



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

Appeal Number: OA/00806/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 23rd May 2017**

**Decision & Reasons Promulgated
On 8th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**[B M]
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

and

ENTRY CLEARANCE OFFICER - KINGSTON

Respondent

Representation:

For the Appellant: Mr S Vokes of Counsel instructed by French & Company Solicitors

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge V A Cox of the First-tier Tribunal (the FtT) promulgated on 24th May 2016.

2. The Appellant is a female Jamaican citizen born [] 2002 who applied for entry clearance to enable her to join her mother [SB] (the Sponsor) who is settled in the United Kingdom.
3. The application was refused on 9th October 2014, the Respondent not being satisfied that the Sponsor had exercised sole responsibility for the Appellant's upbringing, and there were no serious and compelling family or other considerations which made exclusion of the Appellant undesirable. The appellant was therefore refused with reference to paragraph 297(i)(e) and (f).
4. The appeal was heard on 19th May 2016 and dismissed.
5. Permission to appeal was granted by Deputy Upper Tribunal Judge Chapman and I set out below, in part, the grant of permission which summarises the grounds seeking permission to appeal;
 2. The grounds in support of the application for permission to appeal assert that the judge erred materially in law (i) in despite stating at [56] that she had not placed weight on the letter, or its contents, at [45] she did place weight on an assertion that the evidence contained in an unseen letter from [CW] dated 12th July 2014 submitted by the previous representatives, which was not before the judge as no copy had been retained and no Respondent's bundle had been prepared, was inconsistent with the VAF. It was asserted that this forms an important building block in the judge's assessment that the Sponsor did not have sole responsibility for the Appellant; (ii) in failing to give adequate reasons for rejecting the assertion that the Appellant moved to live with [CW] in 2014 and failed to take account of the evidence relating to telephone calls, which ceased to [PR] in March 2014, consistent with the Sponsor's evidence that she had fallen out with [PR] over the care of the Appellant which necessitated a change of carer and other material evidence relating to financial support and the reasons for the separation between the Sponsor and the Appellant and its continuation and the Appellant's unmet needs and failed to conduct a full proportionality assessment outside the Rules; (iii) in failing to take into account and/or resolve conflicts of fact or opinion on material matters viz the acknowledged inconsistencies in the ECO interviews of [PR] (53) and (iv) in committing a procedural irregularity at (54) where she found that the Sponsor could have provided a full and detailed statement from [PR], in circumstances where the interview transcripts were only disclosed on the morning of the hearing, contrary to rule 23(2)(c) of the Procedure Rules and it was procedurally unfair of the judge not to adjourn given her view that a statement was required. A statement from [PR] is attached to the grounds of appeal.
 3. I consider that the matters raised in the grounds of appeal disclose arguable errors of law in the decision and reasons of the First-tier Tribunal Judge and I grant permission to appeal on all grounds, particularly ground 4, given that the evidence in the form of interview transcripts between the ECO and [PR] served only on the morning of the hearing proved crucial in the judge's assessment in the credibility of the Sponsor and her findings regarding sole responsibility.

6. Following the grant of permission the Respondent submitted a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, contending, in summary, that the grounds disclose no error of law. It was contended that the FtT had not placed weight upon the letter from [CW] which had not been produced by either party to the FtT. It was contended that the FtT had given adequate reasons for finding that the Sponsor did not have sole responsibility for the Appellant's upbringing.
7. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

8. Mr Vokes relied upon his skeleton argument. It was submitted that the FtT had placed weight upon [CW]'s letter dated 12th July 2014 which had not been produced, as the FtT had found the letter to be inconsistent with the VAF, and the letter from [CW] that had been produced to the FtT, dated 9th February 2016, was not inconsistent with the VAF.
9. It was submitted that transcripts of a telephone conversation between the representative of the Respondent and [PR] were produced at the hearing. It was procedurally unfair of the FtT not to have offered to the Appellant an adjournment if it was thought that a detailed statement from [PR] was required to explain the nature of her telephone conversation with the Respondent's representative. The FtT had commented that it would have been possible to have obtained a full witness statement from [PR], but this was not possible prior to the hearing, as the contents of the telephone interview were only produced at the hearing. It was not a matter for the Appellant's representative to request an adjournment, as the representative had no knowledge of the finding that the judge intended to make.
10. It was submitted that the FtT had erred in paragraph 57 in not attaching weight to the letter from [CW] because his signature could not be compared with any other evidence. Mr Vokes submitted that there was no other letter to compare this signature against.
11. The FtT had at paragraph 58 referred to [CW]'s letter as self-serving, but had failed to give reasons for reaching that conclusion.
12. The FtT had not taken into account evidence which indicated that when the application for entry clearance was lodged, the Appellant was residing with [CW], and the Sponsor was sending money to him for the benefit of the Appellant.
13. Mr Vokes submitted that the FtT had failed to make a finding in relation to financial support that the Sponsor had provided for the benefit of the Appellant.

