



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03978/2016

THE IMMIGRATION ACTS

Heard at Field House
On 19 June 2018

Decision & Reasons Promulgated
On 26 June 2018

Before

UPPER TRIBUNAL JUDGE WARR

Between

MARYAM OMOBOLANLE ALONGBIJA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

Respondent

Representation:

For the Appellant: No representative
For the Respondent: Ms Z Ahmad

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 14 October 1997. She applied for an entry clearance to join her father in the United Kingdom. Her father had been granted a permanent resident card under Regulation 10 of the Immigration (European Economic

Area) Regulations 2006 on 8 October 2015. As the appellant had submitted and paid for her visa application while she was still under 18 her application was considered under paragraph 297 of the Immigration Rules as a child of a parent or parents present and settled in the UK. The Entry Clearance Officer was not satisfied that the appellant and her father were related as claimed. The respondent also did not accept the claim that the appellant had been looked after by a legal guardian following the death of her biological mother on 16 October 1997. No documentation had been provided to demonstrate the identity of the appellant's claimed biological mother.

2. Had the respondent been satisfied that the appellant and the sponsor were related as claimed she would still have to meet the requirements of paragraph 297(1)(e) and show that the sponsor had sole responsibility for her upbringing. This did not appear to be the case as the appellant had been brought up by her guardian since childhood.
3. Accordingly the respondent was not satisfied that the sponsor had demonstrated that he had the sole responsibility for the appellant and the appellant could not make out her case under the Rules and there were no exceptional circumstances which might warrant consideration outside the Rules. There were no exceptional circumstances.
4. Although the respondent had been aware that DNA results were to follow these did not come before the date of decision. However, by the time the matter reached the First-tier Tribunal following the appellant's appeal from the decision a full DNA report had been provided and on this aspect the First-tier Tribunal Judge was satisfied that the relationship between the appellant and the sponsor was one of father and daughter. The hearing before the judge was on 26 July 2017.
5. The judge focussed on the issue of sole responsibility. She was not satisfied that this had been demonstrated although she did accept that the sponsor had provided financial support. He regularly sent money to the appellant and stated that he "provides everything for them." The judge noted that the respondent did not dispute this and accepted that the sponsor had been financially supporting the appellant for some time. She also found that it was no doubt clear that the sponsor took a keen interest in her life and education and he had certainly had some input over the years but she was not satisfied that there was sufficient evidence to show sole responsibility over her upbringing. The judge noted the sponsor's evidence in paragraph 17 that the appellant had always believed that her stepmother whom she had always lived with was her biological mother and had only discovered the truth following the refusal of her visa application. The judge noted "understandably the appellant was devastated and upset on making this discovery." The judge was not satisfied that the appellant had shown that the sponsor had sole responsibility for her and there were no serious or compelling circumstances that warranted a grant of leave. The appellant had not met the requirements of the Rules. The judge found in consideration of Article 8 that the appellant was no longer a child as at the date of hearing and Article 8 was not engaged. However, had it been necessary to consider the proportionality of the decision she was not satisfied that the decision was disproportionate and observed that it weighed significantly against the appellant that she was unable to meet the

requirements of the Rules. The sponsor could continue to maintain and support the appellant from the United Kingdom.

6. An appeal was launched against the decision and permission was granted by the First-tier Tribunal on 18 April 2018 on the basis that the judge had applied the wrong sub-paragraph of paragraph 297. The appellant's circumstances fell within paragraph 297(i)(d): "One parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead...". The issue of sole responsibility was not relevant. A finding that the appellant satisfied the requirements of the Rules might have relevance to the Article 8 assessment.
7. Before me as I have said the appellant was not represented. Ms Ahmad helpfully accepted that the judge had erred in her consideration of paragraph 297 and that the appellant met the requirements of paragraph 297(i)(d). The appeal would then turn on human rights grounds.
8. The sponsor stated that the appellant would be left on her own since he had made an application for the rest of the family to join him in the United Kingdom. He introduced without objection a letter from the appellant dated 7 June 2018 giving a warm and personal account of her relationship with her father. I was also shown confirmation that the sponsor had been responsible for the appellant's tuition and boarding at her school. She was described as an honest and industrious student.
9. Ms Ahmad helpfully accepted that in consideration of Article 8 it was relevant that the appellant met the requirements of the Rules and there were no factors that favoured dismissing the appeal-there were no countervailing circumstances.
10. At the conclusion of the submissions I reserved my decision. I have carefully considered all the material before me and the submissions that have been made. I can only interfere with the decision if it was flawed in law. That has been accepted in this case. In fact the appellant did raise the correct sub-paragraph of paragraph 297 in her grounds of appeal from the respondent's decision. Unfortunately the First-tier Judge went down the wrong track and found that the appellant did not meet the requirements of any relevant Rule.
11. At the time of the decision a DNA report was awaited and it does appear from the correspondence as if the process took longer than might have been anticipated which is unfortunate.
12. It was also unfortunate that the sponsor was not represented before the First-tier Judge. However his grounds of appeal did make it clear that he was relying on the relevant sub-paragraph of the Rules.
13. I bear in mind that the appellant throughout her life had believed that she had been brought up by her biological mother and it must have been a great shock for her to discover the truth as the judge records in her determination.

14. It now being accepted that the appellant meets the relevant requirements of the Rules the case turns on the question of proportionality. As I have said the appellant was understandably upset on learning what had happened to her biological mother. She had died a few days after giving birth to her. In weighing up proportionality issues apart from the fact that that appellant did meet the relevant requirements of the Rules it is helpfully accepted on the part of Ms Ahmad that there are no countervailing circumstances. Although the appellant is now no longer a child it is plain that there is a close bond between her and her father the sponsor. He has clearly financed the appellant throughout and is plainly concerned about her welfare. I take into account the effect of Section 117B but no reasons have been put forward by Ms Ahmad for weighing public interest considerations against the appellant. There appear to be no issues of the appellant being a burden to public funds and the letter I was shown signed by the appellant does not show any difficulty with command of English.
15. I am satisfied that the decision of the First-tier Judge was materially flawed in law.
16. I remake the decision. The appellant satisfies the requirements of the rules. The appeal is allowed on human rights grounds (Article 8).
17. The First-tier Judge made no anonymity order and I make none.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge did not make a fee award having dismissed the appeal. As the appeal is now allowed it is appropriate that any fee paid should be returned to the appellant and I so direct.

Signed

Date: 25 June 2018

G Warr, Judge of the Upper Tribunal