



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU 04691 2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 July 2018

Decision & Reasons Promulgated  
On 18 July 2018

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

R--- J--- S---  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms C Bexson, Counsel instructed by AJA Solicitors

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

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the case concerns the welfare of a young child and I see no legitimate public interest in the child's identity.
2. The appellant is a citizen of Uganda. He was born on June 2008 and so is now 10 years old. He appeals the decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent by an Entry Clearance Officer refusing him leave to settle in the United

Kingdom under paragraph 352D of HC 395. The appeal can only be brought on human rights grounds but Ms Fijiwala, appropriately, conceded before me that as this case essentially involves a relationship between a minor child and his father it follows that if the appellant does meet the requirements of the Immigration Rules then the appeal should be allowed on human rights grounds. Plainly refusing the child entry in those circumstances would be a disproportionate, if not unlawful, interference with his and/or his father's rights under article 8 of the European Convention on Human Rights.

3. The First-tier Tribunal resolved several issues in the appellant's favour. It was established that the sponsor in the United Kingdom is indeed the natural father of the appellant, that in the event of his coming to the United Kingdom the appellant would be maintained and accommodated in a way that satisfied the requirements of the Rules and that his sponsor in the United Kingdom played a part in his life.
4. The First-tier Tribunal was not persuaded that the parent in the United Kingdom had sole responsibility for the child. The judge said at paragraph 31:

"It is not accepted that the sponsor has had sole responsibility for the Appellant since 2008. It is quite clear that the sister of the Appellant continues to be responsible for the Appellant when he returns during school holidays from boarding school."
5. The First-tier Tribunal also found it "not plausible" that the child's natural mother had no part in his life and especially not when it was realised that she lived close to the sponsor's sister and was prepared to write a letter of support for the appellant. The judge said:

"The idea that she has no role in the appellant's life is not plausible. Even the sponsor when asked in evidence could only state that he was not aware that she had any role – not that it did not occur."
6. There were 22 paragraphs in the application for permission to appeal but Ms Fijiwala short-circuited matters considerably, responsibly and helpfully by accepting that the fundamental findings were flawed because the judge had not had proper regard to the documentary evidence provided.
7. It follows that I set aside the decision of the First-tier Tribunal for error of law.
8. Given that there was one short issue to resolve and that the case involves the welfare of a child I decided it was appropriate to continue with the case in the Upper Tribunal and the parties called evidence and addressed me.
9. I remind myself that the primary findings of fact have to be proved on balance of probability and I remind myself that the material question is the sole responsibility at the date of decision, this being an "out of country" human rights appeal. It is possible, for example, that responsibility for the child's welfare is shared or even vested in someone other than the sponsor at a different stage in the child's life and for the sponsor to be the sole responsible parent at the material time. Further, following **TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049** it is entirely possible for a parent to exercise sole responsibility from some distance even though the day-to-day management of the child is conducted by someone else acting on that parent's behalf.
10. It is the Appellant's case that the sponsor in the United Kingdom has made all the important decisions in the child's life but the sponsor's sister, obviously the appellant's aunt, has given most of the day-to-day care.

11. The sponsor gave evidence before me. He adopted a statement signed on 31 October 2017. The important parts of that statement show that he is a national of Uganda. The appellant, his son, was conceived when the appellant's mother was attending university. The pregnancy was not planned and her parents were displeased because of the interruption to her education occasioned by the pregnancy and giving birth. The sponsor said that he had been making arrangements to study in the United Kingdom. His son was born in June 2008 but his plans were such that he did not want to disrupt them when he had the opportunity of travelling to the United Kingdom with leave as a student in October 2008. He extended his stay so that he had limited leave to remain as the dependent spouse until January of next year.
12. He said that his son had lived with his natural mother until he was 4 months old and after that had moved to live with the appellant's aunt, the sponsor's sister.
13. He said that his sister had been providing the appellant "with support and assistance under my supervision and guidance".
14. He insisted that the son's mother had had no involvement in his upbringing and that all of the major decisions were made by him. He illustrated this by saying he chose the child's school and choice of medical practitioner.
15. He said that he had to apply for the appellant to join him in the United Kingdom because the appellant's aunt told him that she was no longer able to cope. His sister had six children of her own aged between 3 years and 20 years and they lived together in the same property. His sister had had enough.
16. As illustration of his involvement in the care of his child he explained how his son attended a boarding school and that he had spoken with the teachers and staff of the school and received communications from them about the appellant. He had also visited his son with his partner who would be the effective stepmother in the United Kingdom. Both he and his partner had good jobs.
17. He kept in contact with his son as did his partner.
18. He did not see that removing to Uganda was a practical suggestion. It was particularly unsuitable for his partner.
19. He was cross-examined.
20. He insisted that the appellant's mother had no contact with him. He said it was easy to make contact with her for the purposes of getting information for the appeal because her parents lived quite near his sister and were willing to disclose her whereabouts.
21. He accepted it could have seemed strange particularly to UK eyes that the appellant's mother had shown so little interest in him. He said that it did not seem so strange to him from a Ugandan perspective. The appellant's mother had an education to consider and arrangements had been made for the child's care.
22. He gave oral evidence about contact with the appellant that was unremarkable.
23. The appellant's partner gave evidence. She confirmed that they cohabit and that she is a British citizen although she was born in Kampala. She made plain that her partner is in fact her husband, they married in July 2013 and had two children. She believed the appellant

