



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03589/2017

THE IMMIGRATION ACTS

Heard at Field House
On 27 March 2018

Decision & Reasons Promulgated
On 15 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

H W A
(ANONYMITY DIRECTION HAS BEEN MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Akohene, Solicitor, Atlas Law Practice, London

For the Respondent: Mr Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 9 September 2003 and is a citizen of Ghana. She appealed against the decision of the respondent dated 23 January 2017 refusing her entry clearance to settle in the United Kingdom with her sponsor, [SN] under paragraph 297 of the Immigration Rules and on human rights grounds. Her appeal was heard on the papers by Judge of the First-Tier Tribunal Walker on 14 September 2017. It was dismissed in a decision promulgated on 28 September 2017.

2. An application for permission to appeal was lodged and permission was granted by First-Tier Tribunal Judge Saffer on 10 November 2017. He found that it is arguable that there has been an inadequate assessment of the evidence and inadequate findings regarding the question of sole responsibility and that all the grounds may be argued.
3. There is a Rule 24 response on file and this states that although the respondent considers that the explanation of the issues raised in the grounds of appeal are not wholly accurate, she accepts that the Judge's overall acceptance of the appellant's appeal does not properly and adequately deal with relevant matters and therefore the respondent does not oppose the appellant's application for permission to appeal the Judge's decision and invites the Tribunal to give an opportunity for the appellant's evidence to be fairly considered.
4. I found that there was a material error of law in the First-Tier Judge's decision on the grounds on which permission was granted and I set the decision aside and directed a second stage hearing. It is this second stage hearing that I am dealing with today.

Background

5. The appellant's sponsor is her mother [SN]. She is in the United Kingdom and has been for over 10 years. She does not hold refugee status in the United Kingdom so the requirements of paragraph 252D of the Immigration Rules cannot be satisfied. The application has therefore been considered under paragraph 297 of the Immigration Rules. Her father is [MW] and is named on the appellant's birth certificate. He lives in Ghana. The appellant states that she sees her sponsor annually and her legal guardian with whom she stays is [GN] who lives in Ghana and is the appellant's aunt on her mother's side. There is a letter from the sponsor stating that [BD] has authority to act in all matters regarding the appellant. The respondent found that all the terms of the relevant paragraph had not been satisfied. The appellant's rights were then considered under Article 8 of ECHR and the respondent found that the appellant does not have family life with her sponsor, but even if she has, no satisfactory reason has been put forward as to why her sponsor in the UK is unable to travel to Ghana to be with the appellant. It was found that there are no exceptional circumstances.

The Hearing

6. The appellant's sponsor [SN] appeared for this second stage hearing. She took the stand and gave her address as [- Road], London. She asked that her statement at page 1 of the appellant's bundle be used as evidence for the hearing.
7. The appellant's representative asked the sponsor if she was in a relationship with her daughter's father when the appellant was born. She said she was not married to him but he was her boyfriend. She said he was not present at the birth, he was out of the country at the time looking for a job. She was asked when he came back to Ghana and she said she cannot remember but about a week after she had the appellant he and his mother came to name the child. She was asked if she and the appellant and her boyfriend ever lived together as a family and she said they did not and she did not see her daughter's father again after he came to name the child. She said he was living in a town in Ghana and then moved to a city in Ghana and she said she did not see him

before she left Ghana and has not seen him since she left Ghana. She said she had been concerned about this but it was not a very strong relationship. She said she would have liked the appellant to see her father and she was asked if she had tried to find him. She said when he was in Kumasi she contacted his mother but she would not give her his address or phone number.

8. The representative asked the sponsor about travelling to the United Kingdom in 2005. He asked her why she did this and she said she was visiting and she intended to stay for six weeks. She was asked why she overstayed and she said she was visiting someone she had known when she was in school and he had said that he liked her and he would not let her go back to Ghana. At that time the appellant was two years old and she said she had explained to this man about her daughter. She said he had told her that he had come from Germany to the United Kingdom and was an EU citizen so even if she overstayed he would make sure everything was alright. She said he had also promised to look after the appellant.
9. The sponsor rented a house in October 2009 and she was asked why she did not ask the appellant to come over then. She said she had got married but her husband had told her to be patient so she did not do anything. She was asked why she applied in 2016 for her daughter to come to the UK and she said because she was no longer in a relationship with this man. She said that if she ever mentioned bringing the appellant to the United Kingdom he would get angry. She said she had become pregnant to this man but had lost the child and could not get pregnant again so her marriage broke up.
10. The representative asked the appellant about coming to the United Kingdom in 2005 and asked her how she had supported the appellant from then on. She said her parents had been alive and they had looked after the appellant and her husband had given her money to support the appellant. I was referred to money transfers from 2012 to 2016. There is evidence of these on file. She said she had sent other money too through family members.
11. She was asked why she had sent money to [GN] and she said all the money was to go to [GN] but sometimes [GN] was not around so she would send it to other family members to give to [GN]. She said her parents had died in 2011 and she then took full responsibility for the appellant.
12. The solicitor referred to the sponsor's statement and asked her if she speaks to her daughter every week. She said she telephones her using a phone card so she has no evidence about that but she has now started to use WhatsApp and Vyber. She said she calls her sister and she puts the appellant on the telephone. She was asked what she talks to the appellant about and she said she reassures her that she loves her and hasn't rejected her. She was asked how her daughter responds and she said she feels reassured and she said she has told her daughter that she will bring her over to the United Kingdom. She was asked if she speaks to [GN] and she said she does and she was asked what she speaks to her about. She said she asks about the appellant's development socially, her school, her potential and other things and whether she is happy or not. She said she asks about her friends and she said [GN] has said that the appellant cries for her mother a lot.

