



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/22112/2016

THE IMMIGRATION ACTS

Heard at Field House
On 9 July 2018

Decision & Reasons Promulgated
On 30 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

EDMOND MII ARYEE ARMAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Syed-Ali, Counsel instructed via Direct Access
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of the First-tier Tribunal (Judge MA Khan sitting at Hatton Cross on 31 August 2017) dismissing his appeal against the decision of an Entry Clearance Officer to refuse him entry clearance to join his father in the UK. The principal issue in the appeal was whether the appellant's father had had sole responsibility for his upbringing, and the Judge answered this question in the negative, as he attached significant weight to the fact that the appellant's grandmother had been appointed his guardian by a Ghanaian Court on 16 November 2015. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

The Grounds of Appeal to the Upper Tribunal

2. Although the appellant was legally represented before the First-tier Tribunal, his father and sponsor was responsible for drafting the grounds of appeal to the Upper Tribunal. The sponsor said he was frustrated by Judge Khan's decision, as the guardianship order had been provided to show that the appellant's case was stronger than that of his older sibling, Enoch, who had been successful in an application for entry clearance in 2012. At that time, both the appellant's grandparents were still alive. Nonetheless, the ECO accepted that he had had sole responsibility for Enoch's upbringing, and so granted entry clearance on that basis. After his grandfather passed away, it meant that there was one less person looking after the appellant, and so it would be "*a weaker situation*" and more reason to say that he, the sponsor, had sole responsibility.
3. The sponsor continued: "*The guardianship order was only made to show that now the situation was my mother was the one looking after my son simply because my father passed away. That is the only reason it was made and nothing else.*"
4. However, the First-tier Tribunal Judge had incorrectly - both factually and legally - taken this evidence completely the wrong way, and had used it to hold that sole responsibility lay with the appellant's grandmother. This was a complete misunderstanding of the evidence, and went against what the respondent had previously accepted with regard to Enoch.

The Reasons for the Initial Refusal of Permission to Appeal

5. On 4 December 2014, First-tier Tribunal Judge Parkes refused permission for the following reasons:

The decision shows that the Judge had in mind the relevant Immigration Rules and the case law underpinning it. The grant of guardianship to the appellant's grandmother, the sponsor's mother, is a clear difference which the Judge was bound to have regard to and place weight on. The grounds express an understandable disappointment with the decision, but do not demonstrate that the Judge erred.

The Reasons for the Eventual Grant for Permission to Appeal

6. Upon a renewed application for permission to the Upper Tribunal, Upper Tribunal Judge Finch granted permission to appeal on 12 February 2018 for the following reasons:

The appeal before the First-tier Tribunal Judge was a human rights appeal as acknowledged by the Home Office Presenting Officer. For such an appeal, the appellant's ability to meet the requirements of the Immigration Rules is a factor to be taken into account within the human rights appeal. The manner in which the First-tier Tribunal Judge addressed the human rights issues was insufficient and failed to make findings on the relevant elements of Article 8 of the ECHR or consider proportionality. In addition, the analysis of the extent to which the appellant could meet the requirements of the Immigration Rules failed to take into account some relevant evidence and submissions.

The Rule 24 Response

7. On 20 March 2018 Stefan Kotas of the Special Appeals Team settled a Rule 24 response opposing the appeal. He pleaded that the Judge of the First-tier had before him all the evidence and the benefit of hearing the sponsor's oral evidence. He identified the only issue as being that of sole responsibility. It did not appear that it was argued on the appellant's behalf that, if the Rules could not be met under 297, nonetheless there was a wider Article 8 case for leave to be granted outside the Rules. Indeed, the Judge found there to be no compelling case outside the Rules. The findings of the Judge were rationally open to him on the evidence.

