



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

Appeal Number: HU/08647/2016

THE IMMIGRATION ACTS

Heard at Field House

On 3 May 2018

**Decision & Reasons
Promulgated
On 14 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

[P M]

(~~ANONYMITY DIRECTION NOT MADE~~)

and

ENTRY CLEARANCE OFFICER

Appellant

Respondent

Representation:

For the Appellant: Mr R Singer, Counsel instructed by Alfred James Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant in this case is a citizen of Nigeria born on [] 2011 and the adopted child of the sponsor. The appellant applied for entry clearance as the dependent child of her adopted mother, [JM]. There have been a number of applications in this case. The original application lodged by the sponsor was refused and an appeal lodged. This was allowed by the First-tier Tribunal on 21 April 2015. Permission to appeal to the Upper Tribunal was refused. However, the sponsor misunderstood the process and

reapplied and her further application was refused in a decision dated 2 February 2016. In a decision promulgated on 4 August 2017, Judge of the First-tier Tribunal Fletcher Hill dismissed the appellant's appeal.

2. This was despite the case that the judge had found all the issues relating to the genuineness of the adoption and the maintenance and accommodation had already been dealt with on previous occasions (and had been allowed) and that the only outstanding issue before Judge Fletcher Hill was the issue in relation to the TB certificate which had not been raised in earlier refusals, but appeared to be outstanding from the ECM review of July 2016.
3. On the totality of evidence before her the judge found that the appellant had not discharged the burden of proof because of the absence of a current TB certificate and that the reasons given by the respondent justified the refusal. This was despite the fact that the sponsor had by the date of the hearing obtained a TB certificate which was dated 26 July 2016 expiring on 26 January 2017. Although the judge went on to consider the appellant's rights under Article 8 she found that "I do not find that this article is engaged to an appropriate standard".
4. The appellant appealed with permission on the grounds that the judge erred in wrongly ruling that Article 8 was not engaged and/or failing to properly assess Article 8 ECHR and/or the best interests of the child.

Error of Law

5. Mr Walker on behalf of the respondent indicated that although he could not formally concede the substantive appeal (as it was an entry clearance case) he did not oppose the grounds and agreed fully with the permission granted by Judge of the First-tier Tribunal Boyes including it was arguable that as the appellant met the Rules, Article 8 considerations would, almost assuredly, fall in favour of her entry. Mr Walker took into consideration the appellant's previous successful appeal and therefore conceded that there was an error of law.
6. The Tribunal's finding that Article 8 is not "engaged in an appropriate standard" is puzzling. There are no adequate reasons why, given that the appellant could clearly meet all the Immigration Rules, it was disproportionate for her to continue to be refused entry.
7. I therefore find an error of law to the extent that the conclusions of the First-tier Tribunal are set aside, whilst preserving the findings of fact.
8. In remaking the decision I have taken into consideration Section 117 of the 2014 Act and that maintenance of effective immigration control is in the public interest. This includes that, although not specifically raised by the respondent ECO/ECM, the appellant had failed to provide specified documents with her case (although equally I note there was no consideration of whether evidential flexibility applied). However, I have

given weight to Mr Walker's submissions, including his agreement that given that the appellant met the Rules, Article 8 considerations would most assuredly fall in favour of the appellant. That must be the case.

9. Issues in this case have been aired extensively including before the First tier Tribunal in a previous appeal in which the appellant succeeded and the issue of the TB certificate is a belated one. The appellant has now produced that TB certificate to the First-tier Tribunal and I am satisfied under Section 85(4) of the Nationality, Immigration and Asylum Act 2002 that this is a matter that can be taken into consideration by the Tribunal given that it is a matter that is relevant to the substance of the decision, i.e. whether or not the appellant had TB at the time of the decision which, subsequent to the TB certificate would indicate she did not.
10. I am satisfied that the circumstances in this case are sufficiently compelling that they justify a grant of leave outside the Immigration Rules. I have taken into consideration all the factors, including the age of the child, the importance that she is reunited with her adoptive mother, and the fact that she has already been successful in an appeal on the substantive issues, over 3 years ago. Given all the circumstances and that it is now accepted by the respondent that the appellant can meet all the requirements of the Immigration Rules, I am satisfied that it would be disproportionate, under Article 8, to continue to refuse the appellant entry to the UK. The appellant's appeal is therefore allowed.

Notice of Decision

11. The decision of the First-tier Tribunal contains an error of law and is set aside. The appeal is allowed on human rights grounds.

No anonymity direction was sought or is made.

Signed

Date: 10 May 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT FEE AWARD

I make a full fee award. I further accept the submissions of Mr Singer that although the Judge of the First-tier Tribunal who allowed the appellant's appeal in 2015 also made a full fee award, this has not been paid. There are therefore now two outstanding payments of two separate fee awards due to the appellant.

Signed

Date: 10 May 2018

Deputy Upper Tribunal Judge Hutchinson