



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/10987/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 4th May 2016**

**Decision & Reasons
Promulgated
On 20th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

EARL KATEY CARBOO
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

ENTRY CLEARANCE OFFICER, ACCRA

Respondent

Representation:

For the Appellant: Mr G Amadi, Counsel, instructed by Crome Legal Services
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge M A Khan (the judge), promulgated on 1 October 2015, in which he dismissed the Appellant's appeal on all grounds. That appeal was against the Respondent's decision of 13 August 2014, refusing to grant entry clearance under paragraph 297 of the Immigration Rules (the Rules).
2. On or soon after 23 May 2014 the Appellant had applied for entry clearance to join his mother (the sponsor) in the United Kingdom. In refusing the application the Respondent concluded that the sponsor did not have sole responsibility for the Appellant and nor were there serious

and compelling family or other reasons making his exclusion from this country undesirable.

3. The sponsor appeared in person before the judge. The judge found that the sponsor had not visited the Appellant in Ghana between 2003 (when she left the country) and 2011. He found that she then made five visits between 2011 and 2012, the last of these being in February 2012. He rejected the sponsor's explanation as to why she had not seen the Appellant more often and concluded that the latter was not top of the list of priorities for the former (paragraph 27). He found that a medical letter provided to show that the Appellant's great grandparents were ill was deficient and attracted little weight. At paragraph 29, whilst he accepts that the sponsor had provided financial support to the Appellant, he finds that the sponsor did not have sole responsibility for him, and he then directs himself to the relevant case of TD (paragraph 297(i)(e): sole responsibility) Yemen [2006] UKAIT 00049.
4. In paragraph 32 the judge concludes that there were no serious and compelling family or other reasons. As to Article 8, the judge believed that the relevant date for consideration of the facts was that of the hearing. He rejects the Article 8 claim.

The grounds and grant of permission

5. Ground 1 asserts that the judge made a factual error in finding that the sponsor last went to see the Appellant in February 2012, when in fact she went in December 2013 too. Ground 2 asserts that the judge failed to consider the case of Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 00088(IAC) when assessing the issue of sole responsibility. Ground 3 asserts that the judge erred in considering the Article 8 claim as at the date of hearing.
6. Permission to appeal was granted by First-tier Tribunal Judge Shimmin on grounds 1 and 2, but refused on ground 3.

The hearing before me

7. Mr Amadi confirmed that no application had been or was being made to renew ground 3. I found this somewhat surprising given the obvious error by the two First-tier Tribunal Judges. In any event, ground 3 is not before me.
8. Mr Amadi relied on grounds 1 and 2. The sponsor had in fact made six visits to the Appellant, not five. The sponsor's passport had been shown to the judge and this showed the relevant stamp into Heathrow airport in January 2013. In respect of the sole responsibility issue, the judge erred in not considering it in light of section 55 of the Borders, Citizenship and

Immigration Act 2009. The judge should have adjourned for the sponsor to obtain better medical evidence.

9. Mr Bramble submitted that there was no factual error as the sponsor has said in her oral evidence that she last went to Ghana in February 2012. If there was an error, it was immaterial. The judge was entitled to attach little weight to the medical letter. The judge did not mention “best interests”, but had taken all relevant matters into account. He was wrong about the date for consideration of the facts, but this was immaterial.

Decision on error of law

10. I have to say that the judge’s decision is not a particularly well-written piece of work. That does not mean of course that it contains material errors of law.
11. There is no material error in respect of the sole reasonability issue.
12. The judge was entitled to find that the sponsor had not visited the Appellant since February 2012. I have checked the judge’s Record of Proceedings and the note of hearing produced by the Presenting Officer (provided to Mr Amadi and myself by Mr Bramble). Both of these documents clearly show that the sponsor herself stated that she had not been to Ghana since February 2012. It is of course possible that either the Presenting Officer or the judge misheard the oral evidence. However, it is very unlikely, I find, that both made the same mistake about the very same aspect of the evidence. In addition, I have no further evidence from the sponsor as to what she asserts was in fact said at the hearing. Further, there was clear documentary evidence before the judge (in the form of flight booking confirmation) as to the trip in February 2012. By contrast, the sponsor’s passport (which I will accept was shown at the hearing) showed only an entry stamp into Heathrow airport on 18 January 2013. This in itself did not of course prove that the sponsor had returned from Ghana. In view of the foregoing, the judge made no error of fact. The conclusions he drew from the visits made by the sponsor were open to him.
13. Even if there had been an error of fact amounting to an error of law, it was not material. The judge clearly rejected the sponsor’s evidence as to why more visits had not been made in the very lengthy period between 2003 and 2011 (see paragraph 27). Adding a single additional visit in December 2013 would not have altered the overall conclusion of the judge.
14. I therefore reject ground 1.
15. As to ground 2, it is misconceived insofar as it purports to relate to the sole responsibility issue. Mundeba is directed towards paragraph 297(i)(f), not (e).

16. It is right that the judge does not expressly refer to the Appellant's best interests and welfare. He should have done so, as these are part and parcel of the assessment under paragraph 297(i)(f). Having said that, the judge found that the Appellant had lived with his great grandparents since 2003 (a period of some eleven years as at the date of decision). The Appellant had not lived with the sponsor since the age of seven. He found that the Appellant had been looked after and provided with all relevant facilities. He had already found that the Appellant was not top of the sponsor's list of priorities. Importantly, the judge was entitled to have placed little weight on the medical evidence. Having examined for myself the only medical evidence I have in my papers, it is of very poor quality, consisting of (as the judge notes) a handwritten note without naming the author or subject, or any indication of functional impairment. It appears to relate to one individual only. The judge was therefore entitled to conclude (at least implicitly) that no care concerns arose in respect of the Appellant's wellbeing.
17. There is no suggestion in the grounds or indeed the evidence that I have can see on file to indicate the existence (as at the date of decision) of any other serious and compelling factors weighing in the Appellant's favour.
18. Taking the judge's decision in the round, including the findings relating to sole responsibility, the substance of the Appellant's best interests have been adequately dealt with through the prism of paragraph 297(i)(f).
19. As stated previously, ground 3 is not before me. Even if it had been, the relevant matters were dealt with in substance by the judge when he considered paragraph 297(i)(f) (see above). There is nothing which Article 8 could add beyond the scope of the Rule.
20. There is no merit in the suggestion that the judge was obliged to have adjourned the appeal of his own volition in order for the sponsor to obtain further and better medical evidence. The sponsor herself raised the question if the great grandparent's claimed ill-health in her statement provided with the notice of appeal in September 2014. The appeal was heard almost exactly a year later. Standard directions as to the provision of evidence had been sent out to the sponsor. There was every opportunity for her to have obtained proper medical evidence prior to the hearing. She did not seek an adjournment at the hearing. There was, as far as I can see, no explanation from the sponsor as to why better evidence had not been provided at any stage, nor that any such evidence was 'in the pipeline', as it were. In these circumstances the judge did not err in failing to consider adjourning the appeal.
21. The Appellant's appeal therefore fails.

Anonymity

22. I make no direction. None has been sought and none is appropriate.

Decision

**The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
The decision of the First-tier Tribunal stands.**

Signed

Date: 19 May 2016

H B Norton-Taylor

Deputy Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

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

Signed

Date: 19 May 2016

Judge H B Norton-Taylor

Deputy Judge of the Upper Tribunal