



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: HU/20627/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 21st August 2018

Decision and Reasons Promulgated
On: 26th September 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

MR GEORGE WILLIAM ANSONG
ANONYMITY DIRECTION NOT MADE

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation

For the Appellant: Mr Daniel Acheampong appeared as sponsor
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Ghana, born on 6 July 1998. He appeals with permission against the decision of First-tier Tribunal Judge Andrew, who in a decision promulgated on 18 September 2017, dismissed his appeal against the decision of the respondent dated 26 July 2016, to refuse him entry clearance to join his sponsor, Mr Daniel Acheampong, in the UK.
2. Judge Andrew noted at [1] that the appellant sought to join his half brother, Mr Daniel Acheampong, although he was referred to in the respondent's decision as

his father. The appellant was represented at the hearing but there was no attendance on behalf of the respondent.

3. Judge Andrew stated that the issues in the appeal were whether the sponsor and appellant are related as claimed; whether the sponsor has sole responsibility for him and whether there are serious and compelling family circumstances which make the appellant's exclusion undesirable. The latter assertion was the basis upon which the appellant's legal representative relied in his skeleton argument [8].
4. She noted that there was no DNA testing available to her. She did not see the original of the birth certificate for the appellant produced at p. 89 of the bundle. That purported to confirm that the appellant's mother was Charity Hammond. It is a short form of birth certificate. It was registered on 17 August 1998 in Adjabeng Accra.
5. She also referred a certified copy of an entry in the Register of Births dated 18 August 2017 at p. 90, showing that the appellant's birth was registered on 31 December 2017 at Achimota Accra. There was a different entry number from that produced at p. 89. She accordingly gave little weight on these documents to show that his mother is Charity Hammond.
6. She also noted that the birth of the sponsor as shown in the birth certificate at p. 91, was registered 23 years after his birth. The document at p. 92 showed different information. The entry number in the certified copy of entry in register of births dated 30 June 2017 at p. 93. The entry number are not the same: the Registry of births is not the same. She stated that this again led her to find that little weight can be placed on the certificates to show the maternity of the sponsor [12]. Whilst there are several documents which refer to the relationship between the appellant and the sponsor, the persons who completed these documents cannot be said to be truly independent [13].
7. Judge Andrew had regard to the evidence of his sponsor, Mr Daniel Acheampong. She did not find him to be a credible witness. There was no evidence that he suffered from PTSD as claimed. She was thus not satisfied on the evidence before her that the appellant and the sponsor are related as claimed. She set out at [16] fourteen reasons for not finding him credible.
8. She found that the appellant did not meet the requirements of the Rules. She was 'unable to be satisfied' on the evidence that he enjoys family life with the sponsor. The maintenance of effective immigration control is in the public interest in accordance with section 117B.
9. She considered the appeal on human rights grounds. The appellant is now 19 years old. Even if it did involve a s.55 consideration, she would be satisfied that it was in his best interests to remain in Ghana with his family, including his mother and friends [18]. She found that the decision of the respondent was proportionate [19].

10. Upper Tribunal Judge Bruce gave permission to appeal in order that the grounds contained in the application may be considered following oral submissions. She observed that the Tribunal appeared to have misdirected itself inasmuch as the appellant sought to join his brother under paragraph 297(i)(f), so the issue of “sole responsibility” as a single parent did not arise.
11. At the error hearing, Mr Acheampong relied on the reasons for appealing which he has identified in the application. He contended that the Judge erred by not carrying out a full consideration and application of Razgar [2004] 2AC 368 at [17].
12. He also referred to Dasgupta (Error of Law – Proportionality – Correct Approach) [2016] UKUT 28.
 - (i) A tribunal's failure to make clear findings about family life is not per se erroneous in law where its existence has not been contested in the Secretary of State's decision and has not been challenged at the appeal hearing and the tribunal's decision is not otherwise unsustainable in law.
 - (ii) The question of whether there is family life in a child/grandchild context requires a finding of something over and above normal emotional ties and will invariably be intensely fact sensitive.
 - (iii) In error of law appeals, the Upper Tribunal should apply the principles in Edwards v Bairstow [1956] AC 14.
 - (iv) In appeals involving the proportionality of an interference with a Convention right, the ultimate question for the Upper Tribunal is whether the interference is proportionate, per Huang v Secretary of State for the Home Department [2007] 2 AC 167.
13. He submitted that the availability of a DNA test report, despite not being a contentious issue, was raised by the Judge. He stated that 'If the Judge wants a DNA test to be done, it can be done'.
14. The Judge overlooked the fact that all the original documents contained in the appellant's bundle were in the sponsor's possession at the appeal hearing. At no point were the documents requested. The appellant's counsel, who represented the appellant at the hearing, made it known to the Judge that the original documents were in the presence of the sponsor.
15. In paragraph 3(b) of the grounds seeking permission, he made submissions relating to the registration of birth certificates in Accra.
16. He submitted that “substantial weight” should have been given to the evidence produced concerning the appellant's relationship with his sponsor. There was no reference to the years of correspondence between them, his call history, money transfer receipts or independent evidence. There was also evidence from the school.
17. The Judge overlooked the sponsor's explanation that the appellant would accompany his mother to medical appointments historically.

