



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004180

First-tier Tribunal No: HU/62762/2023
LH/02696/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 December 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ABUBAKAR CONTEH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holt, instructed by TMC Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 16 December 2024

DECISION AND REASONS

1. The appellant is a citizen of Sierra Leone born on 7 September 2005. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for entry clearance to the UK.

2. The appellant applied on 7 June 2023 for entry clearance to the UK under paragraph 297 of the Immigration Rules on the basis of his family life with his mother

who had lived in the UK since 2012 and had been naturalised as a British citizen. The appellant's application was refused on 22 August 2023.

3. The respondent refused the appellant's application on the grounds that it was not accepted that his mother had sole responsibility for him nor that there were compelling family or other considerations which made his exclusion from the UK undesirable. The respondent noted that the appellant had been living with his grandmother for the past 15 years and considered that it was his grandmother who had been making the day-to-day decisions during his upbringing and not his mother. The respondent considered further that there was no evidence to suggest that the appellant's grandmother could not continue to care for him in Sierra Leone. The respondent accordingly refused the application under paragraph 297(e) and (f) of the immigration rules. The respondent considered further that the decision was not in breach of the appellant's human rights.

4. The appellant appealed against that decision. For the appeal he produced various documents including evidence from his schools, from medical practitioners, money remittance slips, an affidavit from his grandmother, a letter and statement from his mother and his own witness statement dated 3 May 2024, photographs and WhatsApp messages.

5. In his statement the appellant explained that he had never known his father and had only met him once in his entire life, when he was aged 16. His mother had always been fully responsible for him. He stated that his mother would visit Sierra Leone and spend quality time with him although he had not seen her for five years, and that he was looking forward to being reunited with her and with his brother and stepfather. He stated that his mother made most of the decisions in his life and had been actively involved in his day to day activities and that she would send him provisions. He stated that his grandmother was very poorly and was no longer capable of being the right guardian for him, and that he would not have anyone to look after him in Sierra Leone if she passed away.

6. In her statement, the sponsor stated that she had met the appellant's father at a club in Sierra Leone and had had a one night stand with him. When he found out that she was pregnant he denied being the father and asked her to get an abortion, but she did not do so. In 2006 she met her husband, Gary, a British citizen, when he was on holiday in Sierra Leone. They moved to Gambia and took the appellant with them. They got married on 6 December 2010. She was granted entry clearance to the UK as a spouse and came to the UK on 29 January 2012. She left the appellant with her mother in Sierra Leone and was hoping to bring him to the UK but Gary did not want him here and she could not do anything about it. She travelled back to Sierra Leone in 2014, 2017 and 2018. Gary was controlling and drank alcohol and he called her family names. Her marriage was difficult and she felt like she was in prison. She divorced him in October 2020. It was difficult to bring the appellant over then because of covid. She met her current husband Sonny Conteh and they got married on 22 December 2022. She had another son born on 6 September 2020. The reason why she applied so late for the appellant to join her in the UK was because of Gary. The sponsor stated that she was the person who made decisions for the appellant. She was the one who chose his schools, paid his fees and had contact with the schools, and it was her who chose which doctor he would see. Her mother was old and had health problems and was not able to care for the appellant. The appellant's father was not involved in his life.

7. The appellant's appeal was heard by First-tier Tribunal Judge Marwaha on 13 June 2024. The sponsor, the appellant's mother, Salamatu Kamara Barrett, attended and

gave oral evidence before the judge. It was accepted that there was no question of the appellant's father being involved in his upbringing.

8. Judge Marwaha considered there to be a number of concerning features in the sponsor's oral evidence about the appellant's school, including her knowledge of the name of the school, the name of the school principal and the frequency and nature of contact with the school, and with her evidence about the appellant's care and in particular the name of his doctor. The judge also took account of the length of separation of the appellant and the sponsor, the limited evidence of financial support and the inconsistencies between the evidence of the appellant's grandmother in her affidavit and the sponsor's oral evidence, and concluded that the appellant had not come close to establishing that the sponsor exercised sole responsibility for him from the UK. As for whether there were serious and compelling family and other considerations, the judge found there to be inconsistencies in the evidence of the health conditions of the appellant's grandmother and did not accept the evidence that there had been a serious decline in her health. The judge noted further that there was inconsistent evidence about the lack of visits to the appellant by the sponsor and she did not find that any of the matters relied upon by the appellant constituted serious and compelling circumstances. The judge accordingly did not accept that the appellant met the requirements of the immigration rules and she concluded that the refusal of entry clearance did not amount to an interference with family life, and that even if it did, the interference was not disproportionate and was not in breach of Article 8. She therefore dismissed the appeal, in a decision promulgated on 21 June 2024.

