



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

Appeal Number: UI-2021-001255
HU/00940/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 8th November 2022**

**Decision & Reasons Promulgated
On 18th December 2022**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**FAVOUR OKUNMWENDIA
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr V Obasogie of Bridges Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Interpretation:

Mr E Ogbemor in the Edo language

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nigeria born on 10th September 2008. On 24th June 2020 she applied for entry clearance to come to the UK as the daughter of a person present and settled in the UK with British citizenship, namely her mother Mrs Blessing Okunmwendia. Her

application was refused on 10th January 2021, and her appeal against the decision was dismissed by First-tier Tribunal Judge Hussain in a determination promulgated on the 28th October 2021.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Haria on 29th December 2021. I found that the First-tier Tribunal had erred in law in a decision of 22nd March 2022 and made directions for the remaking of the appeal. This error of law decision is to be found at Annex A to this decision.
3. The matter came before me to remake the appeal. I issued further directions to the parties on 2nd November 2022 reminding them that the hearing before the Upper Tribunal on 8th November 2022 would be a remaking hearing and directing the appellant that evidence going to the current situation with accommodation and support, and evidence from the appellant herself expressing her view on her best interests, should be filed with the Upper Tribunal and served on the Respondent. I admitted the new evidence requested to be admitted by the appellant in the supplementary bundle and the evidence submitted pursuant to my directions of 8th November 2022 as it was pertinent to the appeal and no objection was raised by Mr Melvin.

Evidence & Submissions - Remaking

4. At the start of the hearing there was a discussion about the issue of accommodation and support. Mr Melvin accepted that though the accommodation was far from ideal it was not statutorily over-crowded, and that there were sufficient funds and accommodation for the appellant to be supported adequately without recourse to public funds. The only matter to be determined, when considering the Article 8 ECHR appeal by reference to the Immigration Rules at paragraph 297, was therefore whether the sponsor had sole responsibility for the appellant or whether there were serious and compelling family reasons which make her exclusion undesirable.
5. The sponsor attended the Upper Tribunal and gave evidence through the Edo interpreter, whom she confirmed she understood, and confirmed that her written statements were all true and correct. The evidence of the sponsor, from her statements of 11th September 2020, 27th January 2021, 24th August 2021 and 1st November 2022, and in her oral evidence is, in summary, as follows.
6. Mrs Blessing Okunmwendia, henceforth the sponsor, was born on 20th December 1994. She was forced into prostitution by her step-mother after her father died and had sexual intercourse with many men. She became pregnant with the appellant as a result of this forced prostitution, and therefore has no idea of the identity of her father. The appellant was born on 10th September 2008, when the sponsor was just 13 years old. DNA evidence confirms the appellant is the sponsor's daughter. The appellant was cared for by her step-mother after her birth for the two

year period until she left Nigeria. The appellant had already left school at this time.

7. The sponsor was then given to someone by her step-mother who trafficked her to the UK. In 2011 the sponsor was arrested on entry to the UK and made an asylum claim, and was granted refugee status by the respondent in 2012 on the basis of her history of being trafficked to the UK. The appellant remained in the care of the sponsor's step-mother when the sponsor was trafficked from Nigeria. The sponsor did not tell the respondent or those who cared for her in foster care about her daughter when she claimed asylum as she was embarrassed and ashamed about having a child outside of marriage in these circumstances, and she was only a child herself at that time. She does not know who the father of the appellant is and so he has never played a role in her care at any point.
8. The sponsor met her future husband, Mr Enobakhare, whilst she was in foster care in the UK, and became pregnant with their first child in 2011 when she was 16 years old. She married her husband Mr Enobakhare in the UK on 4th February 2015, and prior to their marriage, she told her husband about the existence of appellant. The separation from and lack of contact with her first child was causing her to feel depressed and confused, and this led eventually to her bringing up the subject. It took time for her and her husband to have funds and to decide what to do however, although he had leave to remain in the UK from 2014. She gave evidence that she thought about the appellant every day but said that they did not know what to do or how to go about finding her, and that Nigeria was not like in the UK where you could have contacted the local authority.
9. In 2016 the sponsor's husband, Mr Enobakhare, travelled to Nigeria and tried to find the appellant as not having contact was having a serious detrimental effect on the sponsor's well-being. Mr Enobakhare found that the sponsor's step-mother had died and the appellant was living with one of her relatives. Mr Enobakhare was not happy with the care arrangement so fixed for the appellant to stay with a friend called Mr Efosa Omoregie, and then later with Mr Desmond Osaghae, as Mr Omoregie was a pastor who travelled a lot. Mr Desmond Osaghae has written to confirm that the sponsor sends him money to provide for all of the appellant's needs such as schooling, medical costs, food and transport, and that the sponsor makes the decisions in her life, and that he believes it would be in the appellant's best interests as a young woman to join her mother and siblings in the UK. From 2016 the sponsor sent money to support the appellant, but it was not until 2019 she kept the evidence that she did this. She had asked Mr Osaghae to get the appellant a birth certificate, as her step-mother had not bothered to do this when the appellant was born, but this did not happen until 2018 because he procrastinated about doing this task.

