



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/10670/2015**

**Appeal Numbers:**

**H**

**U/10673/2015**

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**Decision & Reasons  
Promulgated**

**On 12 September 2017**

**On 18 September 2017**

**Before**

**UPPER TRIBUNAL JUDGE CHALKLEY**

**Between**

**EBRIMA SUWANEH  
ALHAGIE SUWANEH  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD**

Respondent

**Representation:**

For the Appellants: Mr Ali of Counsel

For the Respondent: Mr Mills, Home Office Presenting Officer

**REASONS FOR FINDING AN ERROR OF LAW**

1. The appellants were born on 9<sup>th</sup> September 1997 and 3<sup>rd</sup> April 1999, respectively, and are citizens of Gambia. It is claimed on their behalf that they are brothers and that Basidy Suwaneh (“the sponsor”) is their father.

2. They applied for entry clearance to settle with their parents in the United Kingdom, but their applications were refused on 8<sup>th</sup> October 2015. The appellants appealed and their appeal was heard by First-tier Tribunal Judge Thomas at Sheldon Court on 22<sup>nd</sup> February 2017.
3. The respondent's refusal of entry clearance highlighted the respondent's reasons for refusing the application under paragraph 297 of Statement of Changes in Immigration Rules HC 395, as amended ("the Immigration Rules"). The refusal of entry clearance for Ebrima Suwaneh, the first named appellant, dated 8<sup>th</sup> October, 2015 said:-

*"You have applied to join your father, Basidy Suwaneh, who I shall refer to as your sponsor. You have stated on your application form that your sponsor has been in the UK since December 2003.*

*You have not produced sufficient documentary evidence to confirm your relationship with your sponsor. The birth certificate you have provided was not registered until 11/01/2010 – a significant time after your claimed birth. You have produced no reasonable explanation for this delay in registering your birth. There are a number of documents that you could have submitted with your application to confirm your relationship. The absence of such documents leads me to doubt your family circumstances are as stated. Furthermore I note you have provided only one photograph that has been taken with your sponsor. I am therefore not satisfied that this photograph in isolation satisfactorily evidences that you and your sponsor are related as claimed.*

*In support of your application you have provided a letter from your sponsor. Your sponsor states in the letter, "since we all left for the UK, they were in my dad's guidance". I note that your mother was granted entry clearance to join your sponsor in 2010. Your sponsor goes on to state that your mother suffers the worst due to the separation, which is causing her stress all the time. The letter also states that your grandfather, due to his health, is no longer able to look after you properly. Your sponsor also states in his letter that your sibling (Lamin Suwaneh) and aunt (Aja Ceesay) is your main point of contact in Gambia. The only evidence that you have provided to demonstrate what your current living arrangements are is the letter mentioned above.*

*I also note you have submitted money transfer slips addressed to your elder sibling (Lamin Suwaneh); however, I must consider whether your sponsor has had sole responsibility for your upbringing. Sole responsibility is not simply made up of financial contributions. It encompasses the whole panoply of essentials for the proper upbringing of a child including accommodation, material provision, discipline and guidance in such matters as social, moral and religious affairs.*

*I have also taken into consideration the call records for your sponsor between January 2015 and June 2015. However, I am aware your sponsor has other family members in Gambia, and there is no satisfactory evidence that these calls were made to you. Therefore I cannot be satisfied the above call records demonstrate regular contact between you and your sponsor throughout the period of your relationship. I also note your sponsor states that he contacts you via the applications Viber and Skype. However no satisfactory evidence has been provided to confirm this.*

*I have also taken into consideration the copy of a calling card and three mobile top up vouchers, however there are no names or personal details on these and of themselves do not demonstrate what calls the cards were used for, or even if the cards were brought by and used*

by you or your sponsor. I therefore cannot be satisfied they demonstrate the stated phone contact.

Furthermore, I need to establish whether your sponsor in the UK has had sole responsibility for you. As a parent claiming to have 'sole responsibility' for you, your sponsor must satisfactorily demonstrate that he has, usually for a substantial period of time, been the main person exercising parental responsibility. Your sponsor must show that he has had, and still has, the ultimate responsibility for the major decisions relating to your upbringing, and provides you with the majority of the financial and emotional support you require. It must also be shown that he has had and continues to have care and control over you. Your sponsor has not lived with you for almost 12 years, since you were four years old, and there is no satisfactory evidence as to how many times he has been to visit you or that he has had any involvement in your life. Therefore given the duration you have not lived with the sponsor and the lack of evidence of his involvement in your life, I am not satisfied that he has had sole responsibility for you now. I am not satisfied that your current arrangements are not able to continue. I am therefore not satisfied that the parent you are applying to join in the UK is your sole surviving parent nor that he has had sole responsibility for your upbringing. I am also not satisfied that there are serious and compelling family or other considerations that make your exclusion from the UK undesirable, as I am also aware your mother left you to join your sponsor in 2010. Paragraph 297(i)(e)(f).