9. The appellant sought permission to appeal against Judge Marwaha's decision on two grounds. Firstly, that the judge had failed to take account of material evidence before determining whether the sponsor had sole responsibility for the appellant, namely the appellant's witness statement of 3 May 2024 and the evidence therein explaining why the sponsor had not been able to visit the appellant more often. Secondly, that the judge had failed to take account of the circumstances as to why the sponsor's evidence was inconsistent, namely that she had been stressed and anxious at the hearing.

10. Permission was refused in the First-tier Tribunal, but was granted in the Upper Tribunal upon a renewed application.

11. The respondent filed and served a rule 24 response opposing the appeal.

12. The matter came before me for a hearing on 16 December 2024.

13. Both parties made submissions and those are addressed in my analysis below.

Analysis

14. It was Mr Holt's case that Judge Marwaha had failed to take into account three material aspects of the evidence, namely the appellant's witness statement, the details provided by the sponsor about her marriage to Gary Barrett which explained the delay in applying for the appellant to join her in the UK, and the circumstances arising on the morning of the hearing which led to the sponsor being stressed and making mistakes in her evidence.

15. With regard to the first of these matters, namely the appellant's witness statement, Mr Holt quite properly conceded that there was a limit to the weight that could be accorded to the statement, given that the appellant was not present to be examined

on his evidence. He submitted that the document nevertheless carried some weight as it explained how the appellant missed his mother and how he wanted to be with her and his little brother, and that it was therefore relevant to the consideration of compelling family considerations. He submitted that it was accordingly a material error to fail to consider and engage with that statement. However I agree with Mr Tan that there is nothing in the judge's decision to indicate that she ignored the appellant's evidence in his statement or that she failed to engage with that evidence. As Mr Tan submitted there were, on the contrary, several indications of her having specifically considered the document, in particular at [4], [9] and [15] of her decision. The judge was not required to set out the evidence in the appellant's statement nor to make a specific finding as to the weight accorded to the document, but it is clear that she had regard to it and engaged with the account therein as part of her overall assessment of the evidence. As such I do not agree that any error of law arises in that respect. In any event I agree with the respondent's rule 24 response that it is not clear how the brief assertions made by the appellant could have assisted him in the judge's analysis when taken with the concerns she otherwise had.

16.As for second matter, I do not consider there to be any merit in the assertion that the judge failed to have regard to the sponsor's explanation for her lengthy separation from the appellant and her delay in applying for him to join her in the UK. Mr Holt's submission was that the reasons given by the judge at [17(d)] were not sufficient to show that she had properly considered the full circumstances and the difficulties the sponsor faced because of the nature of her relationship with Gary. However I do not accept that that is the case. Aside from her consideration of the matter at [17(d)], the judge also considered the sponsor's explanation about her relationship with Gary at [21]. In that paragraph the judge referred to the sponsor's evidence in her statement at [4] and [5] where she made specific references to the difficulties in the relationship and to the controlling nature of that relationship. At both [17(d)] and [21] the judge gave cogent reasons for concluding that that was not an adequate explanation for the delay in making the application and for the continued separation from the appellant, in particular given that the sponsor had been divorced from Gary for some years.

17.The judge was therefore perfectly entitled to consider the lengthy separation and the small number of visits to Sierra Leone as an indication of the sponsor's limited role in the appellant's care. In any event, as Mr Tan submitted, that was only one of several factors which led the judge to conclude as she did. The judge was also concerned about various other features of the sponsor's evidence, including her inconsistent evidence about the appellant's schooling and medical care and the limited evidence of financial support.

18.It is accepted that there were inconsistencies arising from the sponsor's evidence, but it is asserted, in the second ground of appeal, that the sponsor had a proper explanation for her poor performance which the judge had failed to take into consideration. The explanation provided was that the sponsor was very stressed and anxious by the time she gave her evidence because there had been problems with sending her bundle of documents to Counsel, in addition to her having done shift work and having a young child, and having slept badly. Mr Holt submitted that that explained the sponsor's confusion about the doctor treating her son and her mother, and other matters, and that the judge had only touched on the matter but had not considered it properly. However that was a matter considered by the judge in some detail at [18] and [19] of her decision. As Mr Tan submitted in addition, the inconsistencies and other concerns did not only arise from the sponsor's oral evidence but also from the documentation produced, as is apparent at [17(c)(i)] and [17(f)]. In the circumstances there is no merit in the challenge to the judge's decision in that

respect. The judge was perfectly entitled to have the concerns that she did and to draw the adverse conclusions that she did from the inconsistent evidence.

19. For all of these reasons I do not find the grounds to be made out. The judge's decision was based upon a full and careful assessment of all relevant matters, with clear and cogently reasoned findings. She reached a conclusion which was fully and properly open to her on the basis of the evidence. Accordingly, I uphold her decision.

Notice of Decision

20. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 16 December
2024