



IAC-FH-NL-V1

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

Appeal Numbers: OA/03075/2014
OA/03077/2014

THE IMMIGRATION ACTS

Heard at Field House

On 9 March 2016

**Decision &
Promulgated
On 13 April 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**JOSEPHINE NABAKOOZA
JONATHAN KAKOOZA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants: Ms J Heybrook of Counsel instructed by Kothala & Co (Harrow Road)

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

DECISION ON ERROR OF LAW

Details of Appellants

1. The appellants in this case are citizens of Uganda. The first appellant was born on 4 January 1996 and the second appellant is her brother born on 23 April 1998. The appellants sought entry clearance as the dependent

children of their mother, Rebecca Odoki, the sponsor, a British citizen. Those applications were refused by the respondent under paragraph 297 and paragraph 320(7A) of the Immigration Rules. The respondent also concluded that there were no exceptional circumstances that would justify granting leave outside Article 8.

2. The appellants appealed the refusals and their appeals came before Judge of the First-tier Tribunal Mr J S Hamilton. In a Decision and Reasons promulgated on 20 July 2015 Judge Hamilton dismissed the appellants' appeals under the Immigration Rules and under Article 8. However, the judge found that the respondent had not demonstrated that the appellants had "deliberately and dishonestly relied upon a forged death certificate in support of their applications".
3. The appellants appealed and permission was granted on the basis that it was arguable that in assessing Article 8 Judge Hamilton had failed to consider the impact on the second appellant of being separated from a sole surviving parent and that it was unclear whether the judge accepted that the father was dead. If that in fact was accepted this may have impacted on the assessment in relation to paragraph 297 of the Immigration Rules as indeed paragraph 297(i)(d) may be relevant.
4. Ms Fijiwala conceded before me that paragraph 297(i)(d) was material to the outcome of this appeal and that no finding had been made by the Judge of the First-tier Tribunal as to whether or not the appellants' father was dead or alive.
5. The respondent had submitted a Rule 24(3)(e) response. The respondent had sought to rely on the judge's asserted failure to provide adequate reasons for not concluding that the death certificate was a forgery given the document verification report. Ms Fijiwala conceded however that the case of **EG & NG (Upper Tribunal: Rule 17: withdrawal: Rule 24: scope) Ethiopia [2013] UKUT 00143** was relevant authority. At paragraph 46 and in the head note of that case the Upper Tribunal confirms that Rule 24 does not create a freestanding right of appeal and Ms Heybrook correctly confirmed that the respondent had not submitted an application for permission to cross-appeal.
6. I am satisfied that the judge failed to provide adequate reasons or indeed any findings in relation to the appellants' father which is material to the case. The judge had found at [39] and following that the sponsor's evidence was evasive and not candid. I accept that this appears to relate to the appellants' circumstances in Uganda. The judge found that the sponsor sought to embellish and exaggerate in order to assist the appellants' case. Significantly the judge found at [41] that the judge did not have a clear picture of the appellants' true circumstances in Uganda and therefore found that it had not been shown that the sponsor had sole responsibility for the appellants.

7. It was Ms Heybrook's contention however the judge found at [43] that 'it did not necessarily follow' that the judge had to reject the sponsor's evidence about the death certificate and the judge specifically found that in contrast to her other evidence the evidence she gave on this issue was "detailed, clear and seemed plausible". The judge went on to consider this issue at [43], [44], [45] and [46].
8. At [46] the judge stated that, "looking at the sponsor's evidence as a whole there is cause to be very suspicious about the reliability of her account". However the judge concluded that suspicion is not enough and when proving dishonesty the burden of proof lies on the respondent and therefore the judge reached the conclusion, noted above, that the appellants had not "relied upon a deliberately forged death certificate when making their application".
9. However, I do not accept Ms Heybrook's submission that given all of the judge's findings and given that the respondent had also verified as genuine the appellants' birth certificates (which specifically referred to their father as dead), it must follow that their father was deceased and therefore the appeals fell to be allowed under paragraph 297(i)(d).
10. The judge materially erred in failing to make a finding either way as to whether or not the appellants' father is deceased or not. Given that the judge made both positive and negative findings in relation to the sponsor's credibility it is not possible to extrapolate a finding either way as to whether the judge found the appellants' father to be deceased or not. As indicated above this is clearly material including as it potentially changes the entire nature of the appellants' case. I am satisfied that the decision of the First-tier Tribunal should be set aside.
11. In relation to the remaking of the decision under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 (b), the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal, given in particular the failure to make findings in relation to whether or not the appellant's father is dead.
12. I heard submissions as to whether any findings of fact should stand. Ms Fijiwala was of the view that the findings in relation to paragraph 297(i)(e) in relation to sole responsibility should be preserved as they may be relevant if the judge of the First-tier Tribunal found that the appellant's father is in fact not deceased. It was Ms Heybrook's submission that the appeal should be heard de novo. In the alternative, if I was not minded to remit the appeal for a fresh hearing it was her submission that equally if the findings in relation to 297(i)(e) were to be preserved equally the findings had to be preserved in relation to the respondent not discharging the burden in relation to the death certificate being a forgery.
13. I am of the view that the judge's failure to make adequate findings in relation to whether or not it was accepted that the appellant's father is

deceased has muddied the waters. It is not clear that if the judge had accepted that the appellants' father was deceased, that the judge would have also gone on to make the negative findings he did in relation to paragraph 297(i)(e). However, given the ambiguous findings in relation to the death certificate I am equally not satisfied that the findings in relation to the document verification report can stand.

Notice of Decision

14. The appeal is allowed. The decision of the First-tier Tribunal is set aside in its entirety. No findings shall stand. The appeal is remitted to the First-tier Tribunal (any London hearing centre) to any judge other than Judge C J Hamilton.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Hutchinson