



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

Case No: UI-2023-002634  
First-tier Tribunal No: HU/57110  
2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 24<sup>th</sup> of September 2024**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**  
**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**MISS FORTUNATE KIRABO**  
**[ANONYMITY DIRECTION NOT MADE]**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Kajubi, Sponsor.

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer .

**Heard at Field House on 18<sup>th</sup> April 2024**

**DECISION AND REASONS**

**BACKGROUND**

1. The appellant is a national of Uganda, born on the 31st of October 2004. On the 12th of August 2021, when she would have been 16, an application was made on her behalf for settlement to join her father, Mr Kajubi, hereinafter referred to as her sponsor. He is now a British citizen, present and settled in the United Kingdom.
2. The application was considered under paragraph 297(1) (e) and (f) of the immigration rules, namely, whether her sponsor had sole responsibility or

there were serious and compelling considerations making exclusion undesirable and suitable arrangements have been made.

3. The application was refused on the 22nd of August 2022. The respondent was not satisfied her sponsor was her father. Aside from this ,the respondent was not satisfied he had sole responsibility for her upbringing. The entry clearance officer took the view that the application was made because it was preferable for her to live in the United Kingdom but not because there were compelling circumstances.
4. The entry clearance officer considered under Article 8 but as the relationship was not accepted then in turn it was not accepted there was family life with the sponsor. In the alternative, if there was , the entry clearance officer felt the decision was proportionate to the need to maintain immigration control.
5. The decision was reviewed on the 16th of December 2022 and the refusal maintained. The respondent continued to maintain that paternity had not been established. A birth certificate had been provided naming the sponsor as her father, but it was not contemporaneous, being issued on the 21st of August 2019. No explanation for the late registration had been forthcoming. There is reference to the provision of further DNA evidence, but this also was not forthcoming. As paternity was not accepted then neither was sole responsibility. In the alternative, sole responsibility had not been demonstrated. Reference is made to a letter of support from her grandfather but there was no evidence to support its contents. Regarding other considerations, it was not accepted that her grandparents could no longer care for her.
6. Regarding article 8 and section 55 considerations, family life was not accepted as the relationship had not been established. If the relationship did exist then there was nothing to indicate it could not continue in absentia, as it had done in the past. It was noted the appellant had a family network within Uganda.

### The First tier Tribunal

7. Her appeal was heard by First tier Tribunal Judge SJ Clarke at Hatton Cross on the 24th of March 2023 and was dismissed. The sponsor attended the hearing. There was no presenting officer.
8. The account given was that her parents separated, and her father came to the United Kingdom and placed her in the custody of his parents when she was an infant. In recent times his father had prostate cancer and was hospitalised. The judge found (para 7) there was contact between the appellant and her sponsor since she was a teenager.
9. Her birth certificate was not contemporaneous. DNA evidence was provided which indicated the sponsor was her father. The judge noted the donor samples had not been exhibited and consequently made no finding as to paternity (Para 10).

10. The judge commented on the absence of evidence from her carers in Uganda, from the boarding school she attended, regular contact, financial support, or medical evidence to show her sponsor took decisions in her life.

### The Upper Tribunal

11. Permission to appeal was granted by Upper Tribunal Judge Kamara on the basis it was arguable the judge did not adequately consider the evidence or the relevant case law and policy. It was also arguable the judge erred by placing weight on the absence of specific items of evidence.
12. There was rule 24 response dated the 25th of August 2023 where the respondent opposed the appeal. It submits that the First-tier Judge directed themselves correctly on the question of sole responsibility and that paragraphs 12 and 13 of the decision described shortcomings in the evidence about the sponsor's involvement in her schooling and making decisions relating to medical matters. Paragraph 14 of the determination describes rare contact between the appellant and her mother but there was an inference to be drawn from her giving consent that she remained involved in the appellant's life.

### Error of law.

13. At hearing Mr. Walker said that having had regard to the grounds submitted and the grant of leave he accepted that First tier Tribunal Judge SJ Clarke had not dealt adequately with all of the evidence. He referred us to additional evidence indicating transfers of money and contact with the school. There were also school certificates, a letter from the appellant and medical forms and so forth.
14. The sponsor, who did not have a lawyer acting, advised that he had experienced problems uploading some of the documentation. We allowed some time so that the parties could check the First tier and Upper Tribunal portals to see what documentation there was. It appeared there were 174 uploads on the CCD system including individual Whats App messages. The sponsor said he uploaded an indexed bundle of 160 pages. These included evidence of contact with the school and inquiries with the school about the appellant's progress. There also appeared to be two uploads of the DNA report, only one containing a sample statement.
15. In seeking permission to appeal the sponsor provided a written undated submission. It states 140 documents were uploaded relevant to sole responsibility. It refers to a What's App communication on the 6th of December 2019 with the sponsor's sister in relation to the appellant's schooling. It refers to an earlier message of the 12th of October 2019 requesting money for the appellant's aunt so she could visit her at school.