10. The sponsor explained that she had not applied to bring the appellant to the UK until 2020 because she had hesitated because she an arrangement was made for her day-to-day care in Nigeria, and again she was uncertain how to go about doing this and could not think straight about it. She has had regular, almost daily, telephone contact with the appellant using WhatsApp internet calls and cheap phone calling cards from Tesco, but has not documented this for the Tribunal. She says that she takes responsibility for her daughter by having this amount of contact, and talking with her all of the time. She said that she recently sent money for a dress for a school graduation, which she clarified was not the appellant's graduation but a ceremony for others who were graduating at her school that the appellant attended.
11. The sponsor updated the Upper Tribunal to explain that in January 2022 Mr Desmond Osaghae had disappeared from the shared accommodation where he lived with the appellant saying that he would be back, but had never returned. As a result the appellant currently lives in multi-occupancy rented accommodation belonging to an old lady who does not live in the building. The sponsor pays for the accommodation where the appellant lives. The appellant has no current guardian. Since the time Mr Osaghae disappeared the sponsor has sent money to his sister, Sandra Osaghae and other people in the house and church, but this is unreliable and sometimes people in the house have taken the money. The appellant is very unhappy having no parent or guardian to care for her. The sponsor visited Nigeria in March 2022 in an attempt to sort out the situation but did not find Mr Osaghae, and he has not reappeared since.
12. The sponsor explained that she chose the Tecxy Comprehensive Academy school which the appellant has attended since 2019, but that prior to this she was in other schools. She would provide the money to Mr Osaghae to pay the school fees, and she believes the receipts will be with the appellant, but accepts that these have not been provided to the Tribunals. In the past Mr Osaghae attended parents' evenings on her behalf but now no one attends for the appellant. The sponsor believes that the appellant may be suffering with an ulcer as she has complained about stomach pain to her on the phone, so she asked the people in the house to take her to the hospital to investigate this, but they did not do this and instead got her some medication from a pharmacy. The sponsor said that her daughter attends the Redeemed Church in Benin, and that she chose this church as it is the one that she believes to be good and that she attends in the UK, and there is a photograph of her and her daughter attending it when she travelled to Nigeria in March 2022.
13. The sponsor believes that it is in the appellant's best interests to come to the UK as her life is not stable in Nigeria and she is afraid she might be exploited as she was herself, and because the sponsor's family, home and work, as a school dinner lady, is now in the UK. The sponsor's husband visited the appellant again in 2019 and 2020 on trips to Nigeria and the sponsor travelled to Nigeria to see her in March 2021 and March 2022, once she had become a British citizen, as is evidenced by her

passport stamps, but they cannot make frequent trips as it is too expensive. The sponsor is now a British citizen and has three British citizen children with her husband: F who is ten years old, E who is eight years old and H who is five years old. The sponsor's husband, Mr Enobakhare works as a self-employed barber.

