



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

Appeal Number: HU/05010/2017

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 3<sup>rd</sup> December 2018**

**Decision & Reasons Promulgated  
On 02<sup>nd</sup> January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**ENTRY CLEARANCE OFFICER - JAMAICA**

**and**

**C D R  
(ANONYMITY DIRECTION MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr Tan, Home Office Presenting Officer

For the Respondent: Mr Hans of Henry Hyams & Co

**DECISION AND REASONS**

1. This is the Entry Clearance Officer's appeal against the decision of Judge Eames made following a hearing at Bradford on 16<sup>th</sup> February 2018.
2. The claimant is a citizen of Jamaica born on 11<sup>th</sup> February 2002. He applied to come to the UK to join his father as the child of a person present and settled in the UK. His case is that he had become estranged from his mother in Jamaica, with whom he had previously lived, and from that point his father was solely responsible for his care.

3. The Entry Clearance Officer did not believe that a truthful account of the appellant's circumstances in Jamaica had been given, specifically that in 2015 there was an arson attack on his mother's home and in the days which followed he had been abandoned by his mother.
4. The judge accepted that he had been told the truth by the sponsor, concluding that he was in effect the person solely responsible for the child's care.
5. The Entry Clearance Officer sought permission to appeal on the grounds that the judge had applied the wrong standard of proof in relation to disputed factual matters. Permission to appeal was granted on that basis.
6. Mr Tan relied on his grounds submitting that at worst the wrong standard of proof had been applied throughout the determination and at best there had been a conflation of both the lower standard and the correct civil standard.
7. Mr Hans submitted that this was a lengthy and detailed determination and the judge had in fact made appropriate positive findings.
8. I have considered this determination with care, and have decided, reluctantly, that it cannot stand. It is a thoughtful and detailed work. However the overriding impression given is that the judge himself was unclear about what standard of proof he ought to be applying in human rights appeals.
9. At paragraph 48 he states:

"I find, applying the lower standard of proof, I make these findings because on balance I find the appellant's father's account to be reasonably persuasive overall."
10. At paragraph 51 he makes a number of findings of fact, at paragraph 51(b) stating that it was likely that the arson attack had taken place, but at paragraph 51(e) reverting to the phrase reasonably likely. At paragraph 53 he said:

"On balance, I am inclined to give the benefit of the doubt on the knife attack story to the sponsor. I find it reasonably likely that it happened ... On balance it is reasonably likely that it did."
11. He concludes at paragraph 57:

"Overall in my view it is proven as reasonably likely to the standard of proof required in a human rights matter."
12. I agree with Mr Tan that in all cases, but in particular a case involving a child, it is essential that the judge applies the correct standard of proof when making his findings, namely in this case, the civil standard, the balance of probabilities. I am afraid that I cannot be at all confident that this is what the judge had in mind when he made his findings . Indeed the

indications are that he believed that he ought to be applying the lower standard required in protection cases.

13. Unfortunately this means that there is no alternative but to remit this case to the First-tier Tribunal to be reheard again.
14. The decision of Judge Eames is set aside. It will have to be heard by a judge other than him at Bradford at a date to be notified.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Deborah Taylor

Signed

Date 14 December 2018

Deputy Upper Tribunal Judge Taylor