14. Mr Bates relied upon the rule 24 response. With reference to the letter from [CW] which has not been produced to the FtT, the FtT had not erred because no reliance had been placed upon it and the FtT had made this clear in the decision. With reference to the signature of [CW], the FtT had noted that no identification evidence had been produced which would be the normal method of verifying a signature and identity of an individual who had written a letter to the Tribunal.
15. Mr Bates submitted that the FtT at paragraph 45 when finding that [CW]'s letter was inconsistent with the VAF, was referring to a letter written by [CW] dated 9th February 2016 at page 42 of the Appellant's bundle. The inconsistency was that the VAF had stated that the Appellant had been living with [CW] for five months, and as the VAF was dated 1st September 2014, this would have meant that the Appellant was living with him from 1st April 2014 whereas [CW] in his letter had stated that he became her guardian in May 2014.
16. With reference to the transcript of the telephone interview produced at the date of the hearing, Mr Bates pointed out that the Appellant's representative had not applied for an adjournment and did not object to the transcript being considered in evidence. There was therefore no procedural unfairness.
17. In response, Mr Vokes pointed out that the money transfers to [CW], from the Sponsor, confirmed his address, which was the same address as contained in his letter at page 42 of the Appellant's bundle. Evidence of financial support is an important consideration when considering sole responsibility and the FtT had erred on this point.
18. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

19. The FtT did not err as contended in ground 1 by placing weight upon a letter from [CW] dated 12th July 2014 which was not before the Tribunal. The FtT specifically confirmed at paragraph 56 that no weight had been placed upon this letter, and I accept that to be the case. In my view the FtT at paragraph 45 when commenting upon the "evidence from the VAF and that from [CW] is inconsistent" was referring to the letter from [CW] dated 9th February 2016 which is included in the Appellant's bundle of documents at pages 42 and 43. It was suggested by the Presenting Officer before the FtT, at paragraph 33, that this letter was inconsistent with the VAF, and the FtT makes reference at paragraph 45 to the signature of [CW]. His signature was contained in the letter dated 9th February 2016, and the FtT could not have been referring to the letter dated 12th July 2014, because it had not been produced and therefore the FtT could not have seen the signature.
20. I conclude that the FtT did not give weight to matters not before it and therefore did not err in law on this issue.

21. The second ground contends that the FtT did not provide adequate reasons at paragraph 45 as to why the letter from [CW] is inconsistent with the VAF, and at paragraph 44 failed to give adequate reasons as to why it was not accepted that at some point in 2014, prior to refusal of entry clearance, the Appellant moved to live with [CW].
22. The FtT was entitled to note the absence of any identity documents submitted on behalf of [CW] containing his signature. Letters written by other individuals, such as [LB], and [AD], who are the Sponsor's father and cousin, were supported by copies of passports, containing the signatures of the authors of the letters. No such identity document was submitted in [CW]'s case. However, I do find merit in the argument that adequate reasoning was not given by the FtT in relation to the findings contained at paragraphs 44 and 45.
23. The FtT does not explain the inconsistency between [CW]'s letter dated 9th February 2016, and the VAF. Mr Bates in his oral submissions suggested that the inconsistency was that in answer to question 21 of the VAF, the Appellant stated that she had resided with [CW] for five months, and the VAF was dated 1st September 2014. That would mean that she had resided with him from 1st April 2014. The letter from [CW] stated that he had been the Appellant's guardian since May 2014. This in my view is not a particularly significant inconsistency, and in any event no adequate reasons were given by the FtT for finding the VAF and the letter from [CW] to be inconsistent.
24. At paragraph 44 the FtT finds that the Appellant did not live with [CW]. There does not appear to be consideration of evidence pointing to a contrary finding. For example, the FtT does not consider a letter from the Sponsor's father [LB] commencing at page 95 of the Appellant's bundle, in which he confirms taking money from the Sponsor, and handing this over to [CW] when he visited Jamaica. The letter refers to [CW] as the Appellant's guardian, and makes reference to giving him money for the benefit of the Appellant in November 2014 and September 2015.
25. There is also a letter from [AD] dated 23rd March 2016 commencing at page 104 of the Appellant's bundle that also refers to travelling to Jamaica and giving money to [CW] for the Appellant's benefit.
26. In addition, there was evidence of numerous phone calls made to [PR] until March 2014, but not thereafter, which lends some support to the Sponsor's evidence that [PR] ceased being the Appellant's carer at that point, and [CW] took over.
27. There is also evidence of money being sent direct from the Sponsor in the United Kingdom to [CW], and copies of the remittance slips are at pages 87, and 89-90 of the Appellant's bundle.
28. The evidence referred to above tends to support the Sponsor's evidence that before the application for entry clearance was made on 1st September

