



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/25276/2018 (V)

THE IMMIGRATION ACTS

Heard at Field House
On 12 November 2020

Decision & Reasons Promulgated
On 1 December 2020

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MR BABATUNDE AYORINDE ADEPITAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation

For the Appellant: Mr N Aborisade, Solicitor, O A Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

DECISION AND REASONS

1. In a decision promulgated on 2 July 2020 (a copy of which is appended to this decision) I set aside the decision of the First-tier Tribunal. I now remake that decision.

Background

2. The appellant is a citizen of Nigeria born on 14 November 2001. On 18 August 2018 he applied for entry clearance to the UK under Paragraph 297 of the Immigration Rules in order to join his father (“the sponsor”).
3. The sponsor moved to the UK in 2007, when the appellant was 6 years old. The sponsor left the appellant in the care of the appellant’s paternal grandmother. The appellant lived with his grandmother until she died in December 2017. Since then, he has been living with a friend of the sponsor, Mr Esan.
4. The appellant claims that the sponsor has had sole responsibility for his upbringing within the meaning of paragraph 297(i)(e) of the Immigration Rules. In the alternative, it is argued that there are serious and compelling family or other conditions which make exclusion of the appellant undesirable under paragraph 297(i)(f).
5. This appeal is brought under section 82(1)(b) of the Nationality Immigration and Asylum Act 2002 on the basis that refusing entry to the appellant is contrary to Article 8 ECHR and therefore unlawful under section 6 of the Human Rights Act 1998.
6. The burden is on the appellant and the standard of proof is the balance of probabilities.

Evidence

7. The evidence relied upon by the appellant consists of the following:
 - (a) His witness statement. This is an extremely brief statement where the appellant states that he was abandoned by his mother when he was 6 months old and that his grandmother, with whom he lived after his father moved to the UK, died in December 2017. He states that his father made arrangements with Mr Esan to look after him whilst an application was made for him to move to the UK. He states that his father and stepmother in the UK pay for his maintenance and accommodation and that his stepmother has visited him several times. He also states that his parents in the UK have responsibility for him and communicate with him on a daily basis.
 - (b) The witness statement of the sponsor. This, too, is extremely brief and lacking in detail. The sponsor states that he left Nigeria in 2007 when the appellant was 6 years old, and that his wife has visited the appellant more than seven times. He also states that he made arrangements for the appellant to live with Mr Esan whilst his visa was being arranged. He states that he has responsibility for the appellant and communicates with him on a daily basis.
 - (c) The witness statement of the sponsor’s wife. In her brief statement, the sponsor’s wife states that she has visited the appellant in Nigeria more than seven times and that she and the sponsor are responsible for him. She also states that following the death of the sponsor’s mother arrangements were

made for the appellant to live with Mr Esan whilst a visa to travel to the UK was obtained.

- (d) The witness statement of Mr Esan. He states that when the appellant's application was refused the sponsor pleaded with him to exercise patience and allow the appellant to continue living with him.
8. The bundle of evidence also includes a death certificate for the appellant's grandmother, showing that she died on 28 December 2017; receipts of money transfers made between 2017 and 2019, mostly from the sponsor to the appellant, and also from the sponsor to Mr Esan; and a copy of a college report from 2015 concerning the appellant's education.
 9. At the hearing, both the sponsor and the sponsor's wife were available (remotely) for cross-examination. Mr Jarvis only cross-examined the sponsor. During the cross-examination, the sponsor stated, in response to questions from Mr Jarvis, that the appellant completed his A levels in August 2019 and is now studying medicine. The sponsor stated that he is paying for the appellant's accommodation and education, but that presently the appellant is living with Mr Esan because of a strike at the university.
 10. When asked why he waited until 2018 to apply for the appellant to join him in the UK (a total of eleven years), the sponsor's response was that he wanted to settle down with his wife first and be financially secure.
 11. Mr Jarvis asked the sponsor about the decisions he makes for, and in respect of, the appellant. The sponsor's response was that he makes every decision and controls everything; and that he wants the appellant to come to the UK now so that he can take proper care of him. He also stated that his wife loves the appellant and that he speaks to him every day.

Submissions

12. Mr Jarvis argued that, despite the entry clearance refusal having been made almost two years previously, there was very little evidence, and no up-to-date evidence, before the Tribunal. He noted that the burden lies on the appellant to demonstrate sole responsibility on the balance of probabilities, and that the appellant was in difficulty in doing so because of the lack of evidence.
13. He highlighted the absence of any detail as to what decisions the sponsor has made on behalf of the appellant or about his involvement in the appellant's life. He also argued that the reason given by the sponsor in cross-examination for not applying earlier for the appellant to join him in the UK (that he wanted to become settled beforehand) was inconsistent with the evidence given in the First-tier Tribunal, where it was stated that he did not want to disturb the appellant's education. He noted that given the appellant is now studying medicine, and that at the time of the application the appellant was studying for his A levels, this seems incongruous as

there would still be a significant disruption to the appellant's education by relocating to the UK.