The Hearing in the Upper Tribunal

8. At the hearing before me to determine whether an error of law was made out, Mr Syed-Ali developed the case that had been pleaded by the sponsor in the grounds of appeal.
9. In his skeleton argument, Mr Syed-Ali submitted that permission to appeal had been granted on two grounds, the first of which is that the First-tier Tribunal Judge had failed to take into account relevant evidence and submissions; and, specifically, had given disproportionate weight to the grandmother's "*guardianship*"; and had failed to consider the significance and weight of the "*accepted fact*" that sole responsibility had been accepted on the previous occasion for another child of the same sponsor.
10. Mr Syed-Ali submitted that the Judge had accepted, at paragraph [27] of his decision, that Enoch was granted entry clearance on the basis of the father's sole responsibility in 2012. There was no enquiry as to why this had changed simply by virtue of the guardianship documents of the grandmother. The father's evidence was that he continued to be solely responsible - even more so after the death of the grandfather. The document that had assumed such a central role in the findings of the Judge was not even before the Tribunal, as the Judge observed at paragraph [28]. The Judge had assumed that the Ghana Court must have been satisfied that the grandmother was the carer without any enquiry into why this guardianship order was necessary and under what circumstances it was obtained. The Judge found at paragraph [29] that things had changed, but this was only based upon the Judge's own assumption. There was no factual finding as to when sole responsibility had supposedly come to an end, and why the grandmother had become a significant decision-maker.
11. In his oral submissions, Mr Syed-Ali submitted that the Judge was mistaken in his belief that there was a guardianship order made by a Ghanaian Court. In fact, the appellant's grandmother, Mrs Sofia Armah, had simply made a statutory declaration on 16 November 2015 in which she declared that she was the guardian of three children fathered by the sponsor, the oldest of whom was the appellant. He produced a copy of this statutory declaration, and also a copy of a statutory declaration in similar terms made by the appellant's grandfather on 7 September 2010.
12. Mr Syed-Ali submitted that these documents showed that the Judge was wrong to treat the grandmother's guardianship as being indicative of her assuming co-parental responsibility for the appellant, rather than the opposite, which was to affirm on a formal basis that parental responsibility was solely vested in her son (the sponsor); and that she was only discharging the functions which were delegated to her by her son.

13. On behalf of the Entry Clearance Officer, Ms Everett submitted that it was not shown that the appellant's legal representatives were not responsible for any alleged material mistake of fact in the Judge's decision. It was clear that the Judge had addressed the evidence and the issues in accordance with the case that was put on the appellant's behalf by his representative, Mr Makal.

Discussion

14. What began as a reasons challenge has, to a significant extent, mutated into an error of law challenge based on the proposition that the appellant has been a victim of procedural unfairness arising from an alleged material mistake of fact made by the Judge on the significance of his grandmother being his guardian. However, Mr Syed-Ali maintains that an error of law is made out on the first basis, and so I begin with Ground 1 as developed in Mr Syed-Ali's skeleton argument.

Ground 1 – Alleged inadequate reasoning and/or alleged misunderstanding of the evidence

15. In **South Bucks District Council v Porter (2) [2004] UKHL 33** Lord Brown said at [26]:

The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. *The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn* (My emphasis). The reasons need only refer to the main issues in the dispute, not to every material consideration.

16. The refusal decision of 21 August 2016 asserted the following: *"A court document issued in Ghana dated 16/11/15 states: Mrs Sophia Armah was awarded guardianship for your care. You have not provided any explanation as to why the care arrangements currently in place cannot continue."*
17. For the purposes of the hearing in the First-tier Tribunal, the sponsor prepared a bundle of documents which contained a copy of the statutory declaration by Mrs Sofia Armah, declared at Accra on 16 November 2015. She affirmed that she was the guardian of three children fathered by the sponsor, Edmund (born on 11 June 1998), A (born on 16 October 2001), and E (born on 30 April 2007). She affirmed that the father of the children remitted money for their tuition and feeding *"on regular basis and full responsibility."* She repeated this affirmation in paragraph 5 of the declaration, declaring that it was a real fact that the father had been *"remitting his children on regular basis"*. In the index to the bundle, the sponsor referred to the statutory declaration as follows: *"Affidavit from my mother in Ghana."*
18. In his decision promulgated on 14 September 2017, Judge Khan set out the evidence given by the sponsor in cross-examination at paragraphs [18]-[21]. He recorded that the sponsor stated as follows in cross-examination: *"He said that the Ghanaian Court granted guardianship to his mother because she was looking after the appellant with his father before he died."*

