



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15053/2016

THE IMMIGRATION ACTS

Heard at Liverpool Civil & Family Court
On 27th June 2018

Decision & Reasons Promulgated
On 08th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MISS ANNIE SIA SONGU SAIDU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nnameke H Ene (LR)

For the Respondent: Ms H Aboni (Senior (HOPO))

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge R Caswell, promulgated on 18th August 2017, following a hearing at Bradford on 9th August 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Sierra Leone, and was born on 27th February 1998. She appealed against the decision of the Respondent Entry Clearance Officer dated 13th May 2016 to refuse her application for entry clearance, to join her father, Mr Andrew Saidu, for settlement.

The Appellant's Claim

3. The essence of the Appellant's claim is that she is now 19 years of age, having lived with her mother and stepfather in Sierra Leone. Her father, Mr Andrew Saidu, came to the UK in 2002, spent many years studying and qualifying to be a registered mental health nurse in this country, and earns in excess of £35,000 per year. He has sent money to the Appellant to support her. He has not visited her until 2016 for financial reasons. The Sponsor also has an older son in Sierra Leone from another relationship, and two younger children with a separate wife in the UK. These facts were relevantly counted by the judge below (at paragraph 4).
4. What has prompted this application, however, has been the fact that the Appellant, who claims to have been twice sexually molested by her stepfather in Sierra Leone, and gone to stay thereafter with her grandmother, through arrangements made by the Appellant's father in the UK, but the grandmother had recently passed away, and the sponsoring father had tried to make arrangements for the Appellant to live with her aunt (paragraphs 5 to 6). The Sponsor in the UK is worried about his daughter and feels guilty at having left her. He believes that she is psychologically vulnerable and needs to be with someone who can care for her. He does not want her to live alone and her natural mother has given up all responsibility for her (paragraph 7). It has also been asserted that the sponsoring father in the UK has been exercising sole responsibility for her and that there are serious and compelling family or other reasons for why she should not be excluded (paragraph 9).

The Judge's Findings

5. The judge found as a question of fact that "the Sponsor has been very involved with his daughter recently, has sent her things and money, kept in touch with her, and also that he has made holiday and other arrangements for her to give her time away from her home, ...". However, he went on to say that "the fact remains that she is still living with her own mother, as she has done ever since the Sponsor left her in 2002" (paragraph 17). There had been a letter from the mother before the judge, but the judge found that "nothing in the short letter from the mother suggests that the Sponsor has been exercising sole responsibility for her" and she only talks "about him sending money for her and her daughter". The judge concluded that there was "an absence of sufficient evidence to show that the Sponsor has made major decisions in the Appellant's life, with regard to education and medical treatment for instance" (paragraph 17).
6. With respect to whether there existed serious and compelling family or other reasons for why the Appellant should not be allowed to come to the UK, the judge had regard to the two attempts by the stepfather to have sexual intercourse with the Appellant, but concluded that, "there is no supporting evidence of this, either from the Appellant

herself, or from the authorities or from any friend of the Appellant”, and neither was there any evidence from the mother. In fact, what the mother had said was that, “my current partner do not like my daughter for reasons that myself cannot understand”. In any event, the judge found that even if such events occurred, they happened as long ago as around October 2015, nearly two years ago, “and yet the Appellant has carried on living in the house”. Moreover, “the Appellant is a 19 year old woman who is going to study at university and wants to be a doctor” (paragraph 18). Accordingly, this basis for entry to the UK could also not succeed.

7. Finally, the judge had regard to the human rights aspect of the appeal. He did not find that the Human Rights Convention was engaged. The Appellant’s sponsoring father was not doing anything other than a normal father would do for a daughter of that age (paragraph 19).
8. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that the judge erred in law in the manner in which she decided the questions of sole responsibility and exclusion being undesirable, and also erred in the manner in which she evaluated the Article 8 question with respect to the Appellant’s human rights.
10. On 2nd February 2018, permission to appeal was granted by the Tribunal on the basis that the judge did not actually err on the question of sole responsibility and exclusion being undesirable. However, he did arguably err by imposing a threshold test for the engagement of Article 8 and by not recognising that there is no cut off after the child’s eighteenth birthday such that family life would cease to exist at that point.

