



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/14912/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 4 January 2018

**Decision &
Promulgated
On 10 January 2018**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**BANGA COLLINE KARAMIRA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - Pretoria

Respondent

Representation:

For the Appellant: Ms O Ukachi-Lois (Counsel) instructed by Charles Allotey, solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in

respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Raymond promulgated on 27 July 2017, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 27/03/199 and is a national of Uganda. On 09/05/2016 the Secretary of State refused the Appellant's application for leave to enter the UK (to join his mother) under paragraph 297 of the rules.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Raymond ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 31/10/2017 permission to appeal was granted in the following terms

1. The Appellant seeks permission to appeal, (in time), against a Decision of the First-tier Tribunal (Judge Raymond) who, in a Decision and Reasons promulgated on 27 July 2017, dismissed his appeal against the Entry Clearance Officer's decision to refuse his application for entry clearance under paragraph 297 of the immigration rules.

2. The grounds assert that the Judge erred procedurally by focusing on matters which were not in dispute, and making findings based on matters which were not put to the appellant; and that the Judge failed to give adequate reasons for findings on material matters.

3. There is arguably a tension between [30] and [102] of the decision. In YHY (China) AP Petition for JR [2014] CSOH 11 it was held that there was procedural unfairness amounting to an error of law where points were taken against the appellant that were not in the original decision and notice of the additional points had not been given to the appellant. In AM (fair hearing) Sudan [2015] UKUT 00656 (IAC) it was held that fairness may require a Tribunal to canvas an issue which has not been ventilated by the parties or their representatives, in fulfilment of each party's right to a fair hearing.

4. The grounds of appeal are arguable. Permission to appeal is granted.

The Hearing

6. (a) For the appellant, Ms Ukachi-Lois, moved the grounds of appeal. She took me to [102] of the decision and told me that, there, the Judge deals with a matter which is not raised by the respondent and not the subject of challenge. At [102] the Judge finds that the sponsor has lied about a rape which resulted in the conception of the appellant. She told me that is not a matter which was before the Judge; it was not part of the subject matter of the hearing, and the sponsor had not been questioned about the circumstances of the appellant's conception. As a result (she told me) the sponsor had been treated unfairly and the appellant had been denied a fair hearing.

(b) Ms Ukachi-Lois referred me to a separate earlier determination reproduced from page 111 of the appellant's bundle, in which another First-tier Judge found

The appellant is a product of rape. Ms Mutesi was raped by two individuals when she was 16 years old. She does not know who the appellant's father is. Ms Butt did not challenge Ms Mutesi's claim.

(c) Turning to the second ground of appeal, Ms Ukachi-Lois took me to [81] of the decision, where the Judge quotes from an Internet website to calculate the annual average income in Uganda. She told me that it is not clear whether the currency quoted by the Judge is euros, but the comparison is given in pounds sterling. Ms Ukachi-Lois told me that the Internet site appears to compare Ugandan dollars with US dollars. She told me that the use of different currencies just creates confusion, and as a result the Judge has failed to give adequate reasons for a material finding.

(d) Ms Ukachi-Lois asked me to find that the decision is tainted by material errors of law and set it aside.

7. (a) For the respondent, Ms Isherwood told me that the decision does not contain errors of law, material or otherwise. She told me that the limited nature of the challenge results in the majority of the detailed findings set out between [70] and [109] going without challenge. She told me that what is contained at [81] cannot amount to a material error of law because, between [82] and [87] the Judge sets out a detailed consideration of the financial evidence produced. She reminded me that the application was made under paragraph 297 of the immigration rules and told me that the determinative question was whether or not the sponsor has sole responsibility for the appellant.

(b) Ms Isherwood told me that between [72] and [98] the Judge considers the evidence of the sponsor's financial position, the financial position of her sister in Uganda, & the arrangements for the appellant's welfare, before reaching a conclusion at [99]. She said that it has never been the case that the sponsor has had sole responsibility for the appellant. She told me that the Judge then goes on to consider whether there are serious and compelling family or other considerations which would make the

appellant's exclusion undesirable and finds that there are no such reasons.

(c) Ms Isherwood told me that the correct legal test has been applied, that the Judge has considered the evidence fully before reaching conclusions which were well within the range of reasonable conclusions available to the Judge. She urged me to dismiss the appeal and allow the decision to stand.

Analysis

8. Permission to appeal was granted on the basis that there was a tension between [30] & [102] of the decision. At [102] the Judge needlessly expresses doubt that the sponsor was raped when she was 16 years old, but the Judge does not make a finding that the sponsor was not raped. What the judge considers at [102] is whether or not the conception of the appellant as a result of rape when the sponsor was 16 years old can constitute serious and compelling family or other considerations which would make the appellant's exclusion undesirable. At [30] of the decision the Judge is simply setting out the background and rehearsing the evidence which was before him. [30] does not contain a finding of fact.

9. The finding a [102] is simply that there are no serious and compelling family or other considerations making the appellant's exclusion undesirable. That finding is reached as a result of the findings of fact between [72] and [101]. It is not a finding which is reached because of an expression of doubt contained in a sub-clause within the first sentence of [102].

10. At [1] of the decision that the Judge correctly identifies that the application was made under paragraph 297 of the immigration rules, and that the appellant's rights of appeal are limited to article 8 ECHR grounds of appeal. Between [4] and [13] of the decision the Judge deals with an earlier unsuccessful application and the uncertainty surrounding the appeal procedure following that application.

11. Between [14] and [31] the Judge deals with the application form and the financial evidence. Between [32] and [45] the Judge summarises the respondent's reasons for refusal. Between [46] and [67] the Judge summarises the evidence placed before the First-tier Tribunal.

12. The Judge's findings of fact start at [70]. At [99] the Judge reaches the conclusion that the sponsor has never had sole responsibility for the appellant. After finding that there are neither serious and compelling family or other considerations making the appellant's exclusion undesirable, the Judge takes correct guidance in law when he considers TD (paragraph 297(i)(e) the sole responsibility) Yemen [2006] UKAIT 00049.

13. At [109] the Judge takes the comprehensive findings made in the decision and uses those findings to answer the five questions set out in Razgar. He finds that although the decision is an interference with family life, the decision is not a disproportionate interference with the appellant's article 8 rights.

14. At [81] there is confusion about the currencies used to calculate the average annual income in Uganda, but the Judge makes a clear finding that the appellant's aunt (the sponsor's sister in Uganda) has enjoyed an income which is roughly 4 times the average income in Uganda. That is a clear and unambiguous finding. The difference between in the symbols used for euros, pounds and dollars does not undermine that finding.

15. The grounds of appeal challenge three paragraphs in the decision - [30], [81], and [102]. The challenges are on the symbol used for Euro, on the mistaken belief that [30] is a finding of fact when it is not, and on 19 unnecessary words in [102] (*"if this indeed occurred, as the many obscure and invasive features in the evidence must place this in doubt...."*). If [30], [81] and 19 words from [102] are removed from the decision, the decision still makes sense.

16. There is no error of law in the decision, but even if the small parts of this decision challenged by the grounds of appeal amount to an error of law, they cannot be a material error of law because if [30], [81] and all of [102] was removed from the decision the decision would still makes sense.

17. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the Judge draws from the primary data were not reasonably open to him or her.

18. In this case, there is no misdirection in law & the fact-finding exercise is beyond criticism. The decision is not tainted by a material error of law. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed.

CONCLUSION

19. No errors of law have been established. The Judge's decision stands.

DECISION

20. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed
2018

Paul Doyle

Date 8 January

Deputy Upper Tribunal Judge Doyle