



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

Appeal Number: OA/06695/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2<sup>nd</sup> November 2015**

**Decision & Reasons Promulgated  
On 17<sup>th</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**A.K.K.  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**Entry Clearance Officer**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The appellant is a citizen of Sierra Leone and stated that she was born on 26<sup>th</sup> May 1996. She appealed against the decision of the Entry Clearance Officer (Entry Clearance Officer) dated 6<sup>th</sup> May 2015 to refuse her application to join her father in the United Kingdom under Paragraph 297 of the Immigration Rules.
2. The Entry Clearance Officer took issue with the birth certificate provided as it was produced 17 years after her claimed date of birth. Her father,

when he made an application to enter the United Kingdom in 2011, gave her date of birth as 31<sup>st</sup> May 1996 not the date given on the birth certificate. It was not accepted that the birth certificate was a true reflection of her age identity or circumstances in Sierra Leone.

3. Further the Entry Clearance Officer did not accept that the appellant's father had sole responsibility for her. Previously the father stated that the appellant was living with his mother and his uncle but the appellant stated that she lived with an aunt. There was no evidence to demonstrate the relationship or contact with the father. The Entry Clearance Officer was not satisfied that the appellant had taken decisions regarding the education and welfare of the appellant. In addition there was no evidence that the mother had given consent for the father to remove the appellant to the United Kingdom
4. First-tier Tribunal Judge Monson heard and dismissed the appellant's appeal. An application for permission to appeal was made first to the First-tier Tribunal which was refused Judge M Davies but then renewed to the Upper Tribunal.
5. The application of permission to appeal set out that the case concerned an application by a child to join her father and stepmother. The father asserted he had sole responsibility.
6. It was asserted:

**Ground 1;** That the judge mis-stated the evidence on issues.

(i) In particular it was stated that there was inaccuracy regarding the claimed FGM. The judge recorded that the father and step mother gave differing dates in respect of when the FGM was raised. On re-examination the step mother conceded that it was an issue which could have been raised with the appellant on multiple occasions. The judge was wrong at paragraph 41 as it was never said that the appellant had actually been the victim of FGM.

(ii) The judge's suggestion that the lack of reference in Whats App to the problems was irrational because this post dated when the appellant moved out of Musa's home.

(iii) The judge described the inconsistency as to when the appellant had lived with his mother (Summer 2010 or the end of 2011) as 'egregious' but Mr Seelhoff's statement confirmed that the father had corrected his evidence.

(iv) The judge had failed to have regard that the ECM accepted there had been a plausible explanation with regard the birth certificate. He failed to address the extensive evidence from the UN which confirmed that Sierra Leone had an efficient and functioning system. The birth certificate was evidence of her age. The judge erroneously inferred that the guardian who swore an affidavit would

need to know her true date of birth. It was irrational to find that the certificate described as 'delayed' was because the birth was registered late. There were no findings as to the reliability of the passport. The judge had not taken into account the fact that there was an ebola crisis and therefore a 2015 report could not be supplied. The age listed at 15 on the 2011/2012 school report was not inconsistent with the school report giving the age of 17 on the 2012/2013 report.

(v) Evidence from the second guardian. The judge incorrectly drew inferences from the fact that the school reports were emailed by the appellant's second guardian Kara in 2012 long before he was the appellant's guardian. He however was the only person with access to a scanner. Further to conclude that the guardian had lied on oath was unreasonable as all over the world close family were referred to as uncle.

**Ground 2;** The issue of age was not in contention and the judge should not have raised the issue without it being put to the appellant.

**Ground 3;** Failure to have regard to the length of time for which the appellant did live with her father (eight years) prior to moving to the United Kingdom.

7. Upper Tribunal Judge Canavan found that the weight to be attached to the appellant's passport should have been considered and granted permission to appeal. The appellant's representative had taken issue with Judge Monson's record of the evidence and he, Mr Seelhof, having served a witness statement to that effect, was directed by the Upper Tribunal to serve copies of his original notes at the First tier Tribunal.
8. In a letter dated 27<sup>th</sup> October 2015 a letter from A Seelhof Solicitors stated  
"We were instructed yesterday that the appellant no longer wishes to pursue the appeal.  
We have not been expressly instructed to withdraw the appeal but we have not been put in funds to prepare of the appeal and are no longer instructed to attend. In the circumstances we are not in a position to comply with directions and serve Mr Seelhoff's note of the hearing in the first tier."  
9. There was no appearance at the hearing for the appellant.
10. I am not persuaded that the judge mis-stated or mis-recorded the evidence. No contrary note of the evidence was supplied in accordance with the direction of the Upper Tribunal. I will briefly deal with further points however.