19. The Judge recorded the closing submissions of the Presenting Officer and the appellant's representative, Mr Makal, at paragraphs [23] and [24]. Mr Archie, the Presenting Officer, submitted that, as it was a human rights appeal, the time for consideration was the date of the hearing. The appellant was now an adult, and he had lived most of his life with his grandparents, "*and in November 2015, the Court in Ghana granted his grandmother the guardianship.*"
20. In reply, Mr Makal submitted as follows: "*The Ghanaian Court may have decided to grant the appellant's guardianship to the grandmother in accordance with the law in Ghana. On the evidence [however] ... I should be satisfied that the sponsor has had sole responsibility for the appellant in this case.*"
21. The Judge's findings of fact were contained in paragraphs [25] onwards. At paragraph [27], he found that the sponsor had come to the UK in 2002 as a student, leaving the appellant and his older brother with his parents. He accepted that Enoch had been granted entry clearance to settle with the sponsor in 2012. However, he continued in paragraph [28], after the death of the sponsor's father, his mother was granted guardianship for the appellant in November 2015: "*The guardianship document is not before the Court, but the refusal mentions this fact and it is accepted by the sponsor that his mother was granted [the] appellant's guardianship.*"
22. At paragraph [29], the Judge found the fact that the sponsor's mother was granted guardianship to the appellant by a Court in Ghana in 2015 indicated that the Court must have been satisfied that she was "*the carer*" and the person who looked after the appellant's wellbeing in Ghana. He distinguished the appellant's position from that of his older brother, Enoch, on the basis that his grant of entry clearance had been three years earlier, and that by the time the grandmother was granted the appellant's guardianship, "*things had changed.*" It was clear that, by that time, the grandmother was "*the sole carer*" for the appellant in Ghana. She had been there for him in the past, and she continued to play an important role in his life. The sponsor provided some financial support for the appellant, but this was up to the time of application - and there was no further evidence of any continuous financial support from the date of refusal. Further, there was very limited contact between the appellant and the sponsor. The telephone records showed that there were 15 calls to the appellant's telephone, but there was not a single call which had lasted from more than a few seconds. The Judge concluded, at paragraph [33], that the sponsor had not had the sole responsibility for his son, "*and that his mother has played the main role in the appellant's upbringing[ing]*".
23. I consider that the Judge has given adequate reasons for finding that the sponsor has not had sole responsibility for the appellant's upbringing on the evidence that was presented to him at the hearing. It was not the sponsor's evidence that there was in fact no guardianship order made by a Court in Ghana. It was not the sponsor's evidence that the only guardianship document was the statutory declaration which his mother had made.
24. It was open to the Judge to infer that the foreign law is the same as English Law, and that the appointment of the grandmother as the appellant's guardian by a court in Ghana in November 2015 meant that the Court was satisfied that she was exercising

parental responsibility for the appellant's upbringing and/or that she was assuming such responsibility through applying to be appointed his legal guardian.

25. Mr Syed-Ali is under the misapprehension that the statutory declaration of the grandmother was not before the Tribunal. One of his submissions is that, if the Judge had seen it, the Judge would have appreciated the true nature of the grandmother's guardianship. I do not consider that the statutory declaration bears the weight that Mr Syed-Ali seeks to place on it. The appellant's grandmother does not in terms affirm that she has the subordinate role in the care and upbringing of the appellant which is assigned to her by the sponsor. What she says in the statutory declaration is entirely consistent with the sponsor having financial responsibility for the care of his three children who are being looked after by her, without at the same time having sole responsibility for their care and upbringing.
26. For the above reasons, Ground 1 as developed in Mr Syed-Ali's skeleton argument is not made out. The Judge adequately engaged with the oral and documentary evidence that was placed before him on this issue, and he gave adequate reasons for finding that sole responsibility is not made out. He was fully aware of the thrust of the appellant's case, and he did not misunderstand the evidence which was put forward to support it. On analysis, the error of law challenge is no more than an expression of disagreement with findings that were reasonably open to the Judge on the evidence.

