



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

Appeal Number: HU/21852/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Tribunals  
On 11<sup>th</sup> September 2018**

**Decision & Reasons  
Promulgated  
On 5<sup>th</sup> October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**[A S]**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

**and**

**ENTRY CLEARANCE OFFICER, AMMAN**

Appellant

Respondent

**Representation:**

For the Appellant: Mr S Vokes (Counsel)

For the Respondent: Ms H Aboni (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Row, promulgated on 20<sup>th</sup> September 2017, following a hearing at Birmingham on 12<sup>th</sup> September 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 male, a citizen of Yemen, and was born on 18<sup>th</sup> January 2001. He appealed against the decision of the Respondent Entry Clearance Officer dated 17<sup>th</sup> August 2016, which had been upheld by the Entry Clearance Manager on 21<sup>st</sup> December 2016 in Amman. The decision in question was to refuse the application of the Appellant, as the nephew of a [GS], a British citizen, who had been born on 15<sup>th</sup> August 1975, and was settled in the UK, and had allegedly exercised “sole responsibility” over the upbringing of the Appellant, his nephew. The applicable Immigration Rule was paragraph 297 of HC 395.

## **The Appellant’s Claim**

3. The essence of the Appellant’s claim is that his father was dead. His only surviving relative was the Sponsor. He could satisfy the requirements of paragraph 297(f) of HC 395.
4. The Respondent Entry Clearance Officer had disagreed with this suggestion. She had even doubted that the Appellant was the nephew of the Sponsor. However, by the time of the hearing before Judge Row, there had been produced DNA evidence, which had established that this was indeed the case, and the judge had so accepted it to be the case. It had been argued on the Appellant’s behalf that if his father was dead then there was no reason why his uncle, [GS], should not be allowed to look after the Appellant. The Respondent for her part, had stated that even if the Appellant’s father was dead, the Appellant had been living in Egypt with a family friend and he was being maintained there by the Sponsor who was paying money to that friend. There was no reason to consider that the current arrangements were unsuitable. The Appellant was being brought to a country in the United Kingdom of which he knew nothing, just .in order to live with an uncle whom he hardly knew.

## **The Judge’s Findings**

5. The judge began his consideration by looking at the basic facts. He noted that the Appellant was temporarily being looked after by a family friend called Ahmed, in Egypt, but the Appellant was now claiming that Ahmed could no longer continue to do this. Ahmed and the Appellant had actually moved to Egypt from Yemen to make the application for entry clearance. They had been allowed to remain there temporarily. The Sponsor had been making payments to Ahmed to maintain the Appellant in the meantime.
6. The judge went on to make a finding that,  
“... that if it is the case that the Appellant has no one to look after him apart from the Sponsor and that he faces destitution it would clearly be in his interest to join the Sponsor in the United Kingdom. This much is taken into account under paragraph 297(f)” (see paragraph 10).”

7. However, the judge went on to say that the Appellant's circumstances were being disputed by the Respondent. The Respondent did not accept that the Appellant's partner was dead, or that the Appellant's situation was as it was being claimed. The Appellant had said that his father died on 16<sup>th</sup> October 2010 while he was living in Yemen. At the time the Appellant continued to live with his mother until she died on 16<sup>th</sup> January 2016. It was not in dispute that the Appellant's mother was dead (see paragraphs 10 to 11). A copy of his father's death certificate had been produced by the Appellant (see page 17 of the Appellant's bundle), and it recorded the fact that the Appellant's father was 48 years old at his death. However, according to the Appellant's application, the date of death of the Appellant's father should have been 42 years, and not 48 years. Moreover, the spelling of the father's name was slightly different to that in the application (paragraph 12).
8. The judge dismissed the appeal of the Appellant because "the difference in the age of the deceased is significant" (paragraph 14). The Appellant also could not succeed under Article 8 ECHR (paragraph 15).
9. The appeal was dismissed.

### **Grounds of Application**

10. The grounds of application state that, in dismissing the appeal, the judge had concluded that "the central issue" was whether the Appellant had established that his father was dead, it having been accepted that his mother had died in 2016. However, in concluding that the Appellant's father had not died as claimed, the judge did not consider all the relevant evidence. There was not only the death certificate, but also evidence from the Sponsor, in which she had explained that the Appellant's father had died in 2010, and that since then the Sponsor had been responsible for maintaining the Appellant. This evidence was corroborated by money transfer receipts which was sent to Ahmed, who was caring for the Appellant following his mother's death. The conclusion by the judge that the Appellant's father had not died failed to give regard to the Sponsor's evidence.
11. Moreover, although the judge had concluded that the money transfer evidence (at paragraph 22) did not alone demonstrate that the Appellant's father had died, he had not considered this evidence in the context of the Sponsor's evidence, or as part of the holistic assessment of the evidence.
12. Second, given that the judge had accepted that the Appellant's mother had died in 2016, there was no logical reason for why the Appellant would be untruthful about the death of his father in 2010, and the judge did not give this consideration proper regard in making his findings of fact. Finally, against all of this, the judge had come to a clear finding that if the circumstances of the Appellant were as claimed that it would be in his best interests to reside with the Sponsor in the United Kingdom, and that there

was no reason why he could not avail himself of the Immigration Rules or precisely this affect.

