



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004158

First-tier Tribunal Nos: HU/56328/2022
LH/00787/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 13th of December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

KOY (Ghana)
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms L Appiah of Counsel, instructed by Fortwell Solicitors
For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 24 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a citizen of Ghana whose date of birth is recorded as 27th September 2008. On 28th February 2022 he made application for entry clearance pursuant to paragraph 287 of the Immigration Rules with a view to joining his mother in the United Kingdom.
2. Paragraph 287 provides that:
 - “(a) The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:
 - (i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:
 - (a) both parents are present and settled in the United Kingdom; or
 - (b) both parents are being admitted on the same occasion for settlement; or
 - (c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or
 - (d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or
 - (e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child’s upbringing; or
 - (f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make the exclusion of the child undesirable and suitable arrangements have been made for the child’s care; and
 - (ii) is under the age of 18; and
 - (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
 - (iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and
 - (v) can, and will, be maintained adequately by the parent, parents or relative the child is seeking to join, without recourse to public funds; and

- (vi) holds a valid United Kingdom entry clearance for entry in this capacity; and
 - (vii) does not fall for refusal under the general grounds for refusal.”
3. On 18th August 2022 a decision was made to refuse the application on the basis that:
- (i) the Sponsor was not the Appellant’s mother, as claimed,
 - (ii) even if she were, it was not accepted that she had sole responsibility for the Appellant’s upbringing; and
 - (iii) in those circumstances it was not accepted that there were serious and compelling family or other considerations which made the Appellant’s exclusion undesirable and suitable arrangements had been made for his care.
4. By Notice of Appeal dated 14th September 2022 the Appellant challenged the Respondent’s decision. The appeal was heard on 21st April 2023 by Judge of the First-tier Tribunal Kempton sitting at Manchester. However, in a decision dated 28th April 2023 she dismissed the appeal.
5. Not content with that decision, by Notice of Appeal supported by grounds uploaded on 11th May 2023, the Appellant made application for permission to appeal to the Upper Tribunal. There were four grounds.
6. However, in granting permission on 25th September 2023, Judge Bibi summarised the grounds as a challenge to the standard of proof apparently applied by the judge though at paragraph 22 of her decision said: “That is where the difficulties arise as there is a lack of documentation which meets the high standards expected in the courts in a matter such as this”; this appears to be the sole basis upon which the matter now comes before the Upper Tribunal.

The Hearing Before Me

7. At the outset I indicated to both representatives that in my view the decision could not stand. Although at first blush it appeared that the challenge was a disagreement with findings of fact and that in referring to a high standard, the judge was simply meaning cogent evidence, it is perfectly clear when one reads the decision as a whole that Judge Kempton appears to have required DNA evidence before determining that the burden was met. There is no requirement for DNA evidence. It may be that DNA evidence is the best evidence available but it is no requirement. The judge was required to look at the evidence in the round and apply the civil standard, being one of the balance of probabilities and that is trite law.
8. As I have already indicated, neither representative sought to persuade me that this decision should be upheld but rather both accepted that the decision should be set aside. In those circumstances the appeal to the Upper Tribunal is allowed. The decision of First-tier Tribunal Sweet is set aside to be remade in the First-tier Tribunal.

Deputy Upper Tribunal Judge Zucker

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

04th of December 2023

Addendum

9. Ms Appiah invited me to preserve certain findings of fact. I am reluctant to do so because the case which will be presented before the First-tier Tribunal may differ in the way in which it is presented, although the judge will have the point that DNA evidence is not a requirement. Of course, if DNA evidence is produced that the judge will look at it.