



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

Appeal Number: HU/23931/2018 (T)

THE IMMIGRATION ACTS

Decided under rule 34

On 23rd August 2020

**Decision & Reasons
Promulgated**

On 26th August 2020

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**[A D]
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Pursuant to directions sent on 2 July 2020 indicating a provisional view that in light of the need to take precautions against the spread of Covid-19 and the overriding objective, it would be appropriate in this case to determine the issue of whether the First-tier Tribunal's decision involved the making of an error of law and if so whether the decision should be set aside without a hearing; the parties did not raise any objections and both made written submissions on the issues raised in the appeal.
2. In circumstances where no objections were made to the issues being determined without a hearing and where the parties have made written submissions; it is in the interests of justice to proceed to determine the error of law issues on the papers in light of the written submission available and the full appeal file.

3. The Appellant appeals with permission (on two grounds only) against the decision of First-tier Tribunal Judge Housego promulgated on 31 December 2019, in which the Appellant's appeal against the decision to refuse her entry clearance to the United Kingdom to join her mother dated 8 November 2018 was dismissed.
4. The Appellant is a national of Ghana, born on 2 May 2008 who sought entry clearance to the United Kingdom to join her mother, residing here with leave to remain as the spouse of a British citizen, the Appellant's step-father. The Appellant's application was based on her having been abandoned by her biological father as a baby and being brought up by her mother (who moved in with her own parents at that time) who has had sole responsibility for her from birth and continuing after her mother's entry to the United Kingdom in 2017; following which she has remained financially responsible for her, has kept in touch with her and visited her three times.
5. The Respondent refused the application the basis that although the Appellant has provided details of her father and stated they have no contact, there was a lack of evidence about his present location or consent for the Appellant to move to the United Kingdom; that there was no legal documentation or custody document to demonstrate that the Sponsor had sole responsibility and there was no evidence beyond a statement as to who the Appellant was living with in Ghana as to her arrangements there. The Respondent did not consider that there were any matters making the Appellant's exclusion undesirable, that suitable arrangements were in place for her care and that there were no exceptional circumstances to warrant a grant of entry clearance.
6. Judge Housego dismissed the appeal in a decision promulgated on 31 December 2019 on all grounds. In essence, the First-tier Tribunal accepted that the Appellant had been abandoned by her father as a baby but found that since then she had been brought up by her maternal grandparents or at the very least, they shared parental responsibility for her with the Sponsor. The Sponsor did not have sole responsibility. The First-tier Tribunal made adverse credibility findings about the Sponsor and her husband on the basis that neither knew very much about the Appellant's education and documents relating to that were unreliable (in relation to the names on the documents and inconsistent evidence about whether written reports were sent) and that the Sponsor was unclear as to when the Appellant started at the school or at what age. The First-tier Tribunal found that there was no evidence showing that the Appellant and Sponsor lived together in Ghana for 9 years from 2008 when the Appellant was born to when the Sponsor came to the United Kingdom in 2017. Finally, it was found that the Appellant's current living conditions were satisfactory and there were no reasons making her exclusion undesirable, nor were there any compelling circumstances that could lead to a grant of leave to enter under Article 8 of the European Convention on Human Rights.

The appeal

7. The Appellant sought permission to appeal on nine grounds as follows. First, that the First-tier Tribunal materially erred in law in its assessment of the proportionality balancing exercise, applying the wrong test of 'unduly harsh' which is only relevant to deportation of foreign criminals and requiring a threshold test of 'exceptional circumstances' which does not exist.
8. Secondly, that the First-tier Tribunal's decision was procedurally unfair because it did not notify the parties of the intention to rely on the case of Tuquabo-Tekle & Others v The Netherlands 60665/00 [2005] ECHUR 803, not relied upon by either party and with no opportunity to make submissions on it.
9. The third, fourth and fifth grounds of appeal relate to the use of an internet search for information about the Appellant's school and teachers in Ghana and claim that the First-tier Tribunal materially erred in law in failing to record the submission about the internet search, failing to consider the lack of evidence that the website was up to date, was procedurally unfair without giving the Sponsor an opportunity to furnish evidence in response, particularly in circumstances where the matter was considered to be material and the Respondent had not previously raised this. The Appellant claims that there was an error of law in this regard in failing to adjourn the appeal and for failing to address all of these points in the written decision.
10. Sixthly, that the First-Tribunal materially erred in law in finding that the Appellant was raised from birth by her maternal grandparents when there is no evidential basis for such a finding and no reasons given in support of it; the finding also being inconsistent with the First-tier Tribunal's finding that there was no evidence of the Appellant living with the Sponsor. The First-tier Tribunal has therefore made findings which were perverse and/or irrational.
11. Seventhly, that the First-tier Tribunal materially erred in law in finding an inconsistency in paragraph 46 of the decision about school reports when there was none - it is not inconsistent for school reports to have been sent but not received.
12. Eighthly, that the First-tier Tribunal materially erred in law in finding that the Sponsor's evidence was not "candid" because he claimed he was fully involved in decisions about the Appellant, without giving adequate reasons and which in any event was irrational on his evidence.
13. Finally, that the First-tier Tribunal materially erred in law in finding at paragraph 49 that there was no evidence that the Appellant and Sponsor lived together in Ghana for nine years, contrary to substantial evidence in the bundle of the same and the written and oral evidence of the Sponsor and her husband.

