



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

Appeal Number: HU/13915/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14 March 2018**

**Decision & Reasons  
Promulgated  
On 5 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**AB**

**(ANONYMITY DIRECTION CONTINUED)**

Respondent

**Representation:**

For the Appellant/Secretary of State: Ms N Willocks-Briscoe, Home Office  
Presenting Officer

For the Respondent: Mr M Omoboade, Legal Representative of  
CTM Immigration & Welfare Legal Centre

**DECISION AND REASONS**

1. Throughout this decision I shall refer to the Respondent as “the Appellant” as he was before the First-tier Tribunal.
2. The Appellant is a citizen of Sierra Leone and his date of birth is [ ] 1999. His mother, GM, is the Sponsor in this case. She is a British citizen. Her date of birth is [ ] 1979. The Appellant made an application for entry clearance to join the Sponsor in the UK on 28 January 2016. The

application was refused by an Entry Clearance Officer on 15 April 2016. The Appellant appealed against that decision and his appeal was allowed under Article 8 by First-tier Tribunal (“FtT”) Judge P S Aujla in a decision that was promulgated on 2 August 2017 following a hearing on 24 July 2017

3. The Secretary of State was granted permission to appeal by FtT Judge Page on 23 January 2018. Thus, the matter came before me. Judge Aujla heard evidence from the Sponsor. The application was refused by the ECO because it was not accepted that the Appellant was related to the Sponsor as claimed. This was not an issue that was advanced at the hearing before the FtT following the production of DNA evidence. The ECO was not satisfied that the Appellant’s father was deceased in the light of a discrepancy about the date of birth disclosed in the documents produced by the Appellant. The ECO was not satisfied that the Sponsor would be able to maintain the Appellant adequately without further recourse to public funds. These matters were issues before Judge Aujla.

#### The Findings of the FtT

4. In respect of the discrepant documents produced concerning the father’s death the judge made findings at paragraphs 29, 30 and 31:-

“29. The Appellant claimed that his father had died on [ ] 1999, just under 7 months before he was born, on [ ] 1999. The Appellant’s birth certificate and his father’s death certificate were issued on 22 December 2015 and 08 February 2016 respectively. The death certificate appears on page 40. It was issued by the Chief Registrar at the Office of Chief Registrar, Ministry of Health and stated that the Appellant’s father died on 15 January 1999. The document on page 44 was issued on 03 May 2016, a few days after the Appellant’s application was refused, on 15 April 2016. That document was issued by The Deputy Chief Registrar. It stated that the Appellant’s father died on [ ] 1999. There are therefore 2 separate documents issued by the Office of Chief Registrar on 2 separate dates confirming that the Appellant’s father died on [ ] 1999.

30. I now turn to the documents on page 35 and 45. Those documents were issued by the Ministry of Social Welfare, Gender and Children’s Affairs, not by the Office of Chief Registrar. The document on page 35 was issued on 24 November 2015 and stated that the Appellant’s father died on [ ] 2013. The document on page 45, which is an exact copy of the document on page 35 except that it was issued on 03 May 2016, the same day as the document on page 44 was issued and stated that he died on [ ] 1999. I therefore have before me 4 documents, 3 of which stated that the date of death was [ ] 1999 and 1 stated that it was [ ] 2013.

31. Whilst I note that it would have been better had the authorities stated in the document on page 45 that they had made an error when issuing the document on page 35, when I consider that I have 3 documents, 2 of which were issued by the Office of the

Registrar, I am satisfied that the discrepancy must have arisen as a result of an error. I have 3 documents issued by the authorities which confirmed that the Appellant's father died on [ ] 1999. Bearing in mind that the Appellant only had to make out his case on the balance of probabilities, I am prepared to accept the contents of those documents and find that the Appellant's father was deceased and he died on [ ] 1999."

5. The judge accepted the Sponsor's evidence about the Appellant's father's death and the documents. He accepted that the Appellant's grandmother with whom he was living died on 17 August 2015 and since then he had been cared for by neighbours. The judge found that the Appellant was not able to satisfy the maintenance requirements of the Rules. This was conceded by the Appellant. The judge considered the Appellant's best interests and he directed himself in relation to Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 00088 (IAC). The judge considered Article 8 and made the following salient findings at paragraphs 40, 41 and 42:-

"40. On the evidence before me, I find that the Appellant was living alone since 17 August 2015. He was born on [ ] 1999. He is 17 years old now and was 16 years old when the Respondent made the decision. He was cared for by neighbours, no doubt on a temporary basis until the Sponsor was able to make some arrangements for his care or bring him over to the United Kingdom. I have found that the Sponsor was the sole surviving parent of the Appellant. Had it not been for the Sponsor not being able to satisfy the maintenance requirement in the Immigration Rules, this appeal would have been allowed without regard to article 8 being considered outside the Immigration Rules. In the particular circumstances of this case, I find that there were compelling circumstances that justified grant of entry clearance outside the Immigration Rules.

