



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

Appeal Number: OA/21350/2013

THE IMMIGRATION ACTS

Heard at Bradford

Decision & Reasons

On 11 August 2015

Promulgated

On 8 December 2015

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

OIFA

(ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mrs Chawdhery, instructed by Arndale solicitors

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, OIFA, was born in December 2012. He appeals against a decision of the respondent dated 8 October 2013 refusing him entry clearance to the United Kingdom as the adopted child of parents settled in this country (paragraph 310 of HC 395). The First-tier Tribunal (Judge Birkby) in a decision promulgated on 10 February 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. There are seven grounds of appeal. First, although the sponsors (Dr and Mrs OFA) had submitted documents in support of the application and appeal concerning adoption procedures in Kogi State, in Nigeria, neither

the respondent nor the judge found that this state had “enacted adoption laws” [8]. The ground of appeal appears to argue that the documents submitted had not been referred to in the decision. This is puzzling because the documents are referred to at [8] and were subjected to an analysis by the judge in which he sets out the deficiencies in the supporting documentation which led the ECO to refuse the application under paragraphs 310(ix), (x) and (xi) of HC 395.

3. Secondly, the judge considered that it was of “crucial importance in this appeal” whether the appellants and sponsor had met the specific requirements provided by the Adoption Act 2002 and the Adoptions with the Foreign Legal Element Regulations 2005 [28]. At [29], the judge wrote:

At the hearing on behalf of the Appellants Miss Chawdhery accepted that it was the law that all prospective adopting parents had to contact their local authority and/or registered agency and be assessed and passed by the adoption panel as suitable to adopt a child before travelling abroad to identify a child. It was accepted by Miss Chawdhery that that had not been done. Also before they travelled all prospective adopters had to obtain a Certificate of Eligibility from the Department for Education or Devolved Authority authorising them to contact the adoption authorities in a named country with a view to adopt a child. The prospective adopting parents had after that to travel to that country to undertake and complete all applicable procedures necessary to adopt under that country’s law. It was accepted that that was a statement of the law in the UK and although the Sponsors had travelled to Nigeria to undertake and complete procedures, they had not done so after they had obtained a certificate of eligibility in the United Kingdom. It was accepted that the Sponsors had to show evidence showing that they as adoptive parents had approached the authorities of the UK prior to the claimed adoption in Nigeria, but it was accepted also that that had not been done.

4. The grounds of appeal do not appear to dispute the legal requirements identified by the judge [5]. However, the grounds state that:

The Entry Clearance Manager (ECM) acknowledged that the letter from Leeds City Council had been provided but stated that they were dated after the date of the decisions (sic) and was therefore not available to the respondent at the time of the decision being made. It was submitted by Counsel for the appellant the purpose of the Adoption Law was that an overseas adoption does not take place where the prospective adopters are unlikely to be approved by a local authority in the UK, however, in this case the adopters were approved by Leeds City Council in the UK and therefore all the necessary checks and assessments have now taken place. Therefore, it would be nonsensical not to allow the appeal simply because Leeds City Council assessments were not undertaken prior to applying for the visa. A new application would be guaranteed to succeed but this would cause further delay in the young appellant’s life – he was only 2 years old – and he clearly needed to be in the UK with his adoptive parents who have been waiting eagerly for him.

5. I find that the ground has no merit. Irrespective of what the judge said regarding the credibility of the evidence submitted by the appellant, the appellant and his representatives acknowledge that the procedures

detailed by the judge in his decision had simply not been followed. The evidence that was needed appears to have been submitted following the application and original decision by the ECO but prior to the review carried out by the ECM. The ECM noted that “before travelling abroad to identify a child all prospective adopting parents must contact their local authority and/or registered agency and be assessed and passed by the adoption panel as suitable persons to adopt a child. This has not occurred as the letters from Leeds City Council are dated after the date of the decision and the date of the adoption.” It does not assist the appellant to argue that it would be “nonsensical” for the First-tier Tribunal to allow the appeal where required procedures have clearly not been followed as required by law. The findings made by the judge at [29] are determinative of this appeal notwithstanding the merits of any other grounds and, for that reason alone, the appeal to the Upper Tribunal cannot succeed.

6. Thirdly and fourthly, the grounds of appeal attack the judge’s assessment of credibility and the question as to whether or not this adoption was one of convenience only. It does indeed appear, as the grounds state [11], that the judge made an error of fact at [27] when he noted that the adoption certificate had been issued before the appellant’s birth in December 2012. The adoption certificate was issued on 22 July 2013 and the judge’s finding that “such a discrepancy clearly undermines the reliability of the documentation from Nigeria” is unsustainable. I note also that the judge elsewhere found in his decision that the two prospective adopters, Dr and Mrs OFA, “are genuine in their desire to adopt the appellant.” However, notwithstanding the judge’s unfounded concern regarding the date of the adoption certificate, the appeal cannot succeed for the reasons which I have set out above.
7. Grounds 6 and 7 are without merit. The grounds at [13] incorrectly state that the standard of proof in an appeal of this sort is that of “a reasonable likelihood” but that statement is incorrect. The judge correctly stated [4] that the standard of proof is the balance of probabilities. Ground 7 which asserts that the judge rejected “the probative value of the documentary evidence “... mainly on the basis of suspicion and surmises rather than solid evidence ...” does not stand up to any scrutiny. No details are provided and any reading of the judge’s decision shows that he took a fair and even-handed approach to the evidence adduced by both parties.
8. In conclusion, the appellant cannot overcome the difficulties described by the ECM in his review and more particularly described by the judge at [29]. For the reasons set out in that paragraph alone, the appeal fell to be dismissed. The judge’s Article 8 assessment [33] does not appear to have been challenged. I would say, however, that it is by no means clear that this adoption application is one of convenience or is in any way at all dishonest. The judge made a mistake as regards the date of the adoption certificate which appears to have led him to doubt the credibility of the application. He was wrong to do so. It may be the case that the sponsors will make a further attempt to bring the appellant to the United Kingdom and, if they do so, they would appear to be unlikely to encounter the same problems as regards adoption law in this jurisdiction which they previously

encountered. However, that is a matter for the sponsors and their legal advisers.

Notice of Decision

This appeal is dismissed.

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

Date 10 November 2015

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 10 November 2015

Upper Tribunal Judge Clive Lane