



**Upper Tribunal  
(Immigration and Asylum Chamber)    Appeal Number: UI-2022-000299  
HU/08539/2020**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 5th July 2022**

**Decision & Reasons Promulgated  
On the 22 December 2022**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD**

Appellant

**and**

**TJA**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer

For the Respondent: Mr L Youssefian, Counsel, instructed by D J Webb & Co Limited

**DECISION AND REASONS**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellants or their family. This direction applies to, amongst others, all

parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. This is a remaking of an appeal against a decision of the respondent dated 4 November 2020 which refused entry clearance for a purpose outside the Immigration Rules. The remaking is required following my error of law decision dated 16 May 2022.

### Background

2. For the purposes of this decision, I refer to the Secretary of State for the Home Department as the respondent and to TJA as the appellant, reflecting their positions before the First-tier Tribunal.
3. The appellant is a citizen of Nigeria. He was born on 15 July 2013 and is currently 9 years old.
4. The appellant's history is not disputed. He was adopted under Nigerian law by the sponsor in this matter, Ms MAA and her former husband. A Nigerian adoption order was granted on 8 July 2019. The adoption is not recognised in UK law as Nigeria is no longer included in the Adoption (Recognition of Overseas Adoptions) Order 2013. The appellant has lived at Ms A's family home in Lagos since before the adoption order was made in Nigeria in 2019.
5. On 6 May 2020 an application for entry clearance for a purpose outside the Immigration Rules was made. The appellant was unable to fulfil all of the biometric requirements for this application due to the COVID-19 pandemic and a second application was made on 4 September 2020.
6. The second application was refused on 4 November 2020. The respondent found that parts of paragraph 316A of the Immigration Rules were not met. Paragraph 316A concerns an application for leave to enter "for the purpose of being adopted (which, for the avoidance of doubt, does not include de facto adoption)".
7. The respondent found that paragraphs 316A(iv) and 316A(viii) of the Immigration Rules were not met. Paragraph 316A(iv) concerns maintenance and accommodation and it is accepted now that these requirements are met by the sponsor.
8. Paragraph 316A(viii) requires that an applicant show that he:  
    “(viii) will be adopted in the United Kingdom by his prospective parent or parents in accordance with the law relating to adoption in the United Kingdom, but the proposed adoption is not one of convenience arranged to facilitate his admission to the United Kingdom.”
9. The respondent found that paragraph 316A(viii) was not met as it had not been shown that the appellant would be adopted in the UK “in accordance

with the law relating to adoption". This was so as no Certificate of Eligibility (CoE) had been provided. In practice, a CoE is an assessment by a recognised body in the UK that the adoption is genuine and appropriate for the child in question. Paragraph 309B of the Immigration Rules states that a CoE "must be provided with any entry clearance application under paragraphs 310 - 316C."

10. The appellant appealed against the refusal of entry clearance to the First-tier Tribunal. The appellant did not argue that he could meet paragraph 316A of the Immigration Rules. He accepted that he was not entering the UK for the purposes of adoption as his adoption was not recognised under UK law so paragraph 316A did not cover his circumstances. The appellant also accepted that he did not have a CoE.
11. Further, it was conceded for the appellant that he was not a de facto adopted child as defined in paragraph 309A of the Immigration Rules. Paragraph 309A required his adoptive parents or parents to have been living abroad together caring for him for at least 12 months prior to the entry clearance application. The sponsor had lived with the appellant in Nigeria but her former husband had not.
12. The appellant's case before the First-tier Tribunal was that notwithstanding that he did not meet the Immigration Rules, the decision was a disproportionate interference with his family life under Article 8 ECHR.
13. Prior to the hearing before the First-tier Tribunal Ms A and her former husband had separated. Ms A continued to act as a parent to the appellant and the First-tier Tribunal accepted that she had a genuine and subsisting family life with the appellant and found the decision amounted to a disproportionate interference with that family life.
14. In my error of law decision dated 16 May 2022 I found that the First-tier Tribunal failed to give a sufficiently clear indication as to what weight was placed on the inability to meet the Immigration Rules and the absence of a CoE in the proportionality assessment. The First-tier Tribunal was set aside for the appeal to be remade in the Upper Tribunal where the remaking was on a limited basis as most of the facts were undisputed.
15. By the time of the remaking, the parties were in agreement that events had moved on. It was accepted that in the 18 months prior to the remaking the sponsor had lived with the appellant in Nigeria as his parent. During that time she had made trips back to the UK in order to ensure that her employment contract here continues but, otherwise, she had lived in Nigeria with her son and worked from there in order to maintain the family.
16. The appellant's case before me was that, as of the date of the hearing, he could show that he was a de facto adopted child as defined in paragraph 309A and that he met the requirements of paragraph 310 of the Immigration Rules concerning a de facto adopted child. It therefore could

