



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: HU/04661/2017

THE IMMIGRATION ACTS

Heard at: Field House
On: 27 September 2018

Decision and Reasons Promulgated
On: 16 October 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

ENTRY CLEARANCE OFFICER

Appellant

and

BRITNEY [W]

ANONYMITY DIRECTION NOT MADE

Respondent

Representation

For the Appellant: Ms A Fijiwala, Senior Home Office Presenting Officer

For the Respondent: Ms R Kotak, counsel, instructed by Shaka Services

DECISION AND REASONS

1. I shall refer to the appellant as “the entry clearance officer” and to the respondent as “the claimant.”
2. The entry clearance officer appeals with permission against the decision of First-tier Tribunal Judge Fox, who in a decision promulgated on 24 May 2018 allowed the claimant's appeal on human rights grounds, against the decision of the entry clearance officer refusing her application for entry clearance to the UK as a dependent child of [EG], her mother and sponsor.
3. The entry clearance officer did not accept that the claimant's father is deceased. Nor was it accepted in the alternative, that the sponsor had sole responsibility for the

claimant or that there are serious and compelling circumstances making her exclusion undesirable.

The evidence before the First-tier Tribunal

4. One of the issues in the appeal was 'the status' of the claimant's father. The entry clearance officer did not accept that the claimant's father is deceased [2]. The Judge had to determine whether the person identified in the death certificate produced, was the claimant's biological father.
5. In her witness statement dated 11 April 2018 the sponsor claimed that there has been consistent commitment to the claimant. Her daughter desired to learn about her father. She did not tell the claimant of the violence inflicted by the father on her, as she wished to protect her daughter from those facts.
6. The sponsor stated that she was aware that the father had died but she had not told the claimant as she did not want to suffer recrimination.
7. The claimant went in search of her father and was accompanied by a companion.
8. The sponsor agreed that [LH] has made decisions for the claimant but only under the sponsor's instructions. Examples given included the insistence of the sponsor on a curfew due to the high crime rate and the claimant's particular vulnerability as a girl. The claimant was moved to another address as the previous guardian became unwell [24].
9. She stated that as the claimant now resides with a male guardian it is even more important that she provides guidance to her daughter as she matures into adulthood. Regular contact is maintained by telephone and they speak about the claimant's financial and practical needs. The claimant relocated to a new guardian each time the sponsor's parental authority was challenged. She has been forced to relocate on one occasion as the guardian's lease expired [25-26]
10. Ms [IB] gave evidence and adopted her witness statement. She provided details of her association with the claimant and sponsor. In cross-examination she provided details of decisions made by Ms [B]'s mother when she was appointed guardian by the sponsor - [27-28].
11. In his assessment of the evidence, Judge Fox addressed the issue as to whether the sponsor was the claimant's sole surviving parent. There was no dispute that the death certificate presented was a reliable document. Judge Fox noted that the issue related to the nexus between the name of the deceased and the claimant's biological father - [37].
12. He found the sponsor to be entirely credible. He stated that he has had the opportunity to observe the sponsor and 'also considered the available evidence within the prism of country conditions' [38].
13. He stated at [39] that it is information in the public domain that districts within Jamaica are sub-divided into parishes. These parishes are invariably centred upon

hubs such as rum shops and community halls. These environs are not conducive to anonymity.