Ground 1 as developed in oral submissions – alleged material mistakes of fact leading to procedural unfairness

27. I turn to consider whether there is any merit in the alternative line of argument, which was pursued by Mr Syed-Ali in oral submissions.
28. The first alleged mistake of fact is that there was in fact no guardianship order, but only the statutory declaration of the grandmother. There is no evidence before me to show that this was a mistake of fact. On the contrary, the sponsor is recorded as having confirmed in cross-examination that there was indeed a guardianship order.
29. The second alleged mistake of fact is that, neither in law or in fact does the grandmother's guardianship of the appellant carry with it an assumption of parental responsibility. But again, there is no satisfactory (still less uncontroversial) evidence before me to show that the Judge was mistaken as to the implications of the guardianship order referred to by the Entry Clearance Officer in his decision. There is no expert evidence to substantiate the claim that a guardianship order can be obtained in Ghana in the circumstances alleged by the sponsor - i.e. that a family member can be appointed as a guardian by a Court in Ghana for the restricted purpose of affirming his or her subordinate role as a day to day carer with no parental responsibility.
30. The third alleged mistake of fact is that the Judge did not take into account that a similar statutory declaration had been made in 2010 by the appellant's grandfather, and that, notwithstanding this statutory declaration, the Entry Clearance Officer in 2012 had granted Enoch entry clearance on the grounds that his father was exercising sole responsibility for his upbringing.

31. There was no documentary evidence before the First-tier Tribunal showing the basis on which Enoch had applied for entry clearance, and the Judge did not make a finding that he had been granted entry clearance because the Entry Clearance Officer in 2012 accepted that his father had had sole responsibility for his upbringing. The Judge merely accepted that he had been granted entry clearance. The sponsor was responsible for compiling the bundle of documents for the hearing, and he did not include in the bundle a copy of the statutory declaration made by the grandfather in 2010. But even if he had done so, this would not have detracted from the crucial distinction drawn by the Judge between the position of Enoch in 2012 and the position of the appellant three years later. It is not suggested that the appellant's grandfather was appointed a guardian of the appellant or Enoch by a Court in Ghana in 2010.
32. For the above reasons, Ground 1 is not made out on the alternative basis argued by Mr Syed-Ali in oral submissions.

Ground 2 – Alleged inadequate analysis of human right claim

33. Ground 2 was not pursued by Mr Syed-Ali in oral submissions, and I do not consider that it has any merit. Mr Syed-Ali agreed that sole responsibility was the key issue in the appeal. Absent the sponsor having sole responsibility for the appellant's upbringing, there was and is little more to be said. The Judge more than adequately addressed the only other potential basis on which the appellant could qualify under the Rules, which was under Rule 297(i)(f). It was open to the Judge to find, as he did at paragraph [37], that the evidence did not go near enough to show that there were serious compelling family or other considerations which made the appellant's exclusion from the UK undesirable. In the circumstances, there was no realistic prospect of the appellant faring any better in a human rights assessment outside the Rules, and Mr Syed-Ali does not contend otherwise.
34. In his skeleton argument, Mr Syed-Ali's complaint about the Judge's Article 8 assessment was confined to the Judge's examination of the issue of sole responsibility. Although Upper Tribunal Judge Finch granted permission to appeal on the ground that it was arguable that the manner in which the Judge had addressed human rights issues was insufficient, and that he failed to make findings on relevant elements of Article 8 or to consider proportionality, Mr Syed-Ali did not seek to persuade me that the Judge had erred in either his assessment of the application of Rule 279(i)(f) or in his brief disposal of an Article 8 claim outside the Rules.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 21 July 2018

Judge Monson
Deputy Upper Tribunal Judge