



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/10079/2015

THE IMMIGRATION ACTS

Heard at Field House
On 21 December 2017

Decision & Reasons Promulgated
On 07 March 2018

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

MR DERRICK MAURICE ANDERSON
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, KINGSTON

Respondent

Representation:

For the Appellant: Mr Rene
For the Respondent: Mr Wilding

DECISION AND REASONS

1. The appellant is a citizen of Jamaica born in 1998. He appeals against a decision of the Entry Clearance Officer made on 9 February 2015 to refuse to grant him entry clearance as the child of a person with limited leave to remain in the UK under paragraph 301 of the Immigration Rules. The application was made on 6 November 2014. His mother had limited leave to remain until 12 February 2017. She appears subsequently to have been granted indefinite leave to remain.

2. The respondent refused the application considering that the evidence provided by the appellant did not show that his mother had sole responsibility for him. Also, insufficient evidence had been submitted to satisfy the maintenance requirement.
3. He appealed.

First tier hearing

4. Following a hearing at Harmondsworth Judge of the First-Tier Howard dismissed the appeal in a decision promulgated on 9 March 2017.
5. He heard evidence from the appellant's mother, Charmaine Angelika Edwards and his older brother, Sanishan Lorenzo Williams.
6. The judge's findings are stated to be from paragraph [12ff]. In fact [12] to [17] are a summary of the mother's oral evidence. The findings in respect of sole responsibility are at [18] to [20]. Having noted her evidence that the appellant had a lack of attendance at school and her response that she had raised this with the school in 2011 and 2014 and that it was due to his having to care for his grandmother, looking after her and washing her, he found that *"this explanation did not appear to have made its way into the school reports"*[18].
7. At [19] *"asked some more prosaic questions such as whether he had a girlfriend. Tellingly her answer was 'not that he has said'"*.
8. At [20], having earlier noted her evidence that she has made five trips to Jamaica to visit him between 2011 and date of decision and had made a number of money transfers to a friend for the appellant's education and upbringing, the judge stated that while it was accepted that *"she assists financially and has an active interest in what he is doing"*, the evidence did *"not establish that she has played a role in any of this. Rather it seems that the appellant and his grandmother have forged a life together of mutual support. Her knowledge of the more personal aspects of the appellant's life was entirely missing from her evidence"*. The judge *"did not find her a convincing witness on this issue"*.
9. Moving on (at [21]) to consider serious and compelling family or other considerations that made exclusion undesirable in particular whether there was evidence of neglect or abuse, or unmet needs, the judge found that there were none such, indeed, the appellant *"on the threshold of manhood appears very well integrated into his immediate environment as it is one of the complaints of the school when addressing attendance that he appears to spend too much time focussed on socialising rather than studying"*.
10. The judge in further considering the rules examined the mother's finances finding (at [24]) that for the year 2014 to 2015 she had a total income of £4,344. Also, her most recent bank statement showed a debit balance in excess of £1,000.

11. Finally, in considering Article 8, having found there is family life and that the refusal to grant entry clearance interfered with the ambition of the appellant and his mother to live together in the UK, the judge considered that such interference did not have consequences of such gravity as potentially to engage Article 8. Between 1999 and 2011 the appellant and his mother were content that family life should be enjoyed at arms length. She made the conscious decision to pursue her life in the UK without him. As such they were “*content that the family life they enjoyed throughout that period was one with which both was satisfied*”. She could continue to make visits to him in Jamaica.
12. The appellant sought permission to appeal which was granted on 27 October 2017.

Error of law hearing

13. The crux of Mr Rene’s submission was that the judge failed to consider a supplementary statement (dated 9 February 2017) by the appellant which detailed the activities which the sponsor said showed support for her claim to have had sole responsibility. Also, there was evidence before the judge to show that the maintenance requirement was satisfied. He added that in respect of the finances, contrary to the respondent’s assertion, original documents had been submitted but had been returned by the respondent to the solicitor. He asked that the case be remitted for rehearing as the failure to consider the supplementary witness statement muddled the waters in making clear findings.
14. Mr Wilding agreed that if material error was found the case should be reheard so the findings can be made afresh. However, he questioned whether the decision showed material error. The judge in his findings had referenced the statements. He had reached findings which were open to him on the evidence. In respect of finances there appeared to be an absence of documents.

Consideration

15. I consider that the decision does show error. The issue of sole responsibility is one of fact. The judge (at [6]) noted that the mother adopted “*her signed statements*” (emphasis added). However, in his somewhat sparse findings on sole responsibility he made no reference to the contents in the supplementary statement. Such included that she takes the important decisions in the appellant’s life including choosing the school, doing her research, having sight of the school reports, visiting the school when in Jamaica, and keeping in touch with the school by telephone from the UK. She also referred to the appellant’s health in 2014 and to taking him to the doctor. She further referred to frequent communication with him and that it is from her that he seeks permission about certain activities. Moreover, she referred to her financial position, her earnings from self employment and to the amount of money spent by her per month on the appellant’s upkeep.

16. As indicated the judge stated (at [20]) that in considering sole responsibility by the mother “... *the totality of the evidence does not satisfy me about this.*”
17. I consider that in reaching that conclusion the judge’s failure to refer to and make findings on the evidence contained in the sponsor’s supplementary statement constitutes a material error of law. I would add that although the judge noted that the appellant’s brother adopted his statement and gave oral evidence and was cross examined, there is no indication of what that amounted to. He makes no reference to, or analysis of that evidence either.
18. In respect of maintenance the evidence is not wholly clear. However, in her supplementary statement she refers to working as self-employed and receiving income in excess of what the judge found (at [24]). In addition she received benefits. In the voluminous bundle that was before the judge there appears also to be evidence of savings. I consider the failure by the judge to refer to and make findings on the financial evidence referred to in the supplementary statement also to be an error.
19. In the circumstances, as both parties agreed if material error was found, the appropriate course is for the case to be remitted to the First-Tier Tribunal for fresh consideration in terms of section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and of Practice Statement 7.2.

Notice of Decision

20. The decision of the First-Tier Tribunal involved the making of an error of law and I set it aside. No findings of fact are preserved.
21. The case is remitted to the First tier Tribunal to be reheard by a judge other than Judge Howard.

No anonymity order made.

Signed

Date 5th March 2018

Upper Tribunal Judge Conway