14. He found it to be entirely credible that the claimant would be able to trace her father with only a name and district to guide her especially when one considers the evidence that demonstrates that family member(s) continue to reside in that area [40].
15. The sponsor provided evidence that she had a good relationship with the aunt at the time of the sponsor's relationship with the father. It is plausible that the aunt would recall the difficult relationship experienced by the sponsor and may have been predisposed to offer assistance due to their historic affection - [41].
16. The evidence of the claimant's quest to locate her father is also 'entirely credible'. He did not doubt that the sponsor has experienced difficulties in her personal life throughout her lifetime as described by her. This manifested itself at the hearing through her anxiety - [42].
17. He found it reasonable to conclude that the sponsor took the responsible parental decision to withhold information from the claimant until the sponsor was satisfied that she had the emotional intelligence to cope with the facts surrounding her parents' relationship. The timing of the claimant's demands are consistent with a young person approaching adulthood with the need to know their personal history.
18. In the event, he accepted that the claimant's father is deceased - [46].
19. In the alternative, he considered the issue of sole responsibility. There was no dispute that the claimant's father, whether alive or deceased, has had no involvement with the claimant in any capacity.
20. He noted that the entry clearance officer asserted that the sponsor has delegated parental control to third parties [47]. He did not accept that parental responsibility had been relinquished by the sponsor. The sponsor's physical absence from Jamaica required third party provision for the appellant's day to day care [49].
21. The available evidence demonstrated that the sponsor remains responsible for the claimant's financial well being. She has taken all reasonable steps to provide historic evidence of her consistent financial responsibilities. She has also provided credible evidence of disagreements that arise when the sponsor feels that financial resources are being diverted away from the claimant.
22. He "acknowledged" the documentary evidence demonstrating the sponsor's active involvement with the claimant's education. In addition, she provided credible evidence along with other witnesses of her struggle to maintain parental authority remotely [51].
23. She provided credible and consistent evidence of conflict with various guardians who failed to recognise the sponsor's parental authority. It is possible that discord has arisen as the claimant and the respective guardians have failed to recognise the

emotional consequences upon the sponsor due to her physical separation from the claimant. However, it is also reasonable to conclude that the sponsor was particularly sensitive to the limited opportunities to make a practical and direct contribution to the claimant's day to day life [52-53].

24. He set out an example of this at [54]. Whilst Ms [B]'s mother was merely attempting to teach the claimant life skills, the sponsor's sensitivity as a remote parent interpreted this as potential neglect. Judge Fox found that this was convincing evidence of genuine parental interaction by the sponsor.
25. He acknowledged at [56] that the latter letter from Mrs Rattary stating that she could not keep the claimant any longer, may be vulnerable to contrivance. However, due to the abundance of evidence in the claimant's favour, he accepted that the letter was obtained in good faith.
26. The sponsor provided credible evidence of her concerns regarding the claimant's profile as a young female. The unique features of the available evidence lend themselves to the credibility assessment. He found that the sponsor has been honest and open about the difficulties of her relationship with the claimant which have been exacerbated by the separation. He accepted that having regard to the available evidence, family life exists between the claimant and the sponsor. He accepted that the sponsor is the only surviving parent [58-60].
27. If wrong about that, he found that the sponsor has sole responsibility for the claimant. As the claimant satisfied the entry clearance officer's definition of Article 8, any interference is disproportionate to any legitimate aim pursued.
28. Ms Fijiwalah relied on the grounds seeking permission. The Judge 'apparently relied on unsupported Judicial knowledge that was not referred to at the hearing'. He failed at any point to identify what information it is that he was referring to at [38-39], that is allegedly in the public domain that would support the conclusions. The finding is unsupported speculation which appeared to be based on a perception of Jamaican society held by the Judge in the absence of supporting evidence, which was compounded when making a fee award, based on country conditions in Jamaica, 'presumably' based on information available to the Judge that was neither referred to nor sourced at any point in the determination.
29. In support of that submissions, Ms Fijiwalah referred to the decision of the Upper Tribunal in AM (Fair Hearing) Sudan [2015] UKUT 00656. The Tribunal held that independent judicial research is inappropriate. It is not for the Judge to assemble evidence. Rather, it is the duty of the Judge to decide each case on the basis of the evidence presented by the parties, duly infused, where appropriate by the doctrine of judicial notice.
30. If a Judge is cognisant of something conceivably material which does not form part of either party's case, this must be brought to the attention of the parties at the earliest possible stage, which duty could in principle extend beyond the hearing date.

