



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/10885/2013
OA/10887/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 23rd May 2014

Determination Promulgated
On 5th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MR JONATHAN MUNZEMBA (FIRST APPELLANT)
MISS BENEDICTE MUNZEMBA (SECOND APPELLANT)
(NO ANONYMITY DIRECTION MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - NAIROBI

Respondent

Representation:

For the Appellants: Mr McIndoe of Latitude Law
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants, Mr Jonathan Munzemba, date of birth 7th April 1995 and Miss Benedicte Munzemba date of birth 6th May 1999, are citizens of the Democratic Republic of Congo.

2. I have considered whether any of the parties to the proceedings requires the protection of an anonymity direction. Taking account of all the circumstances and even taking account of the fact that the Appellants are minors, I do not consider it necessary to make an anonymity direction.
3. This is an appeal by the Appellants against the determination of First-tier Tribunal Judge McGinty promulgated on 28th November 2013 after a hearing on 12th November 2013. The judge dismissed the Appellants' appeals against the decision of the Respondent to refuse each of them entry clearance/leave to enter the United Kingdom as children of a person present and settled in the United Kingdom. The matter was considered both under paragraph 297 of HC 395 and under Article 8 of the ECHR.
4. By leave granted on 10th January 2014 First-tier Tribunal Judge Ievins gave the Appellants permission to appeal to the Upper Tribunal. Thus the matter now appears before me as an appeal in the Upper Tribunal to determine in the first instance whether there is a material error of law within the original determination by the judge.
5. In the Grounds of Appeal submitted the grounds raise the following matters:-
 - (a) The Sponsor's evidence was not properly interpreted and was misrepresented. That only came to light upon receipt of the determination and on the Sponsor having an opportunity of the determination being read back to her.
 - (b) The Sponsor submits that some of the answers given did not reflect properly what she had said. As the judge found that some of her answers were inadequate and inconsistent with documentary evidence the Sponsor maintains that her answers were fuller than that given by the interpreter and that this has led to the misinterpretation and misunderstanding.
 - (c) As an instance of this at paragraph 14 the interpreter failed to put questions to the Sponsor. There it is alleged that the Sponsor was asked more than once to explain the meaning of the Appellant's school documents but failed to do so. The Respondent asked about discrepancies between the documents and her oral evidence but it is suggested by the judge that the sponsor only gave an inadequate reply. It is asserted that this is reflective of the inadequate and incomplete interpretation.
 - (d) It is submitted that the misrepresentation of the Sponsor's evidence contributed to the judge's finding that the Sponsor's evidence was not credible. The Appellants have been unfairly disadvantaged by the interpreter.
 - (e) The judge also applied westernised standards to his assessment of the documentary evidence. The judge expected the format and appearance of two death certificates to be the same. He found that they were substantially different. The fact that the death certificates were in different form is

explainable in the circumstances and no adverse inference should or could have been drawn therefrom.

6. In paragraph 25 of the determination the judge deals with the two death certificates and does note that they are in completely different formats. However the judge's assessment of the death certificates does not end there. The judge notes that in respect of one of the death certificates there is reference to the fact that the Sponsor's husband had allegedly died from a medical condition. The Sponsor had in evidence alleged that her husband had been poisoned. No proper explanation was given for those two inconsistencies causes of her husband's death. That is not an issue of misinterpretation or applying westernised standards but a direct conflict between the Appellant's evidence and the document.
7. The judge having considered the evidence presented was entitled to conclude that the evidence was contradictory. The medical certificate was evidence submitted and relied upon by the Appellant. The judge was entitled to consider that a medical certificate properly obtained would have given the cause of death in those circumstances and that that impacted upon the assessment of credibility of the Sponsor.
8. Similarly the death certificate for the Sponsor's son gave no cause of death at all. It was alleged by the Appellant's representative that the death certificate could be linked to a medical report that appeared subsequently in the pages of the evidence. However there was no reference within the death certificate of the son to the medical report. The death certificate appears to have been a freestanding document. It made no reference to any medical condition or medical report. In the circumstances the judge was entitled to note that and entitled to conclude that if there had been any intention in the death certificate to refer to the medical report that would have easily been solved by a reference within the report itself but none was made.
9. The judge was entitled on examining the certificates to find that there were material discrepancies between the certificates and the evidence of the Sponsor such that the evidence of the Sponsor was not credible in those circumstances.
10. The judge otherwise has noted other discrepancies between the evidence of the Sponsor and the documentary evidence. There was reference to a Nzenze Lulualu. The documents translated and submitted by the Appellant referred to the person as being a male and to being a major as of March 2013. The Sponsor had by comparison referred to the individual as being a lady and a seamstress. It was only when the discrepancies were pointed out that the Sponsor had changed her evidence.
11. Also with regard to Nzenze Lulualu the Sponsor had referred to her as being an aunt and had referred to the relationship but the relationship was not consistent within her evidence.
12. It has to be noted that the Sponsor had originally come to the United Kingdom in 2005. The Sponsor has been in the United Kingdom since that period of time. It is suggested that the answers that the Sponsor gave in Lingala were not properly

translated by the interpreter. The judge has within the body of the determination noted at paragraph 9 that there was no evidence of any problems in the translation at the time of the hearing itself. It was only subsequently after the refusal decision had been promulgated that the problems with regard to translation were pointed out. Throughout the course of the proceedings the Appellants have been represented. The Sponsor was being asked to comment upon documents and answer questions about documents that the Appellants themselves had submitted. The discrepancies between the documents and the evidence of the Sponsor were such that the judge was entitled to make adverse findings with regard to credibility.

13. Taking all the matters into account the judge was entitled to come to the conclusions that he did on the basis of the evidence. There was no evident problem with the interpretation at the hearing. The problems have only been identified subsequently. The Sponsor has been in the United Kingdom a substantial period of time and should have understood some English. If there were a genuine problem with the documentation the Appellant's representative could have clarified the same beforehand. The fact that it was during the course of the hearing that the problems between the Sponsor's evidence and the documents came out is a matter that inevitably occurs in the present type of proceedings but that judge was entitled to come to the conclusion that he did on the basis of the evidence.
14. In the circumstances the judge was entitled to treat the evidence of the Sponsor in the manner that he did. There were clear and evident inconsistencies between the Sponsor's evidence and the documentary evidence. Those inconsistencies have not been explained by the alleged discrepancies asserted within the Grounds of Appeal. In such circumstances the judge was entitled to come to the conclusions that he did on the evidence presented. There is no material error of law within the determination.
15. I uphold the decision to dismiss this matter on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure