



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/08012/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
Oral decision given following hearing  
On 26 February 2018

Decision & Reasons Promulgated  
On 17 May 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR MUANGA KAWELE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Z K Mahmood, legal representative, Nationwide Law Associates

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant in this case is a national of the Democratic Republic of Congo who applied for entry clearance to join his wife under the family reunion provisions. His wife (as is now accepted for reasons which will follow) is his sponsor and she is also a national of the Democratic Republic of Congo who has been granted refugee status. At the same time or around the same time as the appellant made his application, an application was also brought on behalf of six children, four of whom were said to be the biological children of himself and the sponsor, the other two children being said to have been adopted.

2. The respondent had refused to grant entry clearance to either the appellant or any of the children the reason given being that it was not accepted that the relationship was as claimed or that the natural children were even the children of the couple. It was said on behalf of the appellant that the decisions in respect of the children had not been served which was why the appellant, said to be the father of four of the children (the natural born children) was the only one who appealed. The appeal was dismissed by the First-tier Tribunal but in a decision which I made following a hearing before me on 30 August 2017, I set aside the First-tier Tribunal's decision on the basis that it contained a material error of law such that that decision had to be remade. I will during the course of this decision very briefly set out the background.
3. I note that it had been accepted on behalf of the respondent by Ms Willocks-Briscoe who then represented the respondent before me at that earlier hearing that it did not appear that the decisions which had been made in respect of the children in which their appeals had also been refused had been served although following directions which I made at the conclusion of that hearing, they have now been served. I will below make observations with regard to any appeal which might need to be brought in due course in respect of the decisions in respect of the adopted children. The applications as I have noted were refused on the basis that it was not accepted that the appellant was in fact the husband or partner of the sponsor and nor was it accepted that the four children said to be their biological children had any connection either to the appellant or the person said to be their mother and it was not accepted either that the two children said to have been adopted had even met the sponsor or the appellant.
4. Summarising very briefly I found there to have been an error of law in the decision of the First-tier Tribunal because one of the matters about which the sponsor was cross-examined concerned an alleged discrepancy between one of the documents in which one of the children was said to have a birth date of 8 March and her evidence which was that the birth date was 20 March. As I noted within my decision it is clear from a perusal of the documents that this was a mistranslation because the original document in French clearly showed that the date was given as "vingtieme mois de mars" which even a school person's knowledge of French would establish was 20 March and not 8 March. Regrettably it is not surprising that the sponsor was thrown by this apparent inconsistency, the consequence being that she did not acquit herself as well as she might when giving evidence.
5. Having found that this was an error of law sufficient to necessitate a re-hearing of the appeal I also gave directions that the decisions in respect of all the children should now be served, which was done, and also that by 29 September which was some several weeks after the previous hearing the appellant should obtain DNA evidence in respect of the children (to which end the respondent was directed to co-operate) so that the Tribunal would be in a position to make a finding as to whether or not as a matter of fact the children who it has been claimed are the natural children of the couple were indeed their natural children as claimed. I considered that this evidence should be dispositive certainly of the position of the four children said to be the birth children of this couple (whose appeals were not of course before me) and also in all probability of the appeal of this appellant, concerning whom the respondent did not accept he had ever been in a relationship with the sponsor. So far as the children said

to have been adopted are concerned although if the couple were indeed shown to be the natural birth parents of the four other children I considered this would have a bearing on the credibility of the sponsor's evidence, it would still need to be established that these two children were entitled to enter under the Rules which might require further investigation into the adoption.

6. Regrettably the DNA evidence which I directed should be served by 29 September was not so served and so I made arrangements for the appeal to be re-listed for a Case Management conference and it was listed on 15 December 2017. Before that happened, a DNA report was received and that report was served on the Tribunal but the respondent did not have a record on file of this report having been served. A further adjournment was accordingly necessary and the case was re-listed before me for hearing on 16 January 2018. Regrettably although the parties had been informed that the hearing was re-listed and the appellant's representative attended, the respondent was not formally notified and so by that date it had not been possible for the respondent to consider further the position of all the parties.
7. It was accordingly necessary to adjourn the case yet again which is why it is now before me. I had indicated that it was my provisional view that if the document said to be a genuine DNA forensic report was genuine then in light of the conclusion reached in that report which was that both the sponsor and the appellant were the natural parents of the four children as claimed (the chances of there not being said to be one in several million which can be discounted) it would seem that even though the original decisions in respect of these children had not yet been appealed (because they had only very recently been served) there could be no legitimate reason (unless there was some factor of which this Tribunal is not currently aware) why the decision should not be remade in their favour. Also, so far as this appellant is concerned, and the facts as currently understood by this Tribunal, in light of the basis on which the refusal was originally made, it was very likely indeed that if the respondent continued to contest the appeal of this appellant (that is the children's father) the appellant's appeal was likely to succeed. So far as the children said to be adopted were concerned, I had indicated that while the DNA evidence is likely to be relevant when considering the credibility of the sponsor, there may be further issues relating to the validity of any adoption, which was not currently before me but that that decision ought now (assuming the DNA report was a genuine one) also to be reconsidered in light of the new evidence.

### **Subsequent Developments**

8. On behalf of the respondent Ms Everett was able to inform the Tribunal that the applications of the appellant (the father), the four natural children and the two children said to be adopted have been looked at again and that the respondent intended to allow the applications of the appellant and the four naturally born children, but that it was still considered that the children said to be adopted were not entitled to leave to enter because the necessary requirements under the Rules were not satisfied. I am not able to consider their position. If the decisions have in fact been made they have not yet been served, so from a formal point of view the appeal of this appellant at any rate is still outstanding before me.

9. In the circumstances the appropriate course for me to take is to allow the appeal of the appellant as it is in effect conceded on behalf of the respondent that he is entitled to leave to enter.
10. So far as the natural born children are concerned, I record that the respondent has indicated that they will be granted leave to enter.
11. Although the position of the adopted children does not fall for consideration before me in this appeal, I indicated on the last occasion this appeal was before me that it was my clear opinion that in the event that the respondent did not alter her decision in respect of any of the children it was very likely if necessary that an application to extend time in which to bring appeals in respect of the decisions made with regard to those children ought to be successful. As the respondent had indicated that further consideration would be given to the position of all the children, it was entirely reasonable that the Tribunal was not burdened with further appeals until such time as further consideration had been given to their position. However, those representing the two children said to have been adopted should as soon as the decision of the respondent is made (which Ms Everett has said is likely to be negative in their cases) lodge an appeal (out of time if this is said not to be a fresh decision) and attempt to get this hearing listed as soon as possible. Accordingly, I make the decision as indicated above.

### **Decision**

**I set aside the decision of the First-tier Tribunal, and substitute in the case of this appellant the following decision:**

**The appellant's appeal is allowed.**

**No anonymity direction is made.**

Signed:

A handwritten signature in black ink, appearing to read 'Ken Craig', is written over a light blue rectangular stamp.

Upper Tribunal Judge Craig

Date: 14 March 2018 5