31. As to his conclusion in respect of sole responsibility, she submitted that the Judge did not make any findings on the submission made by the ECO, that the sponsor herself in oral evidence, confirmed that the guardians of the claimant made the decisions in her life.
32. Ms Fijiwalah referred to [30] where the Judge recorded that the sponsor has shared responsibility with various guardians. No findings were made at all in this respect. The Judge recorded the entry clearance officer's submission, but made no findings on that submission. She submitted that if the guardians do make decisions it is difficult to see how the claimant can meet the requirements of TD (paragraph 297(i) (e) "sole responsibility") Yemen [2006] UKAIT 0049 at [50]. It was the sponsor's oral evidence that she allowed the guardians to make important decisions in her daughter's life. Accordingly, the claimant could not meet the requirements for sole responsibility.
33. On behalf of the claimant, Ms Kotak, who represented the claimant before the First-tier Tribunal, submitted that there was sufficient evidence that it was the claimant's father who died. The sponsor had stated in evidence that he was her father. Her evidence has been found to be credible.
34. The claimant asserted that she was given his name as well as the area by her mother and she searched for him. She went to the area with her guardian. Details were subsequently given to her as to how he died.
35. She referred to the claimant's bundle at O1: A birth registration form relating to the claimant was produced. Her date of birth is set out. Her residence is stated to be Waugh Hill in the town or village of Rock Hall.
36. It was not contended in the 'permission grounds' that the death certificate was being challenged in any way. The Judge in fact noted that there is no dispute that the death certificate is a reliable document. The issue related to the nexus between the name of the deceased and the claimant's biological father.
37. She submitted that the Judge has properly set out the evidence, including that referred to at [22], that the sponsor was aware that the father had died but did not tell the claimant as she did not want to suffer recrimination. Further, the sponsor confirmed in evidence that the claimant was only aware of the father's name and his home district when she began her search. The father's sister (the claimant's aunt) was content to provide the claimant with the father's death certificate.
38. The Judge found the sponsor to be entirely credible. None of this has been challenged. With regard to sole responsibility, the sponsor provided evidence that she had a good relationship with the aunt at the time of the sponsor's relationship with her father. It is plausible that the aunt would recall the difficult relationship experienced by the sponsor and may have been predisposed to offer assistance due to their historic affection [41].

39. At [45] the Judge found that the sponsor took the responsible parental decision to withhold information from the claimant until she was able to emotionally deal with it.
40. In support of her submissions, Ms Kotak referred to the claimant's witness statement. At paragraph 7 she said that she went to Waugh Hill looking for her father and asking around. That is when she found that he was dead.
41. She had found one of her father's sisters. Her aunt was polite to her and told her a little about him. She gave the claimant a copy of his death certificate. At paragraph 9 she stated that she grew up knowing one parent, namely her mother, who has done everything for her. She learned that she has sent money regularly to the person looking after her. This was for her accommodation as well as costs relating to school, including her uniform and books. She used to speak to her teachers at the school. She discussed with her what was happening at the school.
42. At paragraphs 20 of the sponsor's statement, she set out her claim that she has been solely responsible for the claimant. She was responsible for paying people who were looking after the claimant. She also bought her food, clothes and other items. She sent money for her school uniform, her daily lunches as well as school fees.
43. She provided evidence from the claimant's school that she was responsible for the school fees and was also in regular contact about her ongoing educational attainment. She contended that she was the person who made major decisions about her education. She provided evidence of regular contact that she maintained with her daughter through telephone calls and more recently WhatsApp. Various phone cards were produced. This she used prior to WhatsApp.
44. She claimed that she never abandoned parental responsibility for the claimant being prepared to move her where she felt that the care being provided was not good enough. She was often moved. That was to ensure that she was receiving good care from people who were prepared to follow her wishes and directions relating to the claimant. Even deciding whether the claimant could participate in extra-curricular school activities had to be discussed with her first. She was then able to discuss it with the school and the claimant.
45. Ms Kotak submitted that it was accordingly reasonable for the Judge to conclude that the sponsor took the responsible parental decisions to withhold information from the claimant until the sponsor was satisfied of her relationship with the father. Judge Fox stated that she wished to protect the claimant from those facts.
46. Ms Kotak noted that the sponsor stated that her faith was important to her and she was insistent that the claimant attend the Seventh Day Adventist Church even if no-one else in the household was going to church. When Mrs [H] was not able to insist that the claimant go to church as she instructed, she moved her daughter. She was not satisfied with the overall care she was receiving.

