



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

Appeal Number: HU/08973/2017

THE IMMIGRATION ACTS

**Heard at Bradford
on 9 January 2019**

**Decision & Reasons
Promulgated
On 18 January 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**SK
(anonymity direction made)**

Appellant

and

ENTRY CLEARANCE OFFICER (SHEFO\460907)

Respondent

Representation:

For the Appellant: Mr Hans of Henry Hyams & Co

For the Respondent: Mr Diwnycz - Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Gumsley, promulgated on 20 March 2018, in which the Judge dismissed the appellant's appeal against the refusal of an Entry Clearance Officer to grant the appellant leave to enter the United Kingdom to join the sponsor, his father, who is present and settled in the UK.

Background

2. The appellant is a citizen of Guinea born on 20 November 2000. The Judge notes the appellant and respondent's cases before setting out the correct legal framework and relevant case law on the issue of sole responsibility. The Judge sets out an assessment of the evidence between [10 – 22] and findings of fact at [23] which, in relation to paragraph 297 of the Immigration Rules, was that the Judge was not satisfied the appellant's mother was not playing a role in the family in Guinea, not satisfied she had totally abandoned her children as claimed, was not satisfied the sponsor had established sole responsibility for the appellant, whilst being satisfied that significant roles were being played by others in Guinea and that responsibility for the appellant was being exercised by those who are there.
3. The Judge considers article 8, this being a human rights appeal, from [24] in which the Judge finds the decision to be proportionate.
4. Permission to appeal was refused by another judge of the First-Tier Tribunal but granted on a renewed application by a judge of the Upper Tribunal on 5 November 2018.

Error of law

5. The Judge expresses a number of concerns in the decision in relation to the evidence provided. Having had the benefit of seeing and hearing the sponsor give oral evidence the Judge found him to be an unimpressive witness who was extremely evasive in his answers, claiming to have forgotten a number of matters which the Judge finds are the type of thing a person would be unlikely to forget. The Judge refers for example to the sponsor not being able to say when his wife had left him and the children in Guinea as he alleged. The Judge noted the sponsor did not know about addresses where the children had previously lived [12]. The Judge also found the sponsor inconsistent in a number of areas both internally and in relation to external evidence [13 – 15]. The Judge attached little weight to a document purportedly from the Court of Appeal in Guinea for reasons given at [16] and other documents referred to at [17].
6. The Judge accepted some money transfers had been made but noted the funds were sent to the sponsor's sister and not the grandmother who it is claimed was looking after the appellant in Guinea. The Judge notes the statement from the sponsor's sister suggesting the money was sent for the whole family, including herself. The money orders were of different amounts rather than a consistent maintenance payment for the children and were not regular [18]. The Judge also notes a response from the sponsor that he had no evidence of correspondence, texts, cards or other; other than a couple of photographs taken when he was in Guinea, any photographs of the appellant and the children [21], and no idea of the date or year when his wife was alleged to have left him despite giving evidence that it

made him so will he had to seek medical attention for blood pressure at that time. There was also no evidence of anything done by the sponsor to try to trace his wife [22].

7. The grounds seeking permission to appeal allege the Judge had not given clear reasons as to why the findings made had been reached but such an assertion has no arguable merit. The finding of the Judge is that the appellant had not proved he has sole responsibility for the child or that any other element to paragraph 297 could be met. The Judge gives reasons for coming to this conclusion. The grounds assert the Judge states he is not satisfied the mother is not playing a role in the appellant's life but has provided no reasoning behind this which is a misrepresentation of the findings which are that the sponsor and appellant had not established that the appellant's mother had abandoned her children and that it had not been established, on the evidence, that the claim the mother was not playing a role in the appellant's life was likely to be true. There were arguably adequate evidential grounds for the Judge to find accordingly. The Judge is also criticised for not specifying who or what role others in Guinea play in the appellant's life, but the Judge was not arguably required to do so. The allegation made was that the appellant could succeed under the Immigration Rules on the basis the sponsor exercised sole responsibility. This was not proved. There is no dispute the appellant has been adequately cared for in Guinea and so other family members, such as the appellant's mother or others, must be providing for the appellant. Even though the sponsor claimed that he had sole responsibility he did not establish this before the Judge.
8. The finding relating to money is challenged but all the Judge does with regard to this is record that remittances are made but not of a frequent amount or payment date and that they are paid to the sponsor's sister who states that part of the monies is for her and other family members. It may be that payments have to be made to other than the appellant as he is a minor, but this does not undermine the findings of the Judge in relation to this piece of evidence.
9. The Judge at [19] claims the sponsor had stated he had chosen to bring the appellant, his eldest child, to the United Kingdom leaving other children in Guinea so the child could work and help support further applications for the child. It is said the sponsor's position was that the cost of applications was prohibitive and that the representative stated it would be down to expense, and that one theory could be that the eldest child could work, and this would help the sponsor to make an application in the future. Although the Judge is criticised on the basis the sponsor was not asked about that in evidence and it was a matter raised in submissions made by the appellant's advocate. The Judge was entitled to take it into account. It is not made out it is a submission made without instruction or authority and is a plausible theory if the cost of applications for the other children are in issue. There is nothing arguably irrational in the Judge taking note of the specific submission made.

10. It is accepted that as he is not in Guinea the sponsor may not have been able to answer a number of the questions but that does not explain all of the hesitancy and lack of knowledge identified in the decision under challenge. As noted above, the Judge had the opportunity of seeing and hearing the sponsor give oral evidence. The fact the sponsor was not asked about the appellants schooling or health is not the fault of the Judge. The appellant was represented, and it was not made out there was any restriction upon his advocate asking him in evidence in chief for re-examination about such issues. The Judge made the decision on the basis of the evidence made available.
11. Whilst the appellant disagrees with the outcome and seeks a more favourable conclusion, no arguable legal error material to the decision of the First-Tier Tribunal has been made out. The findings within the range of those available to the Judge on the evidence. The findings are adequately reasoned and the weight to be given to the evidence was a matter for the Judge. In addition to the Immigration Rules the Judge undertook a freestanding assessment under article 8 ECHR adopting the structured approach set out in *Razgar*. The Judge considered statutory provisions including section 55 of the 2009 Act and the best interests of the appellant as a child. The Judge found there was family life recognised by article 8 between the sponsor and the appellant at [26] but found such family life as there is, is weak. The Judge considered the proportionality concluding that any interference in such family life is proportionate to the legitimate aim of the respondent. This has not been shown to be a conclusion not available to the judge on the evidence.
12. The decision of the First-Tier Tribunal shall stand.

Decision

- 13. There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

14. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 9 January 2019

