



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/07792/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 31 August 2018

Decision & Reasons Promulgated  
On 17 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MISS TEKA ISABEL  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Ahmed Sesay, Solicitor, Duncan Lewis & Co Solicitors

For the Respondent: Ms Z Kiss, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a citizen of Angola who was born on 20 March 1999. She was thought to have been the daughter of [E E], who was born on 30 April 1976, but subsequent DNA analysis has revealed that they were not in fact father and child. The Immigration Judge found that the appellant's true parentage only came to light relatively recently. Up to that time the sponsor Mr [E] regarded himself as the father of the appellant.

2. The current appeal is an appeal against the First-tier Tribunal's decision to dismiss the appellant's appeal under paragraph 352D and under Article 8 of the European Convention on Human Rights as incorporated into English law by Section 6 of the Human Rights Act 1998.

### **Background**

3. The appellant has lived in Angola since she was born. I was informed during the course of the hearing before the Upper Tribunal that she has never been to the UK. She has been residing there with a man called Mankenda.
4. The appellant appeals with permission of Upper Tribunal Judge Lindsley given on 17 July 2018. Judge Lindsley identified at least four possible or arguable errors of law in the course of his consideration of the appeal:
  - 1) Whether the Immigration Judge had correctly interpreted the scope of Article 8;
  - 2) Whether the judge had correctly considered maintenance and accommodation;
  - 3) Whether the Immigration Judge had been right to conclude that the appellant would continue to live with Mankenda, and, if so to what extent that would be the case in the future;
  - 4) Whether the Immigration Judge had been correct to consider and find that it was appropriate for the appellant to remain in Angola given her cultural and language assimilation with that country.
5. Judge Lindsley considered those grounds all to be arguable on a renewal application.
6. I heard representations at length by both representatives. Mr Sesay argued that it was wrong for the Immigration Judge to limit family life to the relationship between father and daughter or putative father and putative daughter. There was a wider family life which had been conducted remotely between parent and daughter and the level of emotional involvement was an important consideration when judging that issue. He said that the judge had considered irrelevant factors, when in paragraph 31(iii) of his decision he had said that the child was well looked after by Mankenda. There was a desire on the part of Mankenda to move, but otherwise there were stable arrangements for her care. He also said that there was inadequate reasoning in relation to that finding and he said that it was not right for the judge to go on and consider the ability of the appellant to speak English, which was an irrelevant consideration, there being no requirement for this in paragraph 352D.
7. On the other hand, Ms Kiss on behalf of the respondent, submitted that the decision was sound, that the judge had fully taken into account family life as it was presented in the evidence and arguments before him. In addition, the appellant, who was then a

child but is now an adult, was well looked after by Mankenda at the date of the hearing and certainly at the date of the application. As far as paragraph 352D of the Immigration Rules was concerned, this was not met because the appellant was not the daughter of the sponsor and therefore the requirements of paragraph 352D(i) were not satisfied. Financial evidence was relevant as it was all part of the situation that the court had to consider with regards to private and family life, which was the key issue before it as this was an appeal since the coming into force of the Immigration Act 2014. Therefore, the appeal was not decided under the Immigration Rules, although they were an important consideration.

8. I was referred to several authorities in the course of submissions, I was also taken to some of the evidence given including phone cards and other evidence of telephone contact, but it was submitted that there was a nuanced decision in relation to that aspect of the appeal by the Immigration Judge, who also noted the lack of other evidence in support of the alleged communication between the appellant and her sponsor. Ms Kiss also commented on the fact there was a lack of financial support between the sponsor and the appellant. The ability of the appellant to read and speak English was a relevant consideration, having regard to her need to culturally assimilate with a new country which she had never visited before and overall the judge's findings were open to him on the evidence. By way of response, Mr Sesay said that 352D had been conceded not to be met on the facts by his predecessor, Mr Nadeem, who appeared at the hearing, but it was relevant to note that based on the jurisprudence and in particular based on the case of **RK [2016] UKUT 31**, the issue of whether a person was in a parental relationship was subject to wider considerations than whether one had parental responsibility for a child. One did not have to establish parental responsibility under Article 8 for reunion to be desirable. Article 8 was wider in that sense than paragraph 352D. He also referred me to the case of **GA (Ghana)** as an indication of the cultural context that needed to be considered in a case of this type.

### Discussion

9. Having identified in paragraph 4 above the issues identified by Judge Linsley as those which are before the Tribunal, I will now attempt to deal with those issues.