13. The appellant was asked if she has had direct contact with the school or the teachers and she said when her father died in 2011 she went home and went to the school and got teachers' numbers so she could contact them. She said in 2014 her mother died and she went home and visited the school to update her information about the appellant's development.
14. It was put to her that she has had residence in the United Kingdom since 2009 and she was asked why she waited two years before going out to see her daughter. She said she had not been working and was dependent on her husband and he controlled the money.
15. There is a letter on file from the appellant's father dated in March 2017. She was asked how she had contacted him. She said that when the appellant was nine or ten he went to look for her and of course did not know her, but she said that her sister had got an address for him at that time.
16. The Presenting Officer cross-examined the sponsor asking her about the appellant's father. He put to her that the appellant's father came with his own mother to register the appellant's name and the next time he saw her she was nine years old. He put to her that that means he has seen her twice in her life. She said that is correct. She said when [GN] had looked for him she had found out he was in Kumasi with another woman. She said he had moved there to look for work.
17. The refusal letter is dated 23 January 2017 and it was put to her that the appellant's father's consent letter is dated 31 March 2017, two months later. One of the things mentioned in the refusal letter is that there is no consent from the appellant's father, to the appellant coming to the United Kingdom and the appellant's father's letter must go against her credibility as there has been no contact from her father since the appellant was nine years old. The sponsor said that when the application was refused one of the things mentioned was that the appellant was being brought to the United Kingdom without her father's consent and that is when her sister contacted his mother to get his address. He put to her that it is not credible that there was no contact for nine years and then suddenly a letter appears. She said it was because he had moved to Kumasi and that he was not interested in her child. It was put to her that her solicitor had said to her: "Have you been able to contact the father of the appellant since her birth?" The sponsor's answer was that she could not get in touch with him and she did not see him again before she travelled to the United Kingdom. She said that is correct and her sister contacted his mother not him. She was asked if she has always known where his mother lives and she said she lives in the same place as they do in Ghana. She said that his mother had not been sure of his address in Kumasi but she had managed to find him.
18. The Presenting Officer asked her about evidence to show that she is in contact with her daughter. He asked if she has any cards that her daughter has sent her and she said they WhatsApp each other but she had no WhatsApp evidence with her. It was put to her that her sister [GN] deals with the appellant's day to day requirements and he asked her why [GN] cannot keep doing that. She said that although her sister looks after her she, the sponsor pays for all of her financial care as her sister does not work.

She said the money she sends goes to the appellant but also to [GN] and her children to help her with her rent. She said she sends money for school trips, hospital appointments and anything unusual and it was put to her that there is no evidence of any remittances after 2016/2017. The last payment was in October 2017 which is five months ago and she was asked if she has sent any money since then. She said she had had a major operation and was not working so she paid nothing through the money exchange. She said she gave someone money to send to her sister. She was asked where she got the money and she said she got Statutory Sick Pay.