had a close relationship with his half-brothers and that she had a close relationship with the appellant which she had endeavoured to foster.

24. She said that his aunt who had been taking care of him in Uganda was unable to continue to provide the help and support that was needed. Basically she had a house full.
25. She was cross-examined.
26. Some of her answers corroborated other evidence. She said nothing that in any way undermined the quality of the evidence that had been given.
27. There is a witness statement from R--- N--- who is the carer and aunt of the appellant. She explained that when she took care of the appellant she expected it to be a temporary arrangement and things were changed little when the appellant's father met someone in the United Kingdom that he eventually married.
28. She had reached the point where she could not provide adequate care.
29. There is a letter from the appellant's mother dated August 2016 addressed to the Immigration Officer. It confirms that the appellant's father had been "very supportive towards the upbringing" of the appellant and had paid his school fees, maintenance bills, medical bills and so on. She said that she had looked after the appellant until he went to live with his aunt when he was 6 months old.
30. There are supporting letters. There are letters from the school which appeared to show that the appellant's father is very much involved in supporting him and the school see themselves as accountable to him. It was his father's evidence that he had chosen the school where the appellant could board because it was getting too much for the appellant's aunt.
31. There are elements of the case that I find less than entirely satisfactory. According to different strands of evidence, the appellant's natural mother effectively abandoned him when he was 4 or 6 months old. I do not regard this inconsistency indicative of anything except possibly people telling the truth and remembering things slightly differently but I find it surprising that neither his mother nor his grandparents had anything to do with him even though they do not live very far away. That said it is by no means an unbelievable claim. Attitudes in the United Kingdom have probably changed but it is not so very long ago in history that it was thought best for women who were not able to bring up their children to have nothing whatsoever to do with them and leave them in the care of someone else who would be chosen to be highly committed.
32. There are elements of the appellant's case which suggests contrivance. The evidence about the involvement in the choice of schools and the choice of medical practitioner (chosen because the appellant's father said that he happened to know the doctor) is exactly the kind of evidence that might be thought appropriate and so would be given by a person building a case but this does not mean it is dishonest. The appellant's father and stepmother are educated people and it is in no way discreditable that they would have researched the sort of things that the Immigration Officer and possibly eventually the Tribunal would need to know.
33. This is not a case where the evidence is overwhelmingly compelling but there is nothing wrong with it. At no point is there anything that is beyond belief in the appellant's case and at no point is anything said that I have any proper reason to reject. The core case is a story

of a man getting a woman pregnant at a time that was inconvenient for both of them, of his showing financial responsibility towards the child and mother who disrupted her education for only as long as was necessary and then got on with her life without the child and of the child going to an aunt who looked after him for as long as she could before saying that the time had come that she could no longer take care of the child. All along the father provided maintenance and support and made the decisions about education and medical care. On the evidence before me I have no basis for concluding anything other than the fact that I have been broadly told the truth and that when the application was made and the decision made the sole responsibility for the child, rather than the day-to-day care, was vested in the parent in the United Kingdom.

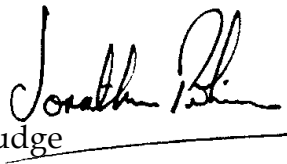
34. Given the other findings that have been established this is a case that satisfied the requirements of the Rules. As was admitted sensibly and helpfully by Ms Fijiwala this is a case where compliance with the Rules indicates where the public interest lies for the purposes of an Article 8 balancing exercise. It follows therefore that I set aside the decision of the First-tier Tribunal and I substitute a decision allowing the appellant's appeal against the decision complained of.

Decision

35. The First-tier Tribunal erred in law. I set aside its decision and substitute a decision allowing the appellant's appeal on human rights grounds.

Signed

Jonathan Perkins, Upper Tribunal Judge

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated: 17 July 2018