Furthermore, I note you state your biological mother is also currently living in the UK living with your sponsor. Our records show that your mother holds limited leave to remain. Therefore I am not satisfied that both your parents are present and settled in the United Kingdom;; or that the one parent who is present and settled in the United Kingdom has sole responsibility for your upbringing. 297(i)(a)(e)

I have considered your rights under Article 8 of ECHR. Article 8 of the ECHR is a qualified right proportionate with the need to maintain an effective immigration and border control and decisions under the Immigration Rules are deemed to be compliant with human rights legislation. Given the concerns raised above regarding the relationship, I am not satisfied that you have a family life with the sponsor. As this is the case, Article 8(1) does not apply to you. However, if you do have a family life with the sponsor, I am satisfied the decision is proportionate under Article 8(2). I note that no satisfactory reason has been put forward as to why the sponsor in the UK is unable to travel to Gambia to be with you. I am therefore satisfied the decision is justified by the need to maintain an effective immigration and border control.

[Omitted from the copy supplied by the Home Office] contained in Article 8 of the European Convention on Human Rights might warrant a grant of entry clearance to the United Kingdom outside the requirements of the Immigration Rules. Following a thorough assessment of the application I am satisfied that there is no basis for such a claim. Additionally, as you applied as a child I have a duty to safeguard children under Section 55 of the Borders, Citizenship and Immigration Act 2009 and have considered your situation in light of this. It has therefore been decided that there are no exceptional circumstances in this case. Consequently, you will not be issued entry clearance outside the Rules.

I have therefore refused your application because I am not satisfied, on the balance of probabilities, that you meet all of the requirements of the relevant paragraph of the United Kingdom Immigration Rules.”

4. That was the Notice of Refusal for Ebrima Suwaneh. I do not have a copy of the refusal for his brother, but it appears from the Entry Clearance Manager's appeal review that the decision in respect of his brother, the second applicant, was based on the same facts.

5. The judge decided that the principle issue in these appeals was the relationship between the sponsor and the appellants. The appellants relied on birth certificates. These birth certificates were, apparently, issued in 2010, more than ten years after the appellants' births.
6. Unfortunately, the birth certificates were not before the judge. The judge refers to having considered letters from the Registrar certifying the birth certificates as being genuine, but without sight of the birth certificates it is not possible to know whether the letter from the Registrar relates to the birth certificates which were considered by the Entry Clearance Officer or not. The judge concluded that the birth certificates were not reliable and that looking at the other documents in the round the judge did not believe that they were sufficient to discharge the burden of proof on the issue of relationships.
7. The judge refused the appeals.
8. The appellants appealed and on the basis that the judge erred by failing to apply the correct standard of proof in assessing the birth certificates, perversity by requiring evidence of birth records in addition to birth certificates and the Registrar's letter and in not balancing the birth certificate with evidence of genuine parental relationship accepted by the Entry Clearance Officer and the Entry Clearance Manager. Mr Ali pointed out that it is clear from the judge's decision that the judge was seeking an explanation as to why the births had not been registered earlier, but the sponsor, the appellants' father, gave an explanation in his witness statement and the letters from the Registrar also give an explanation. The sponsor explains that in the Gambia it is not common to register births of children as it is done in the United Kingdom. The only reason to register the births was to apply for passports and he applied in 2010 knowing that he would need birth certificates to obtain passports for his sons. The Presenting Officer suggested that there was no error in the determination. The relationship between the appellants and the sponsor was the issue in this appeal and the response from the Registrar in Gambia at page 9 of the bundle does not explain why the births were not registered until more than ten years after the births.
9. I have concluded that the judge has materially erred in law.
10. The judge considered the letter from the Registrar appearing at page 9 of the appellants' bundle which refers to a birth certificate numbered [ ] in the name of Ebrima Suwaneh and also to a similar letter from him at page 17 ("the letters") where the Registrar deals with a birth certificate numbered [ ] in the name of Alhagie Suwaneh. Unfortunately, neither birth certificate was in the respondent's bundle or the appellants' bundle, so that it was quite impossible for the judge to have considered the evidence which was placed before him. That must amount to an error of law.

11. I believe that the judge further erred by requiring evidence of the source of the information that enabled the official to issue certificates so long after the births. An obvious explanation would be that the Registrar relied on information supplied to him by the children's father. In the letters, the Registrar says that the information is contained in records under the custody of the Registrar and the judge complains that copies are not before him. With respect, it was incumbent upon the judge to look at all the evidence in the round and to recognise that information before the Registrar would clearly remain in his possession.
12. Unfortunately, the judge did not deal with the other requirements of the Immigration Rules as an alternative. Had the judge done so, any errors of law on the judge's part might not have been material.
13. I have concluded that I must set aside the judge's determination.

### **Notice of Decision**

14. I have given consideration to retaining the appeal in the Upper Tribunal and deciding the appeal myself at an adjourned hearing. Unfortunately, experience shows that this course can result in very long delays and I have concluded, therefore, that the interests of justice require that I remit the appeal to the First-tier Tribunal for hearing afresh by a judge other than Judge D A Thomas. Two hours should be allowed for the hearing of the appeal. An interpreter is not required.

***Richard Chalkley***  
Upper Tribunal Judge Chalkley

**Date: 15 September 2017**