14. In addition to the evidence from the sponsor there are written statements from Mr Enobakhare, Mr Osaghae and the appellant herself. There are also birth certificates and passport copies for the sponsor and her entire family, a letter from the appellant's school, payslips for the sponsor, tax documents for the sponsor's husband, documents regarding their UK accommodation, birth certificate and passport copy for the appellant, money transfer receipts from 2019 to 2022 for money sent to Nigeria by the sponsor, bank statements for the sponsor and her husband and the DNA evidence showing the appellant is related as claimed.
15. The position of the respondent in the reasons for refusal letter is that it is accepted that the appellant is the sponsor's biological daughter and is a minor. In the reasons for refusal notice it is not accepted that the appellant would be currently 14 years old but before me Mr Melvin accepted that from the photographs of the appellant and sponsor provided to the Upper Tribunal that she is plausibly this age. From the Rule 24 response it is clear that the respondent accepts that the sponsor was trafficked to the UK. As recorded above it is accepted that the accommodation and support requirements of the Immigration Rules at paragraph 297 are met.
16. In written and oral submissions from Mr Melvin it is argued however that the appeal should be dismissed. It is argued that the evidence of the sponsor is vague and hard to follow. He argued that likewise the written evidence from Mr Enobakhare and Mr Osaghae is also lacking in detail. It is considered odd that the letter from the appellant's school does not mention Mr Osaghae given he was the day-to-day guardian at the time the letter was written. Mr Melvin argues that it is therefore likely that the father of the appellant is on the scene, and that the appellant is not being passed between friends of the sponsor as has been argued. This would explain why the sponsor was unable to precisely explain the arrangement for the appellant, why there were no documents to evidence her living in the rented accommodation, why the current situation was only explained in very recent statements, and why there had been such delay in obtaining a birth certificate for the appellant and applying to bring her to the UK. As a result, Mr Melvin argues that the sponsor has not shown she has sole responsibility for the appellant, and there are no compelling reasons why she should be allowed to come to the UK. Mr Melvin therefore argues that the appellant cannot meet the requirements of the Immigration Rules at paragraph 297, and that the public interests in maintaining immigration control is not outweighed by any other factors when the Article 8 ECHR appeal is considered more broadly.

17. In a skeleton argument and oral submissions from Mr Obasogie is argued for the appellant that she is her mother's sole responsibility having been born whilst her mother was in forced prostitution in Nigeria. The appellant and the sponsor have no idea who her father is, and the sponsor has therefore been solely responsible for her, providing for her financially and making important decisions in her life such as arranging her schooling since the sponsor's husband located her in Nigeria in 2016, albeit with the assistance of day-to-day carers/guardians in Nigeria. The fact of the appellant having no known father is reflected in her birth certificate, the letter from Mr Osaghae and the letter from the appellant's school. The sponsor's evidence of sending funds to the appellant is not contested, and the sponsor has given examples of choosing the appellant's church, school and dealing with medical matters in her evidence.
18. The sponsor's evidence is that the appellant is not being properly cared for in Nigeria, and has been passed from one person to another and currently has no day to day carer at all, living in a multi-occupancy rented accommodation and so is a vulnerable young teenager in a place with poor security. It is argued that the appellant is a young girl who needs to be with her mother, siblings and step-father, and that it is in her best interests to come to the UK, and this must weigh strongly in her favour as a primary consideration in the Article 8 ECHR proportionality exercise, and when considering that there are serious and compelling family reasons which make her exclusion undesirable under the Immigration Rules at paragraph 297(i)(f) in the context where she can be provided for financially and accommodated adequately. It is argued that this is not just the evidence of the sponsor but also of the appellant herself in her own statement, which reflects her feeling alone and uncared for.

Conclusions -Remaking

19. The first matter that I must decide is whether the evidence of the sponsor before me should be found to be credible. I must look at the sponsor's evidence in the round, in the context of the other evidence before me, and decide whether on the balance of probabilities I find that she has given a truthful and honest account of the situation of the appellant for the reasons I set out below. There was no contention from Mr Melvin that there was any inconsistency in the evidence of the sponsor, and he did not seek to persuade me that there was anything about the documentary evidence which indicated it was inherently not trustworthy. Mr Melvin's critique of the evidence of the sponsor was that it was vague, and that the history was not plausible as there had been too many delays in obtaining documentation and applying to bring the appellant to the UK which he contended were indicative of the sponsor having a father in Nigeria, and thus in undermining the contention that the sponsor had sole responsibility for the appellant.