41. For the sake of completeness, I further find that, for the same reasons as stated above there were serious and compelling family or other considerations in this case which made the Appellants' (sic) exclusion from the United Kingdom undesirable.

42. On the evidence before me, I find that the Respondent's decision would place the United Kingdom in breach of its obligations under the 1950 convention as well as under section 55 of 2009 Act. The appeal is allowed on human rights grounds under article 8."

### The Grounds of Appeal

6. The grounds challenge the judge's reasoning in respect of the documents concerning the father's death and the conclusions of the judge under Article 8.

### The Error of Law

7. The Sponsor's evidence was that there was a mistake on the document from the Ministry of Social Welfare, Gender and Children's Affairs and in response to this she produced a corrected document from the same organisation and a letter from a doctor corroborating the date of death.

The judge accepted the Sponsor's evidence that there was a mistake in the document at page 35 of the AB, having accepted the evidence from the Sponsor on the issue. The judge was entitled to attach weight to the three documents which stated that the date of the father's death was [ ] 1999. Thus, the judge was entitled to conclude that the Appellant satisfied the Immigration Rules (under paragraph 297) save the maintenance requirements of the Rules. The Appellant conceded that he could not meet the maintenance rules.

8. The decision under Article 8 is inadequately reasoned. The judge concluded that there were compelling circumstances, however he did not set out what these are. The Appellant was not living alone as recorded by the judge. He was living with a neighbour, SK, whose evidence is at page 35 of the Appellant's bundle. The judge attached significance to the fact that if it had not been for the failure to meet the maintenance requirements of the Rules he would have allowed the appeal under the Rules. There was no attempt made by the judge to identify the public interest. It is not clear what, if any, weight he attached to it. There is no mention of the relevant factors at Section 117B of the 2002 Act and whether account was taken of them. The assessment under Article 8 is materially flawed. I set aside the decision of the FtT to allow the appeal under Article 8.

### Conclusions

9. The Sponsor was in attendance at the hearing before me. There was no further witness statement from her in the event that the appeal was to be remade by me at the error of law hearing; a situation clearly envisaged by the directions issued to the parties. I noted that her witness statement of 3 July 2017 before the FtT was lacking in sufficient detail. The judge did not set out her evidence in detail and the Record of Proceedings did not suggest that her oral evidence at the hearing significantly expanded upon that in her statement. There was application made for an adjournment and I proceeded to remake the matter. I suggested that the Sponsor oral evidence before me and both parties agreed to this course of action. I indicated that I sought clarification on a couple of issues to properly engage with the appeal under Article 8. I informed the Sponsor that I needed to know more about the history of the family and the Appellant's circumstances in Sierra Leone.
10. The Sponsor's evidence before me was that she last saw her son in 2007. She speaks to him everyday. She is unable to travel to Sierra Leone following an accident in 2015. She has not been able to work since and is dependent on benefit. Since the death of the Appellant's grandmother he has lived with a neighbour, SK, in a flat in the same compound as that where he lived with his grandmother. The flat comprises two bedrooms and a living room. SK's sons reside there. The Appellant does not have a bedroom. He has to sleep in the living room. He has malaria as a result. Since the decision he has had typhoid. The

current arrangements cannot continue because the Appellant is unhappy. He has no family in Sierra Leone and he feels alone. He is sad and his school work is deteriorating. The Sponsor pays for his school fees. She sends money to SK. It is hoped that the Appellant will finish school this year and attend university thereafter.

11. The Sponsor submitted further evidence at the hearing before me in respect of her health. She relied on evidence from Dr Morgan of 2 March 2018 confirming that she has “ongoing disability with discoid lateral meniscus tear and chondromalacia patellae.” She is under the care of the orthopaedics team and is currently mobilising with crutches and is undergoing physiotherapy. In the doctor’s opinion the Sponsor would benefit from the help of the Appellant in taking her 9 year old daughter to and from school and making it possible for her to attend hospital appointments regularly which would facilitate a quicker recovery and return to work. There is a document from Lewisham & Greenwich NHS Trust of 27 April 2017 which confirms the Sponsor’s diagnosis as stated by Dr Morgan.
12. There are a number of documents in the Appellant’s bundle which was before the FtT which I have taken into account. There is a letter from Albert Academy which is the school the Appellant attended of 23 May 2016. In the letter it is asserted that the Appellant’s conduct and academic performance is deteriorating and the advice is that he is reunited with his mother. About the Appellant the following is stated;

“... presently a very sad lad since his grandma died, that had been a source of solace for him and he is not the same person any longer.