18. He submitted that the guardianship of the appellant was taken by Ama Agyemang for the purpose of living arrangements abroad and not in respect of the appellant's upbringing and decision making.
19. The Judge erred regarding the question of sole responsibility. He referred to the decision in TD (Paragraph 297(i)(e)) [2006] UKAIT 00049. All decisions were made by the sponsor.
20. The Judge also misinterpreted the medical report regarding Charity Hammond at page 100. The statement was not referring to 2016. The history of her not having diabetes related to 2009. He also asserts that the Judge refused to allow him to have a look at his copy of the medical report and stated that the sponsor 'should know this meanwhile the Judge was misinterpreting the document'. She overlooked the report at p101 in which Dr Andani stated that Charity Hammond is currently on chronic dialysis for end state kidney disease, possibly requiring a kidney transplant.
21. Given the updated information in the medical letter, the explanation given by the sponsor during the appeal hearing and the failure to consider both reports shows that the Judge has erred.
22. The remaining paragraphs note that he has visited the appellant in Ghana. As shown in his current passport, he visited him on two occasions. He visited him on numerous occasions which is shown in his "previous passport." That passport was lost.
23. The Judge failed to give the appellant the benefit of the doubt relating to money receipts from the sponsor. This showed the extent of his support for the appellant. The money is used for his upkeep including medical, mental and dental healthcare.
24. Finally, he submitted that the appellant's counsel was inept. He asserted that he complained to the solicitors about the conduct of the barrister at the hearing. No evidence in that regard has been produced.
25. On behalf of the entry clearance officer, Mr Tarlow submitted that there had been at least 14 reasons set out by the Judge for finding that the sponsor was not credible.
26. He accepted that there may be two errors in that analysis. The letter of the Senior Medical Officer at page 98 may be ambiguous. That is a letter dated 4 May 2016 relating to the appellant. It is stated that his mother is a known diabetic with complications. The appellant presented with sleeplessness, poor appetite, loneliness and suicidal thoughts. He was referred to see a psychologist who diagnosed him with severe depression and suicidal tendencies. He needs a stable home and close monitoring. However, there is no up to date evidence regarding the appellant's condition.
27. Nor was the letter regarding the diabetes of his mother picked up at [16(f)].
28. However, the Judge has devoted many pages setting out reasoned findings in respect of the sponsor's credibility, all of which are sustainable.

29. Nor is it clear whether the sponsor is in fact relying on sole responsibility or compelling circumstances. If the latter, he submitted that there clearly are no such circumstances applicable in this case.
30. In his reply, Mr Acheampong again referred to the fact that the ECO had a short form of the birth certificate.

Assessment

31. Mr Tarlow has fairly acknowledged that the Judge did not refer to some of the evidence relating to the history of the appellant's mother's diabetes, having stated that she had no history of diabetes. The letter dated 4 May 2016 relating to the appellant, asserts that his mother is a known diabetic with complications.
32. However, the Judge has given detailed reasons arising from the evidence set out at [16] of the decision, in support of her finding that the sponsor was not credible. This included the fact that he was entirely unaware that the appellant's claimed mother had even been expecting a child.
33. She has had regard to two letters from Dr Andani, referring to the appellant as suffering from severe depression [16(h)]. Despite having been referred to a psychologist who made a diagnosis of severe depression, there was no report from a psychologist before her. Nor was there any evidence by way of medical evidence confirming what medication has been prescribed for the appellant.
34. She also noted that there was evidence from the appellant's school dated 2015. The sponsor told her that he continues to attend school and is studying for the equivalent of A Levels in Science. If he continued to be affected by mental illness as claimed, she would have expected to see updated evidence from the school he attends, to confirm this - [16(i)].
35. Nor was there any mention by the appellant's legal guardian of any mental illness from which it is said the appellant suffers.
36. She also noted that in the statutory declaration of Charity Hammond at p.78, there is further confirmation that the sponsor does not have sole responsibility for the appellant. She referred to a discussion with the sponsor and her brother about the move to her brother's house. She goes on to effectively confirm that her brother was to be a father figure. Further, the mother confirmed that the appellant's move to Ama Agyemang was taken in conjunction with the sponsor.
37. Other than the declaration of Ms Agyemang stating that the appellant can no longer live with her and her family, there was nothing before the Judge to show that the appellant is unable to do so or that he cannot live with his mother.
38. I have considered the sponsor's assertions in the grounds regarding the documents as to the relationship. However, he has not sought to deal with or respond to many of the credibility findings at paragraph [16] of the determination.

39. In granting permission to appeal, Judge Bruce noted that the Judge appeared to have misdirected herself in respect of Paragraph 297 as the appellant sought to join his brother under paragraph 297(i)(f) of the Rules. However, the sponsor has contended that both paragraph 297(i)(e) and 297(i)(f) were in issue.
40. The Judge has undertaken a detailed assessment of the evidence as a whole. She has given sustainable reasons for her finding that the sponsor did not have sole responsibility and that there are no serious and compelling family circumstances which make the appellant's exclusion undesirable.
41. In the circumstances, I find that the decision of the First-tier Tribunal did not involve the making of any material error on a point of law.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Anonymity direction not made.

Signed

Date 19 September 2018

Deputy Upper Tribunal Judge C R Mailer