14. Mr Jarvis also submitted that it is far from clear that it would be in the best interests of the appellant to relocate to the UK when he is currently studying medicine and appears to have a stable environment in which to live.
15. Mr Aborisade submitted that the sponsor gave credible evidence that he makes decisions about everything for the appellant and that this is consistent with the evidence of the appellant. He drew attention, in particular, to the evidence of Mr Esan that the sponsor had had to plead with him to provide accommodation to the appellant. He argued that this indicates that the appellant has no-one else looking after him than the sponsor.

Findings of Fact

16. Having considered the evidence, as summarised above, I make the following findings of fact:
 - (a) The appellant was abandoned by his mother when he was 6 months old and has not had contact with her since.
 - (b) When the appellant was 6 years old his father moved to the UK, leaving him with his paternal grandmother.
 - (c) The appellant lived with his grandmother until she died in December 2017. During that time, the appellant was cared for, and supported financially and emotionally, by his grandmother, who took all important decisions in his life. The sponsor argues that he, rather than the appellant's grandmother, provided this support to the appellant. However, the burden is on the appellant and he has not adduced any documentary evidence to show the involvement of the sponsor in his life before 2017. In addition, the statements of the appellant, sponsor and sponsor's wife give no detail, and merely make the bare assertion that the sponsor made decisions for the appellant. Similarly, no detail was provided during oral evidence.
 - (d) Whilst the appellant was living with, and being looked after by, his grandmother, the sponsor's wife visited him on approximately 7 occasions.
 - (e) The appellant's circumstances changed significantly following the death of his grandmother in 2017, when he was 16 years old. The evidence indicates, and I accept, that the sponsor arranged for the appellant to reside with his friend Mr Esan, on a temporary basis, whilst he sought a visa for the appellant to join him in the UK. I also accept that from March 2017 onwards the sponsor provided financial support to the appellant, as well as some funds to Mr Esan.
 - (f) The oral evidence of the sponsor was that he is paying for the appellant's medical education in Nigeria. It is disappointing that no documentary evidence to corroborate this has been submitted when plainly such evidence would be readily available. However, having heard cross-examination of the sponsor,

and carefully considered the evidence, I am satisfied that on the balance of probabilities this is in fact what has occurred.

Analysis

17. The appellant has not established that the sponsor had sole responsibility for him before the death of his grandmother. As explained above, no documentary evidence was adduced to show that, prior to 2017, the sponsor had any involvement in the appellant's life or provided him with financial (or other) support. Reliance was placed on the witness evidence to show sole responsibility prior to 2017, but this evidence lacks any detail. Neither in his witness statement nor in his oral evidence did the sponsor state what decisions he made, or had ever made, in respect of the appellant; or what role he played in the appellant's life whilst the appellant's grandmother was living. I find that prior to her death the appellant's grandmother took responsibility for him and the sponsor did not have sole responsibility for him.
18. Circumstances changed, however, in 2017, when the appellant's grandmother died. The evidence, scant though it is, indicates that the sponsor became involved with the appellant at this time and that he (a) found a place for him to live; (b) applied for him to move to the UK; (c) sent him funds; and (d) paid for him to go to university to study medicine.
19. There are two alternative ways to construe the actions of the sponsor following the death of the appellant's grandmother. The first is that he acted with kindness towards the appellant, taking steps to keep him in accommodation and education, but without assuming sole responsibility for him. As noted by Schiemann LJ in *Nmaju v ECO* [2000] EWCA Civ 505 at [25] situations can (and do) arise where no one can be regarded as having responsibility for a child's upbringing. The appellant was already 16 years old when his grandmother died and it is entirely plausible that thereafter no one assumed responsibility for him. The second alternative is that following the death of the appellant's grandmother the sponsor stepped into the role she had previously undertaken and began taking responsibility for the appellant.
20. Having carefully considered the evidence, I am (just) persuaded that the second alternative is the more likely and I find that, on the balance of probabilities, the sponsor assumed sole responsibility for the appellant in December 2017 when the appellant's grandmother died and that this continued (and was continuing) when the appellant's application for entry clearance was made. Even a brief period of sole responsibility is sufficient (see *Nmaju*), and therefore I accept that the conditions of paragraph 297(i)(e) of the Immigration Rules were met.
21. In order for the appellant to satisfy the requirements of Paragraph 297 of the Immigration Rules it is not sufficient that he meets the conditions of sub-paragraph (i)(e). He must also meet the requirements of sub-paragraphs (ii) -(vii). The respondent's refusal letter did not identify a failure to meet the requirements of sub-paragraphs (ii) -(vii) and Mr Jarvis confirmed at the hearing that the respondent did not take issue with any of them. I therefore find that the appellant meets the

conditions for indefinite leave to enter the UK as a child of a parent present and settled in the UK pursuant to Paragraph 297.

22. Mr Jarvis accepted that article 8(1) ECHR was engaged. Accordingly, I allow the appeal on human rights grounds under Article 8 as where a person satisfies the Immigration Rules, this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1): see *TZ (Pakistan) and PG (India) v The Secretary of State for the Home Department* [2018] EWCA Civ 1109 at [34].

Notice of Decision

The appeal is allowed.

No anonymity direction is made.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

18 November 2020