



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

Appeal Number: HU/14062/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 24th January 2019**

**Decision & Reasons
Promulgated
On 11th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KAREEM [G]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Mr C Mupara of Counsel instructed by Reiss Edwards

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Flynn made following a hearing at Taylor House on 31st May 2017.

Background

2. The claimant is a citizen of Jamaica born on 19th January 1999. He applied to come to the UK to join his father but was refused on 2nd November 2015 because the Entry Clearance Officer was not satisfied that his father had had sole responsibility for his upbringing or that there were serious and

compelling family or other considerations that made his exclusion from the UK undesirable and suitable arrangements had been made for his care.

3. The Entry Clearance Officer initially was not satisfied that the claimant was related to the sponsor as claimed but following DNA evidence it was accepted that the sponsor is the claimant's father.
4. The judge heard oral evidence from the sponsor who was unrepresented. He explained the family circumstances which led to the application being made and the judge accepted that he had given credible evidence. The judge found that the claimant had not lived with his mother since 2012, three years before the date of his application. There was nothing to show that she had exercised any responsibility for his upbringing since that date and the judge accepted the sponsor's evidence that she had taken no interest in his schooling, concluding that the claimant's mother ceded all responsibility for his upbringing to his paternal grandparents.
5. The judge was satisfied that the claimant's father had had sole responsibility for his upbringing and that the requirements of paragraph 297(i)(e) were met. She said that she allowed the appeal under the Immigration Rules. She also allowed the appeal on Article 8 grounds.

The Grounds of Application

6. The Secretary of State sought permission to appeal on a number of different grounds. First, the judge had given insufficient reasons for concluding that the sponsor had given credible evidence and that he had had sole responsibility for his son. In particular, she had not engaged with the evidence from the claimant himself.
7. Second, the Presenting Officer in his minute stated that the sponsor's wife was disruptive in the hearing but there was no reference to her behaviour in the body of the determination.
8. Next, the judge purported to allow the appeal under the Immigration Rules but the grounds of appeal were human rights only and it was not open to the judge to do so. In any event, her considerations in relation to Article 8 were flawed in that she applied the wrong standard of proof suggesting that the standard of proof was lower than the normal civil standard; moreover she misunderstood the date at which to consider the evidence.
9. Finally, she said that she was mindful of her duty under Section 55 although the claimant was not a child at the date of the hearing.
10. Permission to appeal was granted by Judge Hollingworth for the reasons stated in the grounds on 24th January 2018.

Submissions

11. Mr Walker relied on his grounds. In particular, the judge had failed to mention a key letter written by the claimant on 12th July 2015 when he specifically said that he was supported by his father and his mother and his grandparents. He quite properly did not pursue the allegation made in the grounds of procedural unfairness since there was no supportive evidence with the grounds to demonstrate a prima facie case that the judge had not acted fairly.
12. Mr Mupara defended the determination, submitting that the credibility findings were open to the judge and that adequate reasons had been given.

Consideration as to whether there is an Error of Law

13. I am satisfied that the judge erred in law. Credibility was central to this appeal and it is quite clear from paragraph 61 that the judge was applying the lower standard of proof rather than the normal civil standard, namely the balance of probabilities. Moreover, it was incumbent upon her to engage with the evidence from the claimant which appeared to show that responsibility for him was shared between his father, his mother and his grandparents. Finally, it was not open to her to allow the appeal under the Immigration Rules.
14. The decision is set aside.
15. It was agreed between all parties that it would be possible to re-make this decision since the sponsor was present and able to give evidence.
16. Accordingly, I allowed a short adjournment so that a witness statement could be taken from him, which he adopted at the start of his evidence.