19. I asked the sponsor what her status is in the United Kingdom and was told that she has indefinite leave to remain. I asked her who she stays with and she said she stays on her own. I asked her how often she has seen her daughter since she left Ghana and she said in 2011 and 2014 and I asked her why she does not go more often and she said she has not been making enough money to go any more often as she has to send money to her sister for her and her children.
20. The Presenting Officer asked her about her house and she said she lives alone in a two-bedroomed property. She said there are two bedrooms and a living room and she really wants the appellant to come to stay with her as she cannot have any more children.
21. The Presenting Officer made his submissions, submitting that this sponsor does not have sole responsibility for the appellant. I was referred to the case of *TD (Yemen)* [2006] UK IAT 00049 and I was asked to take note of the refusal letter.
22. He submitted that there are credibility issues as it is not credible that the appellant's father who has made no effort to take an interest in the appellant was suddenly found so that a letter could be obtained to say that he does not mind the appellant coming to the United Kingdom. The appellant's father signed the birth certificate. The evidence now is that he visited the appellant when she was nine years old but when the refusal letter stated that it is not known what the appellant's father's views on his daughter coming to the United Kingdom are, the sponsor's sister [GN] managed to contact the appellant's father's mother and then contacted him. He submitted that it is dubious if this letter is actually from the appellant's father and that this part of the evidence does not stand up.
23. With regard to the financial situation he submitted that there are remittances from the sponsor to different family members. The sponsor has explained this by saying that these other family members got the money if [GN] was not about, to give to [GN], but he submitted that since October 2017 there have been no remittances. He submitted that there is no evidence that the sponsor's sister [GN] needs these remittances. He submitted that money had been paid right up to the time of the First-Tier hearing but then it stopped. He submitted that this goes against the sponsor's credibility.
24. He submitted that the sponsor stated that her sister deals with the appellant's day to day activities but her sister deals with the appellant's emotional problems and her accommodation as well. The sponsor stated that she deals with the financial transactions but she mentioned nothing about the appellant's emotional needs. He

submitted that this appeal cannot succeed under paragraph 297 of the Immigration Rules as all its terms have not been satisfied. He submitted that during the last four or five months there is no evidence of the sponsor even paying money to the appellant and there is no evidence of any other support. He submitted that the sponsor has only visited twice and that was when her parents died. The sponsor has never actually gone out specifically to visit the appellant.

25. With regard to the remittances, he submitted that the amounts vary and although the sponsor states that she could not afford to visit, some of the remittances could have been smaller and she could have visited more often.
26. He submitted that the burden of proof is on the appellant and if the sponsor and the appellant have been in touch constantly on WhatsApp a print-out could have been obtained but there is no evidence of any day to day contact and no evidence of the sponsor dealing with the appellant's emotional needs.
27. He submitted that all these matters are requirements of the Rules and this appeal must fail.
28. The appellant's representative made his submissions referring me to the said case of TD (Yemen). In this case it is stated that if a parent and her child are separated this does not mean that the parent does not have sole responsibility for that child. He submitted that the sponsor has given a plausible explanation for not having seen the appellant apart from in 2011 and 2014, after she left Ghana. He submitted that she has sent a lot of money for the appellant's upkeep and it is perfectly plausible that she does this as an alternative to visiting her daughter and, the money is not just for her daughter, it is for her sister and her nieces and nephews. He submitted that the sponsor visited when her parents died and her account of having too little money is perfectly credible.
29. He submitted that although the Presenting Officer questions the credibility of the sponsor, what she has stated is credible. The appellant's father went to name the appellant. This is a cultural requirement. He then disappeared and the sponsor could not contact him as his mother did not have details of his address but she got these details and she gave them to the sponsor's sister and that is how the letter of consent was obtained. He submitted that it was only after the refusal letter was received that the sponsor knew she needed this letter and he submitted that the appellant's father was happy to write the letter as he is not interested in the appellant. He submitted that because of that it would be a good thing for the appellant to join her mother as her father has never been in her life.
30. I was referred to page 46 of the appellant's bundle which is a document about family data called "Cumulative Record for Basic Education Schools". There is a space for the appellant's father's name and address but it has been left blank. The sponsor's details are there and her sister is named as the appellant's guardian. He submitted that this corroborates the evidence given by the sponsor.
31. He submitted that the sponsor talks to her daughter regularly about the important things in her life. He submitted that this must include the appellant's emotions. The

sponsor uses phone cards so there is no evidence of these conversations and he submitted that the sponsor did not realise that the WhatsApp messages should be printed and probably did not even know they could be printed.

32. With regard to the financial remittances, he submitted that the evidence pre-dates the original decision. He submitted that it is clear that the sponsor has been financially supporting the appellant and has given a plausible reason for not sending much money recently. He submitted that the sponsor has not abdicated her responsibility to her sister and that the test in the said case of TD (Yemen) has been met for sole responsibility.
33. He submitted that the sponsor's accommodation is suitable as it is a two-bedroomed flat. The appellant can come here and live with her mother. He submitted that the required test under the Rules has been met and that it would be disproportionate for the appellant to have to remain in Ghana while her mother is in the United Kingdom.

