



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

Appeal Numbers: HU/26326/2016
HU/26328/2016

THE IMMIGRATION ACTS

Heard at Field House

On 17th January 2018 & 7th March 2018

**Decision & Reasons
Promulgated
On 6th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ROSA [A]
CLAVER [A]
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr T Melvin Home Office Presenting Officer (17th January 2018)

Ms A Fijiwala, Home Office Presenting Officer (7th March 2018)

For the Respondents: Mr Joao [A], Sponsor (in person)

DECISION AND REASONS

1. The Appellants are nationals of the Democratic Republic of Congo. They applied for entry clearance as the children of the Sponsor. The Entry Clearance Officer refused both applications on 20th October 2016. The Appellants appealed against those decisions to the First-tier Tribunal.

First-tier Tribunal Judge Lal allowed those appeals in a decision promulgated on 18th October 2017. The Secretary of State now appeals against both of those decisions with permission granted by First-tier Tribunal Judge Boyes on 17th November 2017.

2. In each decision the Entry Clearance Officer gave four reasons for refusing the application. These were (i) that the ECO was not satisfied that the Sponsor is the father and related as claimed to the Appellants; (ii) that the Appellants have not evidenced that the Sponsor had and has continuing control and direction of their upbringing including making the important decisions in relation to their lives; (iii) that the evidence provided was not sufficient to show that the Appellants would be accommodated adequately by their Sponsor without recourse to public funds in accommodation which they own or occupy exclusively; and (iv) that they had failed to provide TB certificates in accordance with paragraph 320(8A) of the Immigration Rules.
3. The First-tier Tribunal Judge found that the evidence of the Sponsor was credible and reliable. The judge found that the evidence shows that the Sponsor has had sole responsibility for the Appellants since 2010. The judge considered the evidence as to the relationship and found:

“16. DNA evidence would be conclusive evidence of relationship but the Tribunal does not need to be sure; it only has to be satisfied on the balance of probabilities. In this case because of the quality of the oral evidence and the self prepared Bundle it is satisfied that the Appellants have shown that they are related to the Sponsor as claimed. When asked the question as to whether they would undergo DNA testing the Sponsor immediately replied yes. This was to his credit and was a spontaneous answer to the question asked.”
4. In the Grounds of Appeal to the Upper Tribunal the Secretary of State contends that the judge failed to make findings on material issues which were in dispute. It is contended that the judge made no findings on the Sponsor’s ability to adequately maintain and accommodate the Appellants without recourse to public funds nor had the judge dealt with the failure of the Appellants to provide a TB certificate as requested. The second ground contends that it was not open to the judge to find that the Appellants and Sponsor were related as claimed when this had been put directly in issue by the ECO and the Sponsor had failed to adduce DNA evidence or provide any explanation for his failure to do so.
5. At the hearing before me Mr Melvin accepted that the Secretary of State had not appeared at the hearing of the First-tier Tribunal and that the Sponsor had appeared in person. He accepted that the issue of maintenance had not been taken by the Entry Clearance Officer. However he pointed out that the accommodation issue had been raised by the Entry Clearance Officer and that this had not been dealt with by the First-tier Tribunal Judge. He accepted that TB certificates are in the file and that these have been stamped and issued by UK Visas and Immigration and accepted that the issue about the TB certificates therefore falls away. Mr

Melvin pointed out that the relationship issue was raised by the Entry Clearance Manager and the Entry Clearance Officer when considering the application. He accepted that the judge found at paragraph 15 that the Sponsor was a wholly credible witness. He accepted that at paragraph 16, whilst noting that DNA evidence would be conclusive evidence of the relationship, the judge reminded himself that the Tribunal has to be satisfied only on the balance of probabilities. Based on the quality of the oral evidence and the evidence in the bundle the judge accepted that the Appellants have shown that they are related to the Sponsor as claimed. At the hearing before me Mr Melvin accepted that it was difficult to maintain any criticism of this finding in light of the judge's findings as to credibility.

6. This left the accommodation issue as the only issue still in dispute. It is clear to me reading the decision that the judge failed to engage with the issue of accommodation as put in question by the Entry Clearance Officer.
7. At the hearing the Sponsor accepted that no documentary evidence of accommodation in the form of a tenancy agreement or any other evidence had been submitted to the First-tier Tribunal. He said that he lives in a two-bedroom flat which is privately rented. He said that when they come to the UK his daughter will sleep in one of the bedrooms and that he and his son will sleep in the other bedroom.
8. Mr Melvin expressed concerns about the oral evidence given in light of the fact that the two children are step-siblings and in light of their age (16 and 17). I agreed that oral evidence from the Sponsor on this issue was not sufficient to demonstrate that accommodation is available to the Appellants within the terms of the Immigration Rules.
9. In these circumstances I decided to adjourn the hearing and to direct that the Appellants provide documentary evidence in relation to the accommodation within a period of 28 days.
10. In advance of the resumed hearing the Sponsor submitted a tenancy agreement in respect of accommodation into which he had moved on 22nd January 2018. At the resumed hearing on 7th March 2018 I pointed out to the Sponsor that the tenancy agreement did not given details about the size of the property and in particular the number of bedrooms. I gave the Sponsor time and he contacted the landlord who sent an email to the Tribunal. In that email the landlord confirmed that the property has a reception room, a kitchen, a bathroom, a toilet and two bedrooms. Ms Fijiwala accepted on the basis of this evidence that the accommodation provided by the Sponsor is adequate. I agree.
11. Accordingly I preserve the findings of the First-tier Tribunal Judge. I set the decision aside only to the extent that it did not deal with the issue of accommodation and I remake that part of the decision deciding that the evidence shows that there is adequate accommodation. Therefore the Appellants have demonstrated that they meet the requirements of the

Immigration Rules. Accordingly the decision to refuse the application for entry clearance is a disproportionate interference with their family life.

Notice of Decision

The appeal is allowed on human rights grounds of appeal.

No anonymity direction is made.

Signed

Date: 30th March 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

I maintain the fee award made by the First-tier Tribunal Judge.

Signed

Date: 30th March 2018

Deputy Upper Tribunal Judge Grimes