not be said that there was a public interest in refusing entry and the refusal was a disproportionate interference with family life.

17. The respondent did not dispute that as of July 2022 the appellant was a de facto adopted child as defined in paragraph 309A or that paragraph 310 of the Immigration Rules was met. However, Ms Everett remained concerned that the appellant had not provided a CoE. As before, paragraph 309B states that a CoE “must be provided with any entry clearance application under paragraphs 310 - 316C.”
18. However, paragraph 309B also states that it applies to “Inter-country adoptions” which “may” be subject to a requirement for a CoE. It is undisputed here that the appellant is not involved in an inter-country adoption where his Nigerian adoption is not recognised in UK law. The provision that there “must” be a CoE does not apply, therefore.
19. This reading of paragraph 309B and its application to a situation concerning a de facto adopted child is also consistent with the respondent’s policy document entitled “Adopted children and children coming to the UK for adoption” Version 4.0 published on 1 December 2021. On page 27 the guidance indicates that a CoE must be provided “where relevant with entry clearance adoption applications under paragraph 310 - 316C of the Immigration Rules (my emphasis).” The guidance then sets out a table which identifies in the first row that in applications under paragraph 310-316 concerning a de facto adopted child “In most cases, confirmation of Certificate of Eligibility is not needed (my emphasis).” The guidance therefore confirms that as a de facto adopted child the appellant does not need to provide a CoE.
20. Mr Youssefian also took me to paragraph 19 of the reported case of TY (Overseas Adoptions - Certificates of Eligibility) Jamaica [2018] UKUT 00197 (IAC). This paragraph sets out:

*“De facto* adoptions take effect for immigration law purposes but are not adoptions under United Kingdom family law and the *de facto* parents will not have parental responsibility for the children under family law on entry and will need to obtain a family order to have such parental responsibility rights and responsibilities.”

That paragraph describes the situation here and is consistent with the reading of paragraph 309B and the guidance as discussed above. The appellant is a de facto adopted child. He cannot be “adopted” under UK law. The sponsor, aware that she will not have parental responsibility if he comes to the UK, provided evidence from as long ago as October 2021 that she has already obtained legal advice on obtaining a Child Arrangements Order to allow her to care for the appellant in the UK. It is through that process that the appellant’s well-being is overseen by a child protection mechanism in the UK, rather than through a CoE.

21. It was my conclusion, having been much assisted by Ms Everett and Mr Youssefian’s, submissions, notwithstanding that there is no CoE, the

appellant meets the requirements of the Immigration Rules for entry as a de facto adopted child. There is therefore no public interest in a refusal of entry clearance and the appeal is allowed under Article 8 ECHR as the decision to refuse entry clearance is disproportionate.

### **Notice of Decision**

22. The decision of the First-tier Tribunal disclosed an error on a point of law and was set aside to be remade.
23. The appeal is remade as allowed under Article 8 ECHR.

Signed S Pitt

Date 3 August 2022

Upper Tribunal Judge Pitt