20. It is accepted that the appellant is the daughter of the sponsor given the DNA evidence, and that she is currently 14 years old, and was conceived and born in Nigeria when the sponsor was therefore only 13 years old. The sponsor was granted refugee status by the respondent in 2012, when she was 16 years old on the basis that she had been trafficked to the UK. The sponsor says that she was trafficked for prostitution and that she had become pregnant due to being held for forced prostitution in Nigeria, and had been too embarrassed to tell the UK authorities about the appellant, the baby she had been forced to leave behind in Nigeria, due to the context of her conception and having been an unmarried mother. She also points out she herself was a child at this time. The appellant's birth certificate names no father on the document. I find, in the context of the facts accepted as true by the respondent, that the appellant was indeed conceived in the context of the sponsor's forced prostitution at the hands of her step-mother after her father's death. I find that the appellant's father was and remains unknown: there is absolutely no evidence of his existence; it is inherently very unlikely that the sponsor would have been married or in a stable relationship at the time of the appellant's conception and birth given her age; and clearly being forced to work in prostitution carries a risk of pregnancy even in a girl so young.
21. It is sad and regrettable that the sponsor had not felt able to tell the UK authorities about the appellant when she made her asylum claim, but I have found that she was a minor victim of sex-trafficking in a foreign country, and further I note that she had not actually had care of the appellant as this had been taken on by her step-mother whilst the appellant was made to continue working as a prostitute. The sponsor has had little education, stating that by 13 she was no longer in school in oral evidence, and notably did not feel confident to give her evidence in English even after over a decade living and working in the UK. I accept the sponsor's evidence, that it took time for the sponsor and her husband to decide how to go about finding the appellant, and then, once she was found, to persuade others in Nigeria to do things like obtain a birth certificate for her. I note that they had their own three children born in 2012, 2014 and 2017 and were working, but not in well-paid employment (he is currently a self-employed barber and she a dinner lady) or were reliant on benefit, which would have made their life in the UK extremely busy, and budgets stretched. I find, in this context, that the sponsor gave honest evidence in saying that she has thought about the appellant every day, but had not known how to progress things and so this had taken time.
22. I find, having considered all of the evidence before me, that the sponsor's husband located the appellant in 2016 on his trip to Nigeria, and accept that they sent money for her care from this time, made arrangements for guardians and established regular phone contact. The evidence of the sponsor is corroborated by her husband's written statement and stamps in his passport. I note that other documentary evidence was not kept until 2019, when plans to apply to bring the appellant to the UK were clearly afoot, but I do not find that this damages

the sponsor's credibility given her background, history and circumstances as set out above.

23. I find that the evidence about the sponsor's taking sole responsibility to be entirely plausible: carers did not work out and had to be changed, sometimes money went astray or had to be sent to others, schools were changed and those helping procrastinated about things she wanted to be done or did not do the things she asked but substituted their own plan of action. It is correct that the written statements from the appellant are not detailed, and some of her oral evidence was vague, but she was able to give examples of having chosen guardians, a school and a church for the appellant, and recently of her having attempted to decide action on a medical issue although this was ultimately not carried out by those in Nigeria. I also take note of what is said in the letter from Mr Osaghae and in the letter from the appellant's school, and find that the sponsor has sole responsibility for the appellant as I find she has made the key decisions in the appellant's life since 2016, and shown continual interest in supporting her and directing her upbringing through her almost daily telephone contact.
24. As a result, I find that the appellant can satisfy paragraph 297(i)(e) of the Immigration Rules as the sponsor is present and settled in the UK and has sole responsibility for the appellant. It is accepted for the respondent that she can show compliance with paragraph 297(vi) and (v) as the sponsor and her husband can accommodate and support her adequately without recourse to public funds. I therefore find that she satisfies the Immigration Rules at paragraph 297 as no other aspect of paragraph 297 were put in question by the decision of the entry clearance officer or in submissions before me.
25. I find that the appellant and sponsor have a family life relationship as minor daughter and mother; and that the refusal of entry clearance interferes with this family life particularly as there are no funds for regular visits (more than once a year) by the sponsor to Nigeria. Although this interference is in accordance with the law, I find that it is not proportionate as the appellant can show that she meets the requirements of the Immigration Rules at paragraph 297, and thus there is no public interest in her exclusion from this country. Further I find that it is in her best interests to be able to join her mother, step-father and siblings in this country for the following reasons: given the close relationship I have found between the appellant and sponsor; the fact that this is the appellant's view of the situation as set out in her own statement; the fact that this was the view of her last day to day carer in Nigeria; given that she is currently lives alone in multi-occupancy rented accommodation; and in the context of adequate accommodation and support existing in the UK.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal and all of the findings.
3. I re-make the decision in the appeal by allowing it under Article 8 ECHR.

Signed: Fiona Lindsley
2022
Upper Tribunal Judge Lindsley

Date: 9th November

Annex A: Error of Law Decision:

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nigeria born on 10th September 2008. She applies for entry clearance to come to the UK to join her mother. Her application was refused on 20th January 2021. Her appeal against the decision was dismissed on Article 8 ECHR grounds by First-tier Tribunal Judge Hussain in a determination promulgated on the 28th October 2021.
2. Permission to appeal was granted on all grounds by First-tier Tribunal Judge Haria on 29th December 2021 on the basis that it was particularly arguable that the First-tier judge had erred in law in failing to consider the best interests of the appellant who was, and remains, a minor.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to determine whether the decision and any findings needed to be set aside and remade. The hearing took place via video link, a format to which no party raised any objection. There were no significant problems of audibility or connectivity.