The school has learnt that he is also alone with nobody else here to take the place of the late woman. Surviving here has become a daily struggle for him ...”.
13. There is a letter from the Government of Sierra Leone, Ministry of Health and Sanitation from Dr Ngobeh of 8 February 2016. Dr Ngobeh states that AB has been regularly visiting his clinic for “medical appraisal” and that he has been the family physician for the past year and has been receiving and sending correspondence to the Appellant’s mother who is responsible for his medical bills. The Appellant has presented with episodes of malaria and moderate anaemia for which he has been treated. The Appellant is currently residing with a neighbour where he is unavoidably exposed to recurrent episodes of mosquito bites, hence the course of his illness. Dr Ngobeh recommends that he goes to stay with his mother abroad. There is a “declaration and testimony” from SK of 3 May 2016. Her evidence is that she has been a guardian for AB since the death of his grandmother.
14. It is important in this case to understand the timeline which was not made entirely clear by the FtT. The Appellant was born on 10 August 1999. His father died shortly after his birth. His mother left Sierra Leone in 2004 from which time the Appellant lived with his grandmother until she passed away in 2015. She visited Sierra Leone on two occasions only; in 2005 and

2007. The decision of the ECO, which is the subject of this appeal, is dated 15 April 2016, four months before the Appellant's 17<sup>th</sup> birthday. The Appellant's mother, the Sponsor, was working in the UK until she had an accident in 2015. Since then she has been reliant on public funds. She became a British citizen in 2016. She has not seen the Appellant since 2007. She had a daughter here in the UK in 2008.

15. I must consider Article 8 based on the position at the date of the decision. There is family life between the Appellant and the Sponsor. There is no doubt about this. Article 8 is engaged. However, it is far from clear on the evidence before me that there is a serious interference with it. As a matter of fact, the Appellant has not lived with his mother since he was aged 4 or 5. He has not seen her in person since he was aged 8 or 9. Since she left Sierra Leone in 2004 she has visited him twice. There is no evidence before me that he has ever seen his sister in person.
16. There is evidence that since the death of the grandmother there has been regular contact between the Appellant and the Sponsor. The Sponsor pays the Appellant's school and medical fees and funds his everyday needs. However, the extent of the interference for the purposes of Article 8 must be considered in the light of the realities of this relationship which is made clear when the timeline is appreciated. I conclude that there is no interference with family life.
17. In any event, the decision is proportionate. The Appellant was a child at the date of the decision. The evidence of the Sponsor about whether SK received payment for looking after her son was unclear. There is no evidence that SK is unwilling to continue with whatever the arrangement is. In her evidence she does not refer to the inadequacy of accommodation or of there being a health risk. Her evidence is as follows:

“[SK] has given her unconditional consent to the Ministry for [AB] to reunite with his biological mother in **LONDON** indefinitely as he needs proper care and protection. Similarly the biological mother, [GM], has heartily requested from the Ministry for her son to join her in **LONDON** ...”.
18. The Appellant is sleeping in a living room and is bitten by mosquitoes. However, he lives in the same compound as he did whilst he was living with his grandmother. There is no persuasive evidence that the medical problems he has suffered have been caused by inadequate accommodation. The Sponsor's evidence before me was that that the Appellant has had typhoid since the decision. There is no cogent evidence to connect the accommodation with the Appellant's health problems. The Appellant sought medical treatment in Sierra Leone for which he received and which is funded by his mother. There is no evidence that his mother will not be able to continue to maintain him. There is no reason advanced before me why he will not be able to continue with his studies.

19. The letter from the school suggests that the Appellant grieves for his grandmother. This is understandable and reasonably likely to have caused deterioration in his grades. It is not clear upon what information the school or the doctor in Sierra Leone based their opinions in relation to the Appellant being reunited with his mother. However, I have considered that the Appellant would prefer to be here with his mother and that she very much wants him to join her. I have considered the practical assistance the Sponsor would benefit from should the Appellant join her here. I accept that at present she may not be able to fly, but there is no evidence that this is long-term. She has made only two visits to date.
20. The best interests of a child are usually best served by being with a parent. This is an entry clearance case and unusual insofar as face-to-face contact between the Appellant and his mother has been very limited. The Appellant's best interests are a primary consideration and I attach weight to this in the proportionality assessment. There is no evidence before me which would lead to a conclusion that there are family or other considerations which would make exclusion undesirable. There is no evidence of neglect or abuse or that the Appellant's needs are unmet. There is no evidence that the arrangement is not stable for his physical care. Continuity of residence is a significant factor. The Appellant has lived in Sierra Leone all his life. He is now aged 18. At the date of the decision he was shortly to turn 17. He has not lived with his mother since he was aged 4 or 5. He has seen her since then on two occasions only. As a matter of fact, his mother is dependent on funds and living in social housing. Whilst this may be temporary there is no evidence to establish when she will return to work or that her earnings before the accident were sufficient to meet the requirements of the Rules. If the Appellant were to join his mother here there will be a burden on public services. There are no compelling circumstances identified in this case. If there were a serious interference with the Appellant's family life (there is not in this case), the decision is proportionate.
21. The Appellant's appeal is dismissed under Article 8.

**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 his 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 Joanna McWilliam

Date 3 April 2018

Upper Tribunal Judge McWilliam