13. On 8<sup>th</sup> January 2018, permission to appeal was granted by the Tribunal.

### **Submissions**

14. At the hearing before me on 11<sup>th</sup> September 2016, Mr Vokes, appearing on behalf of the Appellant, submitted that when the ECO refused the application, he had done so on the mistaken basis that there had been no death certificate for the father (but see page 17) which was plainly wrong.
15. Second, he had done so on the mistaken basis that the Appellant and his sponsoring uncle in the UK were not related, which was also incorrect given the DNA evidence which proved precisely the opposite.
16. Third, he had done so on the basis that the Appellant's best interests did not require him to be in the United Kingdom, which was belied by the express findings of Judge Row (at paragraphs 9 to 10) where he had concluded that if the Appellant faces destitution then "it would clearly be in his interests to join the Sponsor in the United Kingdom" (paragraph 10). Given these background considerations, the judge ought to have given some proper consideration to the Sponsor's evidence in relation to the death of the Appellant's father. However, there is no assessment whatsoever of the evidence given by the Sponsor. This could not be unimportant. This is because the sponsoring uncle in the UK had maintained the Appellant and his mother, right up to 2016, when the mother died, and thereafter maintained the Appellant by sending funds to Ahmed in Egypt. This was accepted by the judge. It was an important finding which carried significant weight.
17. Finally, that left the question of the difference in age of the Appellant's father from 42 years (which ought to have been the case) and 48 years (which was recorded in the death certificate) (at paragraph 12). However, whilst the judge does deal with the "spelling mistake of the name [S]" (at paragraph 14), in order to clarify this particular discrepancy, the judge does not in the same paragraph give consideration to what the Sponsor's evidence was in relation to the age discrepancy of the Appellant's father. All that the judge does is simply to state the conclusion that, "the difference in the age of the deceased however is significant" (at paragraph 14). Without assessing the evidence of the Sponsor, this conclusion could not properly have been arrived at.
18. For her part, Ms Aboni submitted that, even though the relationship between the Appellant and his sponsoring uncle in the UK had now been cleared up by virtue of the DNA evidence produced, nevertheless, the Respondent still believed that the Appellant's father was alive in Egypt. It had never been accepted that he had died. This is why the discrepancy in

the age was significant (at paragraph 12) and why the death certificate was disbelieved by the judge. The judge gave his reasons for not finding the death certificate to be credible. Having found that the Appellant's father "was not necessarily dead".

19. In reply to Ms Aboni's submissions, Mr Vokes submitted that the fundamental question in this appeal was "hardly know what the oral evidence was from [GS], the Appellant's sponsoring uncle?" We cannot, he submitted, know the answer to this question because the judge did not sufficiently address this very issue. The judge simply assumed that the evidence was not material. One has to come to this conclusion if one looks at the explanation given by the judge at paragraph 14, which is simply a conclusion in terms that, "the difference in the age of the deceased however is significant".

### **Error of Law**

20. I am satisfied that the making of the decision by the judge did involve 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. In what is a relatively short decision of just over two and a half pages, the judge nowhere deals with the evidence of [GS], the Appellant's sponsoring husband. Yet, I have noticed that the Record of Proceedings make it clear that "the Sponsor gave evidence at some length", followed by submissions from the representatives. The fact is that the Sponsor's evidence is simply not recorded. This impacts upon the question of whether the evidence that the Appellant and his sponsoring uncle relied upon, was credible or not. It is also procedurally unfair to the Appellant because he does not know why he has lost his appeal. These matters are ultimately material because the judge had accepted that the sponsoring uncle has been maintaining the Appellant in Egypt through a man by the name of Ahmed. The judge has also accepted that the Appellant's mother died in 2016, but has failed to explain why it is not accepted that the Appellant's father died in 2010, if that is the evidence that is presented by the Appellant, and is then also ultimately backed by a death certificate from the hospital. On top of this, the judge accepted that, "if it is the case that the Appellant has no one to look after him apart from the Sponsor and that he faces destitution it would clearly be in his interests to join the Sponsor in the United Kingdom. This much is taken into account under paragraph 297(f) as the judge explained at paragraph 10 of the determination.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law 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 allowed under Practice Statement 7.2(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal, to be determined by a judge other than Judge

Row. I give a direction that those matters that have been found to be in the Appellant's favour should stand as they are when the matter is reconsidered again.

No anonymity direction is made.

This appeal is allowed.

Signed

Dated

Deputy Upper Tribunal Judge Juss

28<sup>th</sup> September 2018