Submissions – Error of Law

4. The grounds of appeal firstly assert that the First-tier Tribunal failed to address the relevant Immigration Rules, particularly paragraph 297(i)(f) regarding serious and compelling circumstances, and simply looked at the matter outside of those Rules. It is also argued that there was a failure to cite any relevant legal authorities
5. Secondly, it is argued, that the decision at paragraph 21 and 22 of the decision errs in law when requiring specific evidence regarding finances when flexibility ought to have been applied in light of the Home Office Coronavirus (Covid-19) Concession.
6. Thirdly, it is argued, that the First-tier Tribunal erred in law by holding at paragraph 29 of the decision that there were issues of credibility with the sponsor's asylum claim and a lack of evidence that she had been trafficked to the UK, when these issues were not relevant and she is a British citizen.
7. Fourthly, it is argued, the First-tier Tribunal makes a mistake of fact at paragraph 30 of the decision when it is said there was no evidence that the sponsor travelled to Nigeria in 2016 and subsequent years, when in fact there was such evidence in the appellant's bundle before the First-tier Tribunal.
8. Fifthly, it is argued, that the reasoning of the First-tier Tribunal in relation to issues of the appellant's age and attendance at boarding school at paragraph 31 of the decision is not clear.

9. Sixthly, it is argued, there was a failure to consider whether the best interests of a child when the appellant was a minor growing up alone in Nigeria.
10. The Rule 24 notice dated 10th February 2022 accepts that the decision of the First-tier Tribunal errs in law and should be set aside and remade. It is accepted that the fourth ground is made out and that there was a failure to consider this evidence. It is accepted that the sixth ground is made out as there was a failure to consider the best interests of the child. In relation to the third ground it is accepted that the sponsor was found to be a victim of trafficking and granted asylum in 2012, and the sponsor's oral evidence on these matters should have been accepted as correct. The respondent does not accept that there are any material errors however in paragraphs 21-22 of the decision, and argues that they should be upheld. The Covid 19 policy is not relevant and the sponsor should have documented her income and accommodation at the date of hearing.
11. Ms Cunha submitted that despite the findings on accommodation and maintenance not demonstrating any errors of law that it would be right to set aside all of the findings as new findings on these issues would need to be made at the date of hearing. This was a submissions with which I agreed. I informed the parties that I found that the First-tier Tribunal had erred in law, and that the decision and all of the findings would be set aside. It was agreed that the decision should be remade in the Upper Tribunal.

Conclusions – Error of Law

12. The decision of the First-tier Tribunal fails to set out the relevant Immigration Rules by which the appeal should be assessed in the first instance. At paragraph 21 the First-tier Tribunal Judge commences the findings section simply by stating that the appeal “would have to be dismissed for want of evidence of maintenance”. Clearly a human rights appeal does not have to be dismissed for want of evidence of maintenance. Whilst this is a relevant issue to consideration by reference to the Immigration Rules at paragraph 297 this is not made clear. I find that the decision errs in law for failure to set out the relevant Immigration Rules, and thus in making a clear and adequately reasoned decision that the losing party could follow.
13. The decision considers the issues of sole responsibility and whether the appellant's exclusion is undesirable at paragraphs 23 to 35 of the decision. As identified by the appellant and acceded to by respondent the First-tier Tribunal errs in law in failing to consider relevant evidence in relation to visits; makes errors of fact relating to the sponsor's history as she was in fact accepted by the respondent as having been trafficked and was granted asylum on this basis; and fails to consider the best interests of the child appellant. I find that all of these findings are contaminated by material error of law as a result. As the decision of the First-tier Tribunal

dismissing the human rights appeal may have been different had these errors not been made I set it aside.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision and all of the findings.
3. I adjourn the re-make of the decision.

Directions:

1. Ten days prior to the date of the remaking hearing appellant will file on the Upper Tribunal and serve on the respondent an updating bundle of documents including:
 - updating witness statements from the sponsor, appellant and appellant's husband about the current circumstances of the appellant and the interactions between the appellant and sponsor;
 - the sponsor's grant of refugee status and her asylum interview/statement and any decision of the Tribunal relating to the sponsor;
 - full updating documents regarding accommodation, income, business earnings and savings for the sponsor and her husband;
 - any evidence of money transfers or payments in Nigeria for the appellant;
 - any other evidence in the form of letters/statements or documentation about the appellant's circumstances in Nigeria and the sponsor's role in her upbringing from those who have day to day care for her – such letters/statements/documents should be signed and dated, identify how and for how long the writer knows the appellant/ sponsor and give the writer's profession.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 22nd March 2022