47. Ms Kotak also referred to the witness statement of [LH], at D1-D2. She resides in Jamaica. She is the mother of [IB]. In her statement she noted that the sponsor would send her money to cover the claimant's clothes, toiletries, school uniforms and the like. She would ring the claimant regularly and talk to her. She also used to ring the school as sometimes when the claimant brought home papers or reports she would tell her that the school had already spoken to her mother.
48. The sponsor had made it clear from the start when the claimant spoke with her that she would make all the main decisions regarding the claimant. She did not try to take over the role of parent. There were times when she heard that the claimant had been late home and got angry. She insisted that the claimant should discuss such matters with her first.
49. She confirmed that the sponsor was upset because she was not really strict on the claimant's attending the Seventh Day Adventist church in which she had been raised.
50. In reply, Ms Fijiwalah submitted that there was no finding relating to the nexus referred to by the Judge at [37]. Nor did the Judge make any findings relating to sole responsibility.

Assessment

51. It is correct that the Judge should have informed the parties of his research and recording that there was available evidence in the public domain that districts within Jamaica are sub-divided into parishes. This formed part of his finding that it was credible that the claimant would be able to trace her father with only a name and district to guide her.
52. However, this was not the only evidence relating to the claimant's curiosity and desire to find out who her father was. There was also a birth certificate of the claimant produced, in which her mother is recorded as residing at Waugh Hill, in the 'town/village' of Rock Hall - O1.
53. The claimant's evidence was that her mother told her on several occasions when she was about fourteen or fifteen, what her father's name was, and the area he lived in. She also told her the name of one of his sisters with whom she got on quite well when she was going out with him.
54. That was the background in which she accordingly went herself to the Waugh Hill area looking for him. She then discovered that he was dead. Her aunt told the claimant a little about him and said that she had nothing else to give but offered her a copy of his death certificate, which the claimant took.
55. She noted that he died in 2004. She had never met him. Although her mother had told her when she was born, he did not come to see her, apart from perhaps once. She never knew him.

56. I have also had regard to the sponsor's witness statement at C1-C6. She identified her husband, Mr [EW]. They were married in 2011. She had wanted the claimant to join her in 2013 when she was 14. Unfortunately her husband unexpectedly fell ill in 2012. She set out his diagnosis at paragraph 7 of her statement.
57. He required significantly more practical and emotional care and support. He suffered not only from dementia/Alheimers but also diabetes, hypertension and had prostate and heart problems. He was eventually placed in a nursing home in 2014. His health deteriorated significantly and it required a great deal of her time to agree to a long term care plan for him. He died in November 2017.
58. The death certificate relating to Mr [EW] was produced at U1(a) of the claimant's bundle. The coroner's certificate of the fact of death certified by the Senior Coroner for South London, dated 15 December 2017, identified [EW], giving his date of birth and the place of his birth at St Elizabeth, Jamaica. He is recorded as a retired husband of the sponsor, a care assistant. He died on 25 November 2017 at the [~] Nursing Home, in Surrey. At [46] the Judge accepted that the claimant's father is deceased.
59. Judge Fox directed himself in accordance with the relevant authorities, set out at [14]. He had before him the available evidence regarding the claimant's father from both the claimant and her sponsor. His finding as to the identity of the claimant's father, and the fact that he is deceased, is sustainable on the evidence produced.
60. Further, on the evidence before him it was also established that the sponsor was responsible for important decisions in the claimant's life, including important decisions taken in respect of her school and her religion. Although the day to day care would necessarily have to be undertaken by any guardian at the time, it is evident that the sponsor from time to time changed guardians when she was not satisfied about their care of the claimant.
61. In light of the evidence produced, the Judge was entitled to find that the sponsor has been sole responsibility for the appellant. Having satisfied the Rules, Judge Fox satisfied himself that family life exists between the claimant and her mother. He found that she is the only surviving parent. She also has sole responsibility for the claimant. His finding that the entry clearance decision constituted a disproportionate interference with the legitimate aim pursued, is sustainable on the evidence.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. The decision shall accordingly stand.

Anonymity direction not made

Signed

Date 10 October 2018

Deputy Upper Tribunal Judge C R Mailer