11. It was incorrect to claim that the appellant had never claimed to be a victim of FGM and the judge made no error in this respect. In part 9 of the application form the appellant clearly states that she underwent FGM.
12. The point in relation to WhatsApp, as Ms Sreeraman noted, is that evidence of difficulties could have been supplied in relation to WhatsApp contact prior to moving out and yet was not. That said, I note that the communication dates from as close to the claimed moving as February 2014 and span several months and yet make no reference to the alleged problems.
13. In relation to the dates regarding moving out from his mother's home not only was there inconsistency in relation to the year but also the season or time of the year and this is recorded in the evidence. The father clearly shifts his evidence from the summer of 2010 to the end of 2011. It is not irrational for the judge to comment on the inconsistency in the evidence.
14. The judge adequately considered the facts surrounding the birth certificate. He clearly states at [44]

“... the birth certificate relied upon describes itself as a ‘delayed’ birth certificate. The implication of this description is that the appellant’s birth was registered for the first time in November 2013; **not** (my emphasis) that the appellant obtained a duplicate birth certificate which was based on an entry made in the birth register shortly after the appellant was born. The Entry Clearance Officer reasonably queried the reliability of the birth certificate as showing the appellant’s correct age, as well as evidencing her true paternity and reasonably asked the appellant to produce the evidence that had been used to obtain the certificate. According to Mr Kargbo, Musa (the appellant’s then legal guardian) swore an affidavit. But this affidavit has not been produced. It is in any event unclear how Musa would know what the appellant’s true date of birth was, since he is only alleged to have become the appellant’s guardian in or about December 2011.”
15. If the evidence is such that the system of registering births in Sierra Leone was efficient as claimed in the application for permission to appeal there is even more reason to suppose that any certificate would have been headed duplicate rather than delayed. The judge cannot be said to have made his findings irrationally. The passport was obtained a day after the birth certificate and it must be the case that the passport would be reliant on the birth certificate. As the judge rejected, with adequate reasoning, the evidence in relation to the birth certificate I find that it is not material that there was no specific finding in relation to the passport. The judge reviewed the evidence with regards the appellant’s age and, putting aside the question of the final report, found the two produced reports inconsistent (and there was no indication that the school system of recording age had changed) but clearly he noted and took into account the fact that the date of birth was not registered on any of the school reports.
16. The point in relation to Mr Kamara sending the school reports was not that only he had access to a scanner and fax but that he sent a report dated July 2013 in September 2012 [47]. Further the report of Mr Kamara

was a formal legal affidavit and the Judge is entitled to observe that he would describe himself accurately.

17. At [52] the judge stated that *'having considered the evidence in its totality, I find that the appellant has not discharged the burden of proving that she was still a child at the date of application. For the reasons I have given earlier in this decision, both the documentary evidence and the oral evidence relating to the appellant's age and date of birth are not reliable'*. The judge was entitled, as he did to make an overall assessment of the evidence, and his reasoning was sound.
18. For the avoidance of doubt the question of the appellant's age was specifically raised in the reasons for refusal letter by the Entry Clearance Officer. That the Entry Clearance Manager considered the appellant's father might have a plausible explanation for the inaccuracy in his said daughter's date of birth when he entered the UK in 2011 does not constrain the judge in finding otherwise for the reasons he gave.
19. Putting aside the question of age, overall the judge was not satisfied [53] that the evidence was reliable and that the appellant had shown that her father had exercised sole responsibility rather than shared responsibility with other relatives or legal guardians in whose household the judge noted that the appellant resided. Indeed it is evident from the emails of Mr Kamara that he has, on his own, taken important decisions, such as where the appellant would stay.
20. As I recorded there was no submission of the note of the hearing and I find that the First-tier Tribunal Judge Monson made no error of law and the decision shall stand.

Signed

Date 3<sup>rd</sup> November 2015

Deputy Upper Tribunal Judge Rimington