14. Permission to appeal was granted by Judge Page on 7 April 2020 on grounds six and nine only; permission to appeal was expressly refused on the remaining grounds. Judge Page identified the central issue in the appeal being whether the Sponsor had sole responsibility for the Appellant and that only grounds six and nine sufficiently engaged with findings on that matter to warrant permission being granted. In relation to the other grounds, Judge Page stated:

“The remaining rounds of appeal amount to disagreement with the judge’s conclusions on the other evidence before the judge and the procedures the judge followed during the hearing and after when writing up. The judge was under no obligation to notify the parties of the caselaw that the judge would refer to in the decision [ground 2]. The judge has not relied on any “unusual case law” – and it is not explained what was unusual. There was no obligation on the judge to engage in on-line research into the appellant’s school in Ghana to verify the appellant’s evidence about who taught there as suggested by ground 5. With regard to the other grounds, the correct legal tests and Rules appear to have been properly applied. None of the remaining grounds have identified arguable errors of law. ...”.

15. In response to the directions issued on 2 July 2020, the Appellant made written submissions on 18 August 2020 (with sufficient explanation as to the delay directly attributable to personal and general difficulties caused by Covid-19) in which all grounds of appeal continued to be relied upon on the basis that Judge Page unfairly restricted the scope of the grounds of appeal which were all material and on point. However, the Appellant did not seek permission to appeal directly to the Upper Tribunal on the grounds which were initially refused (which is the correct procedure) and any such application even if properly made would be significantly out of time, the deadline for doing so having passed some three and a half months before these written submissions. The invitation to the Upper Tribunal to consider the remaining grounds at this stage does not constitute an application for permission to appeal, nor is there a good reason to extend time to do so and in any event I would have refused permission for the same reasons given by the First-tier Tribunal on these grounds. The decision therefore only concerns the sixth and ninth grounds of appeal which are the only ones properly before the Upper Tribunal to determine.
16. As to the grounds before the Upper Tribunal, the Appellant’s written submissions are substantively the same as the grounds of appeal on the sixth and ninth grounds.
17. In response to the directions issued on 2 July 2020, the Respondent made written submissions on 9 July 2020 opposing the appeal. In relation to the sixth ground of appeal, the Respondent submitted that the Sponsor displayed a lack of knowledge and awareness of the Appellant’s education

and circumstances which was relevant to her credibility. In this regard the First-tier Tribunal made adverse findings based on the oral evidence, with clear and cogent reasons given for the findings. The Respondent reiterates that it is for an Appellant to establish their claim with evidence and that the First-tier Tribunal is entitled to accept or reject it, with reasons, particularly where credibility is an issue.

18. In relation to the ninth ground of appeal, the Respondent submits that it is immaterial to the central issue of whether the Sponsor had sole responsibility for the Appellant. The cohabitation between the Sponsor and her husband was not relevant and could not have affected the outcome of the appeal, and in any event, as referred to in paragraph 29 of the First-tier Tribunal, it is a matter of which it was aware anyway.

Findings and reasons

19. The two live grounds of appeal in this case are linked, concerning the finding that the Sponsor did not have sole responsibility and to the contrary, the Appellant had been brought up by maternal grandparents who at the very least, had shared responsibility with the Sponsor. These findings in part relied upon the finding that there was a lack of evidence of the Appellant residing together with the Sponsor in Ghana.
20. Contrary to the claim in the grounds of appeal that there was substantial evidence of the Appellant's cohabitation with the Sponsor in Ghana, there was in fact very little at all about the Appellant's circumstances there. The Sponsor's evidence before the First-tier Tribunal was that she and the Appellant had, after the Appellant's birth, lived with the Sponsor's parents in Ghana until she came to the United Kingdom in 2017. There was no documentary or other evidence of the Sponsor's residence and no evidence from the Appellant's grandparents.
21. Also before the First-tier Tribunal was evidence in the form of the application form, which confirmed that the Appellant had lived at her current address for seven years (the same address as listed for her grandparents) and listed both of her grandparents as her 'legal guardians', whom it was confirmed she was still living with in the grounds of appeal. The Appellant's own written evidence before the First-tier Tribunal was that the people who took care of her from infancy were her grandfather and mother.
22. This evidence consistently supported the finding that the Appellant had lived with her maternal grandparents for the majority, if not the whole of her life in Ghana, with limited evidence that the Sponsor also lived with them before coming to the United Kingdom. When this evidence is considered together with what the Appellant herself said about her relationship with her grandparents (her grandfather in particular) and the adverse credibility findings which were made against the Sponsor, it was rationally open to the First-tier Tribunal to conclude that there was insufficient evidence of the Appellant and Sponsor residing together in

Ghana as claimed and that overall, at best, the Sponsor had shared responsibility with her parents for the Appellant, which was not sufficient for the purposes of the Immigration Rules. The adverse credibility findings were clearly reasoned in relation to the lack of knowledge about the Appellant's education (not limited to the evidence about head-teacher, teacher and details on the website but also as to when the Appellant started school) and open to the First-tier Tribunal to make on the evidence. There was nothing perverse or irrational about these findings or the overall conclusion.

23. I find no error of law in the First-tier Tribunal's decision or its reasoning. This is a case in which the Appellant had simply failed to establish, on the balance of probabilities, that the Sponsor had sole responsibility for her and where there was a lack of any other evidence upon which there was an alternative basis upon which the appeal could have been allowed by satisfaction of the Immigration Rules or outside of them on Article 8 grounds.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

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

Unless and until a Tribunal or court directs otherwise, the Appellant, who is a child, is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

Signed G Jackson
Upper Tribunal Judge Jackson

Date 23rd August 2020