



Appeal Number: UI-2022-003065  
(**HU/02359/2021**)

**IN THE UPPER TRIBUNAL**  
**(IMMIGRATION AND ASYLUM CHAMBER)**

**ON APPEAL FROM THE FIRST-TIER TRIBUNAL (IAC),**  
**Judge Abebrese**

**THE IMMIGRATION ACTS**

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

**Decision & Reasons Issued**  
**On the 30 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**and**

**MD (IVORY COAST)**  
**(ANONYMITY ORDERED)**

Respondent

**Representation:**

For the Appellant: Mr Lindsay, Senior Presenting Officer  
For the Respondent: Ms Quadi, instructed by BMAP

**DECISION AND REASONS**

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

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. I make that order due to the appellant's age.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

1. The Entry Clearance Officer appeals, with permission granted by the First-tier Tribunal, against the decision of First-tier Tribunal Judge Abebrese. By that decision, the judge allowed MD's appeal against the refusal of her application for entry clearance under paragraph 297 of the Immigration Rules.
2. To avoid confusion, I shall refer to the parties as they were before the FtT: MD as the appellant and the Entry Clearance Officer as the respondent.

### **Background**

3. The appellant is an Ivorian national who was born on 16 March 2010. She is therefore twelve years old at present. Her application for entry clearance was made more than two years ago, on 17 August 2020. She stated, in summary, that her parents were dead and that her maternal uncle (the sponsor) had been solely responsible for her and/or that serious and compelling family or other considerations made her exclusion from the UK undesirable.
4. The Entry Clearance Officer refused the application on 17 February 2021. She did not accept that the sponsor was solely responsible for the appellant or that her exclusion was undesirable. She was satisfied that her decision to refuse entry clearance under the Immigration Rules was a lawful and proportionate step for the purposes of Article 8 ECHR.

### **The Appeal to the First-tier Tribunal**

5. The judge heard the appeal remotely on 4 May 2022 and issued his reserved decision two weeks later. The appellant was represented at the hearing; the respondent was not. In his decision, the judge summarised the evidence before continuing as follows:

[15] I have considered the evidence before me and I make the following submissions. The appellant and the sponsor are credible and they have provided reliable evidence. I find their evidence to be credible regarding the death of the appellant's parents. The appellant provided through the sponsor evidence supporting the death of her parents and I found these to be credible supporting evidence. I am of the view that the documents were obtained through a credible source.

[16] I also found the evidence regarding the financial and emotional support provided by the sponsor to the appellant to be credible and that he has consistently provided support to her. I find it credible that he has now had to take on the full mantle of supporting the appellant in the absence of her parents.

[17] I considered that the evidence regarding the extent of the communications that he has with the appellant by telephone and also on social media to be credible and reliable.

[18] I am of the view that the appellant has no other relative in the country who can look after her and that she is likely to be isolated as the person who has been entrusted with her has 4 children of his own and he is also looking after 4 other children.

[19] I have considered all of the evidence in this appeal and I am of the view that the appellant has satisfied the requirements of Rules. I am also of the view that the decision to refuse her application was contrary to Article 8 of the ECHR in that she would be vulnerable if she were to remain in the Ivory Coast as the person who is looking after appears not to be viable in the long term.

[20] The appeal is therefore granted.

### **The Appeal to the Upper Tribunal**

6. The respondent sought permission to appeal on the basis that the judge had given inadequate reasons for his conclusions. In granting permission, Judge Karbani found that complaint to be arguable.
7. When the matter was called on before me, Ms Quadi sought additional time in order to take instructions from the sponsor. On returning, she was able to confirm that she did not oppose the respondent's appeal. She joined with Mr Lindsay in inviting me to remit the appeal to the FtT to be heard afresh by a judge other than Judge Abebrese.
8. As I said at the hearing, this was the only proper stance that Ms Quadi could credibly have adopted, and it is to her credit that she did not attempt to defend the FtT's decision.
9. It is quite plain, unfortunately, that there were inadequate reasons given by the judge for his findings. The litmus test is obviously whether the reasons enable the losing party to understand the basis on which they have lost. This decision fails by some margin to cross that low threshold. The ECO gave fairly detailed reasons for refusing the appellant's application and the judge did not consider those points when he concluded that the appellant met the requirements of the Immigration Rules. There was noted, for example, to be a discrepancy as to the appellant's mother's date of birth. The appellant's parents' deaths were also noted to have been registered by close family members. Those matters were said to cast doubt on the truthfulness of the assertions made by the appellant or the sponsor but these matters were not considered by the judge.
10. The assessment of credibility is obviously a matter for the trial judge and any appellate body will be slow to interfere with that assessment, for the reasons explained in countless authorities including Perry v Raleys Solicitors [2020] AC 352. Where, as here, the judge

demonstrably fails to deal with significant matters which are said to support or undermine the credibility of a party or a witness, it is logical to infer that he has not applied his mind to the thrust of the competing claims. It is clearly appropriate to draw that inference here, and I agree with the advocates before me that the decision cannot stand.

**Notice of Decision**

The ECO's appeal is allowed. The appeal is remitted to the FtT to be heard afresh by a judge other than Judge Abebrese.

M.J.Blundell

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**16 November 2022**