*1) Whether the Immigration Judge correctly understood the wide scope of Article 8?*

10. I am satisfied that the judge had regard to the jurisprudence on Article 8, of which there is a great deal. Indeed, from paragraph 7 onwards of his decision the judge quoted extensively from the case law. He clearly had this in mind when he came to decide that Article 8 was not a narrow concept but was a wide one. He held that the appellant's relationship with the sponsor was a genuine one and, through no fault of anybody's, it had been revealed subsequently that they were not in fact father and daughter.
11. The Immigration Judge had regard to Section 55 of the Borders, Citizenship and Immigration Act 2009, which required the Secretary of State to treat the child's welfare

as a paramount consideration. This tends to suggest that the Immigration Judge saw the appeal in its correct context. This appears relevant because at the time of the application the appellant was still a child. She is now an adult and indeed was an adult at the date of the hearing.

2) *Whether the Immigration Judge was entitled to consider the maintenance and accommodation available to the appellant?*

12. The Immigration Judge was correct to have regard to the maintenance and accommodation requirements when looking at the Immigration Rules because Section 117A to B of the Nationality, Immigration and Asylum Act 2002 (2002 Act), and specifically section 117B (3) required the Immigration Judge to consider the economic interests and the well-being of the UK wherever article 8 is considered. Therefore, the Immigration Judge correctly considered this issue at paragraph 31(v) of his decision. This was in accordance with the representations made to him.

3) *Whether the Immigration Judge was entitled to look at the extent to which appellant was adequately housed accommodated by Mankenda at the date of the hearing?*

13. I am satisfied that it was appropriate for the Immigration Judge to look at the accommodation and maintenance arrangements for the appellant with Mankenda at the date of the hearing. There was a letter before the Tribunal, at page 65 in the original bundle, which suggested that Mankenda and his wife wished to move to Moxiko. That was misinterpreted at paragraph 4 of the grant of permission by Judge Lindsley as "Mexico". There is no indication in the evidence as to how far Moxiko was from the address where the appellant was living, but it was noteworthy that Mankenda commented on the fact that it was due to financial difficulties that he and his wife wished to move. That is noteworthy because the sponsor's evidence was that he was giving substantial financial support to his daughter, which presumably would be passed on to Mankenda. It therefore appears relevant that the appellant was adequately housed and maintained in Angola at the date of the hearing. Furthermore, as the judge commented in paragraph 31 II, there was "no reliable evidence before (me) that she (i.e. the appellant) cannot continue to live with Mankenda and his family if the sponsor is willing to ease their financial by providing for the care of the appellant".

4) *Was the Immigration Judge entitled to consider whether it was in the appellant's long-term interests to remain in Angola?*

14. The Immigration Judge looked at the appellant's welfare more widely, pointing out that she is being schooled at Angola, she was aware of the language and culture there and had a long period of continuity of residence there. Whatever the desirability of being reunited with her, perceived, biological father the Immigration Judge had to deal with the case before him. The appellant was likely to speak one of the languages common in Angola, which include Portuguese and French among the European languages spoken. The appellant probably did not speak English well, or if she did,

there was no adequate evidence of this. This is a point the Immigration Judge specifically dealt with paragraph 31 V of his decision. I am satisfied too that this was also a factor which the Immigration Judge properly considered. The appellant would have to culturally assimilate if she was to settle in the UK.

### **Conclusion**

15. This was not a straightforward or easy case for the Immigration Judge to deal with, but I have concluded that he reached a decision he was entitled to come to on the evidence and arguments before him.
16. Section 12 (1) of the Tribunals, Courts and Enforcements Act 2007 requires the Upper Tribunal to consider whether there is a material error of law in the decision of the First-tier Tribunal. Only if it finds such an error will it then consider whether it is necessary to set aside the decision. The Upper Tribunal will not find such an error merely because a different judge might have reached a different conclusion on the facts.
17. The challenges made by Mr Sesay, although properly argued by him, amounted to a disagreement with the Immigration Judge's conclusions and do not amount to errors of law.
18. I have therefore decided that the decision of the First-tier Tribunal was in accordance with the law and the appeal to the Upper Tribunal is therefore dismissed.

No anonymity direction was made by the First-tier Tribunal and I make no anonymity direction.

Signed

Date 11 September 2018

Deputy Upper Tribunal Judge Hanbury

### **TO THE RESPONDENT** **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 11 September 2018

Deputy Upper Tribunal Judge Hanbury