Submissions

11. At the hearing before me on 27th June 2018, Mr Ene, appeared on behalf of the Appellant, and relied on his skeleton argument of five pages dated 12th June 2018, in the new bundle of 13th June 2018. He explained that there were two other children in the UK of the Sponsor aged 6 and 9 years, and that being so, the Sponsor could not abandon these two children and go and live with the Appellant, as the judge appeared to suggest, when he dealt with the question of Article 8. The judge had also erred (at paragraph 19) by stating that the Appellant’s private life in the UK, working as a nurse, could be effectively forfeited, if he wanted to continue with his relationship with his Appellant daughter. Moreover, this was a case where the Appellant had made three previous applications to register as a British citizen. However, since she was a legitimate child, she was told at the post overseas that she had to come to the UK in order to be able to successfully make this application, which was not correct as a matter of law. Mr Ene submitted that the judge had accepted at paragraph 17 that if the Appellant came to the UK she would be able to register as a British citizen. He submitted that the right to citizenship was an important human right as confirmed by the Supreme Court in **Johnson [2016] UKSC 56**.
12. For her part, Ms Aboni submitted that there was no material error of law. The Appellant could not meet the Immigration Rules. The judge did make an error in

saying that Article 8 is not engaged because the Appellant had reached the age of 19, but the judge did carry out a full assessment. Apart from the Sponsor sending financial remittances there was little evidence that he was providing moral support, educational support, and welfare support, which were essential if he was to succeed in showing that he had sole responsibility for his daughter. So the error of there being no family life between the Appellant and the Sponsor, now that she had reached the age of 19, as the judge stated, was not a material error. There was no face to face contact between the Appellant and the sponsoring father in the UK. The fact that she could register as a British citizen had not been part of the appeal, and had not been part of the application before the Entry Clearance Officer, and Mr Ene was wrong to place so much emphasis on it.

13. In reply, Mr Ene submitted that the error was material. He referred to page 3 of his skeleton argument, and drew attention to the two cases there. These are **Keegan v Ireland [1994] 18 EHRR 342** and **Soderback v Sweden [1998] EHRR**. In the former, it was stated that family life will always embrace a tie between Appellant and the child even where the parents are not married, and do not live together. In the latter, what one had was an applicant who was just a friend of the mother of his child who had never lived with her and never had a steady relationship with her. Yet, the European Commission held that Article 8 extended to a potential relationship which might develop between a natural father and a child born out of wedlock.

Error of Law

14. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
15. First, it has to be said that the judge gave a full and proper consideration to the appeal under the Immigration Rules and entirely properly concluded that the Appellant could not succeed on the basis that her sponsoring father had shown sole responsibility or that her exclusion would be undesirable. It is well-established that, although sole responsibility can never be literally construed, because in the very nature of things, where responsibility is shared between one parent in the UK and another in a foreign country, it must inevitably be a responsibility that cannot be "sole", nevertheless, what the sponsoring parent has to show is evidence of his or her support in the form of giving a moral direction to the child. That would mean, as the judge correctly stated, an interest in the Appellant child, with regard to education, medical treatment, religious orientation (if relevant), and general moral welfare.
16. This is a case where the sponsoring father had paid for the Appellant to have a holiday in Dubai together in 2016, where she was for nearly a month, and he had paid for a ticket and accommodation (paragraph 5). Yet, none of this is in the evidence before the judge from the Appellant's own mother, although the judge does state that "the Sponsor has been very involved with his daughter recently" (paragraph 17).
17. In the same way, the Appellant could not succeed, as the judge found, on the basis that there were serious and compelling family or other reasons suggesting she should be admitted, and the judge gives comprehensive reasons for this (at paragraph 18).

18. However, where the judge did err, was in stating that the Appellant's receipt of money, furniture, and other items "is not at all uncommon for a young person contemplating university", because what the father and daughter have done in terms of the maintenance of their family life cannot be a matter of irrelevance. There is a world of difference between maintaining relationships and not maintaining them. It is also an error to suggest, for a sponsoring father, who has acquired British citizenship in the UK, to suggest that he could just as easily go and live in Sierra Leone, when he has a constitutional right to remain in the UK.
19. However, the biggest error is to state that,

"Given that the Appellant is 19 years old, I find that there is insufficient evidence before me, even bearing in mind cultural differences, to prove that there is a family life between her and her father, in the sense which engages the Convention" (paragraph 19).
20. Finally, whilst I find that there is an error of law in relation to the judge's analysis of Article 8 in this appeal, the conduct of the hearing before me by Mr Ene was unfortunate to the extent that he raised matters that were not before the Entry Clearance Officer, and not before the judge below. The Grounds of Appeal place primary emphasis on the Appellant's right to register as a British citizen, being a legitimate child of the sponsoring father (see paragraph 1), and Mr Ene spent a great deal of time at the beginning addressing this Tribunal on precisely that question. However, not only is it the case that no undertaking was given to the Appellant in Sierra Leone that she would be able to register as a British citizen, but these applications, if challenged, have to be challenged by way of judicial review. At page 18 to 19 of the new bundle, there is a letter from the FCO that a British passport could not be issued because "from the information and documents you have provided it would appear Annie does not have an automatic claim to British citizenship" (see page 18 in the letter dated 13th May 2013).

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law, on the question of Article 8 ECHR, such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge R Caswell on the question of Article 8 ECHR.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

3rd August 2018