The Evidence

17. [LG] said that he started a relationship with his former partner in 1997 and his son was born on 19th January 1999. In March 1999 when Kareem was 2 months old the couple separated, his mother leaving the matrimonial home and his son remaining in his care. She did not support him in any way. The sponsor looked after Kareem until 2010 with the help of his parents. They had migrated to Florida in 2003 and his son spent the summers with them.
18. In 2010 the sponsor moved to the UK. The plan was to bring Kareem to join him and for a fairly brief period the claimant lived with his mother. However, things proved difficult and he knew deep down that the arrangement would not work. After about sixteen months, in 2011, Kareem went to Florida to live with his paternal grandparents.
19. In 2016 Kareem developed behavioural issues at the same time as his grandfather became unwell and his grandmother, who was caring for her

husband full-time was not able to control him. The sponsor sent him back to Jamaica where he lived with his uncle, the sponsor's brother. He overlapped with his mother for a period of just a couple of weeks. However she said that she had signed him over to his father and she did not want to end up back with him. She herself was not planning to stay in Jamaica and indeed a few weeks later she left for the USA.

20. The sponsor was asked to comment on the letter which Kareem had sent in 2015. He had appeared to suggest that he was financially supported by his father and grandparents and his mother but the sponsor said that in fact his mother has never given him any money and all of the receipts were for monies sent by him save for a single present of cash on his birthday.

Submissions

21. Mr Walker acknowledged the strength of the oral evidence and accepted that the sponsor had clarified the issues under appeal. He accepted that the sponsor had chosen the school which the claimant attended, that he saw the school reports, that he had supported him financially throughout, and that he was in weekly contact with him. As he said, the evidence spoke for itself.
22. Mr Mupara submitted that the appeal ought to be allowed on human rights grounds since the evidence clearly pointed to the claimant meeting the substantive Immigration Rule.

Findings and Conclusions

23. It is clear that the original judge accepted the credibility of the oral evidence given to her and having heard the sponsor myself, I quite understand why she did so. Indeed, none of the evidence has been challenged by the Presenting Officer.
24. I accept that the sponsor has been solely responsible for his son's upbringing. He has looked after him since he was 2 months old when his mother ceased to support him financially or indeed, in any other way. She does appear to have had some involvement until 2011 when she looked after him for a time, before signing a grant of legal guardianship to the grandparents so that Kareem could go to school in Florida. However, aside from that she appears to have shown little interest in him.
25. I accept the evidence that Kareem has been depressed and it could be that he finds it difficult to accept that his mother has been neglectful. Certainly, there is no documentary evidence to substantiate his remark in the letter of 12th July 2015 that she gave him financial support. The money transfer receipts solely emanate from his father.
26. Sole responsibility is demonstrated by the decision in 2011 to send Kareem to live with his paternal grandparents. If there had been joint responsibility and his mother had wished to continue to look after him, no

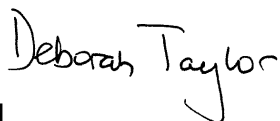
doubt she would have done so from 2010 when the sponsor moved to the UK. In fact, he went to live with his paternal grandparents for five years and only returned to Jamaica when they were no longer able to care for him. I accept the now unchallenged evidence that his mother refused to take him in in 2016, that she very soon thereafter went to live with her boyfriend in the USA, and that Kareem is now in the care of his paternal uncle.

27. Mr Walker accepted that the claimant meets the substantive Immigration Rule, namely paragraph 297(i)(e).
28. In TZ (Pakistan) v Secretary of State for the Home Department [2018] EWCA Civ 1190 the court stated that where a person satisfies the Immigration Rules this would be positively determinative on an Article 8 appeal providing of course that the appeal engages Article 8.
29. In this case there is no doubt that Article 8 is engaged since the claimant enjoys family life with his father with whom he is in weekly contact. The refusal of entry clearance interferes with his right to enjoy family life. Since he satisfies the relevant Immigration Rules there can be no public interest in his not being granted entry clearance and it would be disproportionate not to do so.

Notice of Decision

30. The Immigration Judge erred in law. Her decision is set aside. It is re-made as follows. The appeal is allowed on human rights grounds.

No anonymity direction is made.



Signed

Date 8 February 2019

Deputy Upper Tribunal Judge Taylor