claimed relationship. It was likely that the sponsor and the appellant were mother and son but it was also likely they were in the category of siblings or aunt and nephew. The judge recorded in paragraphs 40 and 41 of the determination that he did not accept the representative's assurance that the sponsor was certainly the mother of the appellant although the certificate said that she was 99% likely to be the mother of the appellant.
11. In relation to Article 8 the judge referred to relevant authorities including **Razgar [2004] UKHL 27** and concluded his determination as follows:
 - "47. The right to respect for private and family life has not been damaged by the respondent's decision. The sponsor visits her son occasionally and she may continue to do so. If there were regional troubles when the sponsor left Nigeria many years ago, they are not shown to have hindered the reunion in Nigeria. Nigeria is a vast country with many safe areas where people may relocate if need be.
 48. The Appellant may come on a temporary basis; he might visit the UK, or study in the UK, subject to obtaining a visa to do so. What is refused is permanent settlement at this point; that is a huge leap into the unknown for him.
 49. The statutory requirement to consider best interests looks at children within the UK. So I am asked to consider best interests outside the scope of that provision. Similarly, the UN Convention on Rights of the Child or UNCRC is not directly enforceable within the UK, as the UK has a dualist theory of Treaty Law, of which the paradigm example is the ECHR, which required the HRA 1998. The Supreme Court, in March this year, (**SG & Others v Secretary of State for Work and Pensions [2015] UKSC 16**) has found by a majority that UNCRC is not directly enforceable.
 50. I accept that on turning 18 there is still a degree of vulnerability, which only gradually recedes with growing life experience. The mental development of a male teenager typically continues into their early twenties, when judgment and self-control typically reach their plateau.
 51. The best interests of this child are not shown by the evidence to have been undermined by the refusal decision. The Appellant is receiving education and has a home, we are told. The whole of his life has been preparing him for adult life in Nigeria. It has never been aimed at preparing him for adult life in the UK. He hardly knows the sponsor. No proof has been provided that he has formed any emotional attachment to the sponsor. To put it another way, I have not been able to find proof that the Appellant

and sponsor have become emotionally close to each other. There is no proof that the Appellant has acquired any knowledge of the UK. We do not know how his language skills and so forth would hinder or advantage him here. I find it not shown that his best interests require removal from the country and culture that he has always known.

52. There is nothing to consider outside the Rules, as actual family or private life has not been shown; the sponsor and Appellant lived apart in separate continents since 2000 with a long period of no communication, so I gather. The DNA evidence has not resolved the relationship question beyond proving a family connection exists. The Appellant is now 18 years old and is gradually becoming more able to take care of himself. At the date of decision he was still a minor but with some maturity. There is no evidence from the current carer that they cannot continue to be a carer; the reason is not supplied, let alone the proof of it, so neither exceptionally nor compassionate circumstances have been demonstrated. I adopt the relevant reasoning of the ECO and ECM.

53. The evidence does not provide any basis for finding an extant family or private life to be infringed. There is an extreme poverty of persuasive evidence and so the human rights point is lacking in any conceivable merit for that reason. The claim does not come remotely close to meeting the provisions on family and private life inside the Immigration Rules for these reasons. The case also cannot pass step 1 of **Razgar**."

12. Accordingly the judge dismissed the appeal on all grounds. Among the points taken was that the judge had failed to consider the fact that the sponsor was in the UK as a refugee.

13. First-tier Tribunal Judge Saffer refused permission to appeal although he acknowledged that as he puts it:

"Paragraphs 38 to 41 of the determination are complete nonsense. As stated in paragraph 17 of the determination, it was 99.998% certain that the Appellant was the sponsor's child. Nothing further was needed to establish that on balance they were related as claimed."

However Judge Saffer continued:

"The rest of the grounds have no merit at all. There was no documentary evidence before the Judge that the sponsor was a refugee. Indeed it is apparent from the grounds that she was not. He therefore applied the correct rule. He was entitled to find the issue of dependency had not been made out both in relation to that provided from here and in relation to the care available in Nigeria for the very brief period before the Appellant turned 18."

14. The application was renewed and Upper Tribunal Judge Plimmer granted permission on the basis that it was arguable that the First-tier Tribunal had erred in its approach to the DNA evidence and reached an irrational conclusion in paragraphs 40 and 41 of the determination. She also found that it was arguable that the First-tier Tribunal had failed to consider all relevant evidence regarding the claimed relationship between the appellant and sponsor. Mr Kanu relied on the grounds that had been submitted. He submitted that the First-tier Judge had failed to have regard to the material before him. He submitted there had been an abundance of evidence in the bundle concerning dependency. The judge had taken into account the relevant matters.
15. Mr Kanu referred to the bundle that had been submitted for the current hearing dated 24 June 2016. It was clear that the sponsor was the mother of the appellant. She had come as a refugee in December 2000. The child's circumstances had been overlooked. The sponsor had been raped at a young age. She had discovered the appellant's whereabouts when she had visited Nigeria in 2011. She had made three trips to Nigeria as evidenced by her passport – the first in July 2011, the second in September 2012 and finally on 5 June 2015. There were money transfer receipts and reference was made to the money transfer receipts on pages 133 to 151 of the former bundle before the First-tier Judge. It had been submitted before the First-tier Judge in the skeleton argument that the appellant had been living in the United Kingdom as a refugee and had been granted indefinite leave to remain.
16. Mr Melvin submitted that the application to the Entry Clearance Officer had not been on the footing that the sponsor was a refugee. The sponsor had not been granted indefinite leave to remain on that basis. She had been a minor at the time and had been granted leave as a minor and not on the basis of protection or refugee issues. Indefinite leave to remain had been under the legacy provisions. Judge Plimmer had not granted permission to appeal on the refugee point.
17. There had been a response filed by the respondent on the DNA issue.
18. The judge's findings and conclusions were sufficiently reasoned. At the date of decision in 2014 there had only been two visits in two years. The judge's findings had been open to him and were not irrational.
19. At the conclusion of the submissions I reserved my decision. I have carefully considered the material before me. I note that I can only interfere with the decision of the judge if it was materially flawed in law.
20. The judge correctly directed himself on legal issues as I have observed. He states, and I have no reason to doubt, that he had considered the bundles of evidence that had been submitted. Mr Kanu refers to money transfers. The appellant had every opportunity to advance her case and as appears from the extract set out above, she was asked why there were no money transfers in the bundle. She handed them to the Presenting Officer who confirmed there were none. In relation to the school

receipts it is clear the judge had these in mind. These are referred to at paragraph 19 of the decision. It is plain the judge reached a conclusion on the school receipts as appears from paragraph 33 of his decision. It was entirely open to the judge to find there was “simply a wide-ranging lack of material evidence”.

21. In the response the respondent acknowledged that while the DNA evidence would appear to show that the parties were related as claimed the remaining findings under paragraph 297 were well-reasoned and adequate findings had been made.
22. I have given anxious consideration to the question of whether the approach to the DNA issues contaminated the rest of the decision. I am not satisfied that that is the case. I do not agree that the judge gave inadequate consideration to the bundle before him. The judge’s assessment of the issues under the Rules and in respect of Article 8 was, when viewed as a whole, satisfactorily reasoned.

Notice of Decision

23. For the reasons I have given, I am not satisfied that the judge’s decision was materially flawed in law.

Anonymity Direction

24. The First-tier Judge made no anonymity order and I make none.

Fee Award

25. The judge made no fee award and I make none.

Signed

Date 11 July 2016

G Warr
Judge of the Upper Tribunal