16. On the 19th of April 2024, the sponsor provided a bundle to the tribunal which was then uploaded on to the Upper Tribunal electronic system. Amongst those papers were school results for the appellant and a letter from one of the schools to the First tier Tribunal Judge dated the 25th of April 2023 ( postdating the appeal) stating that the sponsor contacted the school by telephone about the appellant's progress .There were also various money transfers from the sponsor going back to August 2019.
17. The primary issue in the appeal was the question of sole responsibility. The judge referred to large gaps in the evidence and the limited nature of the evidence produced. Copies of passport stamps to show visits had been provided but not the passports. The judge referred to an absence of school reports over the years nor any supportive letter from the Boarding school she attended. There were no records of school fees paid. There was no medical evidence to show the sponsor was involved in the important decisions affecting her and the judge referred to an absence of evidence to show her immediate carers could no longer look after her .
18. We appreciate that there was some uncertainty as to what evidence had been made available to the judge. Some of the documentation post-dates the hearing. Having heard from the sponsor we accept his account of attempting to upload documentation to support sole responsibility. A trawl through the documents on the electronic system supports this claim. The material uploaded is relevant to the question of sole responsibility and addresses the criticisms made by the First-tier tribunal judge about the absence of evidence.
19. There is a report from the appellant's Primary school, dated the 3rd of January 2017 and an undated exam score from her secondary school. There is a letter from her college dated the 24th of April 2023 addressed to the First-tier tribunal judge saying she attended the school between February and September 2022.It states her aunt passed on directions from the sponsor and they would hold discussions with the sponsor over the telephone to clarify issues about her studies and welfare. There is also a series of money transfers from the sponsor.
20. We place reliance upon this material and find it goes towards showing sole responsibility. The judge alluded to the absence of such evidence, and it is not clear if it reached the judge or was missed in the electronic forum. A clear example of a gap in the evidence relates to the DNA testing. The judge refers to the report not containing the donor details. However, checks on the electronic system show a report containing these details.
21. Having regard to the approach taken by Mr. Walker ,the content of the First Tribunal decision and our own checks on the uploaded material we concluded there was a material error of law in the Judge's assessment of the evidence.

22. Having established there was a material error of law the issue arising was disposal. There was merit in dealing with the matter in the Upper Tribunal on the day, subject to Mr. Walker having an opportunity to consider the documentation. Our intention was to remake the decision if at all possible without adjourning.
23. We rose for lunch and during the interval sought to unravel what documents were sent. This gave the parties an opportunity to check all the intended documents were before us. The sponsor arranged to send the documentation directly to Mr. Walker which was then to be forwarded on to us. When we resumed Mr. Walker indicated he was content he had been given enough time to study the papers.

### Remaking

24. Mr Walker had no questions for the sponsor. He said all of the evidence he had seen was positive and indicated that the sponsor was the appellant's parent and that in effect had sole responsibility for her.
25. By way of conclusion Mr. Walker felt it was likely all of the evidence had not been available to Judge SJ Clarke but having checked with the sponsor about the document sent was satisfied that the evidence indicated he was the father of the appellant. The evidence as a whole suggested he was the one with responsibility for her.
26. The sponsor explained that he did not obtain her birth certificate at the time as he was not there. The appellant indicated that the appellant's mother had occasional contact by telephone but not face to face. Her difficult circumstances were set out in her statement of consent. He said she had run away from her own family and then starting a relationship with the sponsor, against a background of religious differences. The sponsor told us that he is a Christian who brought up his daughter in that belief. Her mother had married and followed Islam.

### Conclusions

27. Whilst Mr. Walker was not conceding the appeal he agreed with the suggestion that the judge had not dealt with all of the evidence and there was an issue as to whether in fact it had all been properly uploaded onto the system in time. On the two main areas in contention, he accepted the evidence suggested the sponsor was the appellant's father and that he had sole responsibility for her. It was our conclusion therefore that an error of law has been demonstrated in the decision of Judge SJ Clarke. Having had an opportunity to check the evidence we were in a position to remake the appeal and allow it.

### **NOTICE OF DECISION**

The Decision of Judge SJ Clarke materially errs in law and is set aside. We remake the decision allowing the appeal.

Case No: UI-2023-002634  
First-tier Tribunal No: HU/57110 2022

Francis J

Farrelly

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
14th August 2024