2014, the Appellant was living with [CW], and the Sponsor was providing financial support to him, for the benefit of the Appellant. In my view it is an error of law not to analyse potentially material evidence, and the FtT has failed to conduct such an analysis and provided inadequate reasons for the conclusions reached at paragraphs 44 and 45 of the decision, in relation to [CW]. I find that this error is material, as it was the Sponsor's evidence that in the months preceding the application for entry clearance, the Appellant had been living with [CW], the Sponsor was sending financial support, and was taking the important decisions in relation to the Appellant. The finding by the FtT that the Appellant did not live with [CW], adversely affected the Sponsor's credibility, and I find also infected the findings subsequently made by the FtT.

29. At paragraph 54 the FtT found that it would have been "a straightforward matter for the Appellant and the Sponsor to have provided a full and detailed statement from [PR]". There is an assertion made in the refusal decision that [PR] had told the Respondent's representative in a telephone conversation that the Appellant had continued to live with her. A letter from [PR] dated 15th December 2014 was contained at page 39 of the Appellant's bundle, and this was written after the refusal decision. This simply states that she told the Respondent's representative that the arrangements regarding the Appellant were "not the same since March 2014". What was not possible for the Appellant, was to obtain a detailed statement from [PR] in relation to the contents of the telephone interview that took place on 9th October 2014, because this was only produced at the hearing before the FtT on 19th May 2016. It is of course correct that the Appellant's representative did not oppose that interview record being submitted into evidence, and did not request an adjournment. Notwithstanding that, it is my view that the FtT erred by placing substantial weight upon the record of the telephone interview, when it was clear that this was not accepted by the Appellant, and the Appellant was not given an opportunity to clarify with [PR], what it was contended that she had said in that telephone interview with the Respondent's representative.
30. In my view the FtT made cogent findings at paragraphs 47-49 in relation to the Sponsor's lack of contact with the Appellant's school, but I do find that the conclusion made that the Appellant did not live with [CW], is not adequately reasoned, and material evidence has not been analysed. Therefore the FtT materially erred in law on this point, and I cannot be satisfied that this conclusion did not in fact infect other findings, in relation to credibility of the Sponsor.
31. I therefore find because of the error of law described above, the decision of the FtT is unsafe and must be set aside.
32. When I indicated at the hearing that I was reserving my decision in relation to error of law, both representatives indicated that if an error was found as contended by the Appellant, the appropriate course would be to remit the appeal back to the FtT for a fresh hearing.

33. I have taken into account paragraph 7.2 of the Senior President's Practice Statements, because credibility is in issue, and there is a substantial fact-finding undertaking, I consider it is appropriate to remit this appeal back to the FtT to be decided afresh with no findings preserved.
34. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FtT Judge other than Judge V A Cox.

Notice of Decision

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

Anonymity

The FtT made no anonymity direction. There has been no request for anonymity and I see no need to make an anonymity order.

Signed _____ Date 30th May 2017

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FtT.

Signed _____ Date 30th May 2017

Deputy Upper Tribunal Judge M A Hall