Decision and Reasons

34. The burden of proof is on the appellant and the standard of proof is the balance of probabilities.
35. I have considered all of the evidence on file, the oral evidence given at the hearing and the submissions of both parties. This is a case where in 2005 the appellant's mother left her in Ghana with the appellant's grandparents at age two and came to the United Kingdom. Since then she has only seen the appellant twice and that was because her father and mother both died and she went over to their funerals. The sponsor is the appellant's biological mother and her father [MW] is named on the birth certificate.
36. The sponsor's parents have died and she has been staying with her aunt [GN] since 2011. The appellant's evidence is that in 2011 when her parents died "she took over responsibility for the appellant". Clearly her parents were responsible for her before that. The sponsor's sister now has taken over her parents' role. There is no evidence of what the appellant's situation is in Ghana. We do not know what kind of house she stays in or how many people live in the house, all we know is that the sponsor has to send money, not only to keep the appellant but also the sponsor's sister and her family. There is evidence of money being paid to various people in Ghana but payments are not made regularly and since October 2017 no money has been paid. I have noted the sponsor's oral evidence about this. There is however no evidence of her having had an operation and no evidence of anyone to whom she gave money taking that money to the appellant in Ghana.
37. The sponsor's evidence is that [GN] deals with the appellant's day to day care. There is no evidence that [GN] is unable to support herself and her family and is unable to support the appellant. I accept that some financial support for the appellant has been provided by the sponsor but I find there are credibility issues and a lack of evidence before me about this. Also the payments stopped in October 2017.
38. The sponsor states that she deals with the appellant's schooling, religion, medical care etc but there is no evidence about this and there is no evidence of regular contact

between the appellant and the sponsor apart from oral evidence. The appellant is doing well at school and the current care arrangements appear to be working well. I cannot see any serious or compelling family or other considerations which make the appellant's exclusion from the United Kingdom undesirable. There are suitable arrangements for her care. There is only the sponsor's oral evidence about contact between her and the appellant and this is not sufficient. The appellant also originally said she sees her mother annually but that is not true.

39. I find that there are credibility issues relating to the appellant's father and the letter supposedly written by him dated two months after the refusal letter. The sponsor first of all at this hearing said that when the appellant was 9 or 10 her father came to see her and her sister got his address then. Later she contradicted this, saying that when the sponsor saw the refusal letter she got her sister to contact the appellant's father's mother and that is when she got his address. I am dubious about the appellant's father's letter although it has been attested.
40. Not only do we have little evidence of the appellant's circumstances in Ghana, we have very little evidence of the sponsor's circumstances in the United Kingdom. There is the first page of a tenancy agreement on file and the sponsor states that she lives on her own in a two-bedroomed property but again this is verbal evidence nothing else. I accept that the appellant's mother has a good job in the United Kingdom so she is unlikely to be willing to give that up to go to stay with the appellant. This is compounded by the fact that she has only seen the appellant twice since she was two years old.
41. The appellant is doing well at school and seems to be fit and healthy and there is nothing to indicate that she is not happy living with her aunt in Ghana apart from the sponsor's evidence that she cries for her mother which I doubt. She has not been with her mother since she was two years old.
42. Section 55 of the Borders, Citizenship and Immigration Act 2009 has to be applied as the appellant is a minor. I have to decide if it is in her best interests to come to the UK to join the sponsor and I find that based on the evidence before me it is not. Since she was two she has only met her mother twice and there is nothing to indicate that she is living in distressing circumstances in Ghana. To uproot her from all she knows and all the people she knows to join her mother who is a virtual stranger in the UK cannot be in her best interests.
43. I find that her mother, the sponsor, does not have sole responsibility for the appellant. There is a lack of evidence about this. Paragraphs 297(1)(e) and (f) cannot be satisfied so this claim cannot succeed under the Immigration Rules.
44. I now have to consider Article 8 of ECHR and proportionality. I have to decide whether this appellant has family life with the sponsor and I accept that she does have some family life but it is very limited. The sponsor can travel to Ghana to be with the appellant. Alternatively there is no reason why this family life cannot continue as it has been for the last number of years. There are no exceptional circumstances which

might warrant a grant of entry clearance to the United Kingdom outside the requirements of the Immigration Rules.

45. I have nothing before me when I consider Section 55 of the Borders, Citizenship and Immigration Act 2009 to suggest that the appellant would be better off staying with her mother in the United Kingdom who works full-time as opposed to staying with her aunt in Ghana which is what she is used to. The appellant's family life is with her aunt and her life to date, based on what is before me, has been satisfactory and there is no evidence that she is unhappy with her life. The sponsor states that she wants her to come to join her in the United Kingdom as she has no other children and cannot have any more, but there is no evidence of what the appellant will do in the United Kingdom and how the sponsor will deal with having the appellant living with her when she is working full time. We have no details of her family life or private life in the United Kingdom and the appellant is now at a crucial age in her education and appears to be doing well at school in Ghana.

Notice of Decision

I dismiss the appeal under the Immigration Rules as the terms of the relevant Rule cannot be satisfied.

I dismiss the appellant's human rights appeal.

Anonymity has been directed.

Signed

Date

Deputy Upper Tribunal Judge Murray

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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 their 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.