



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/20903/2016

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre  
On 6<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 12<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR HENRY OSAYANDE OSAGIE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - NIGERIA

Respondent

Representation:

For the Appellant: Mr N Izeubizua (LR)  
For the Respondent: Mr A McVeety (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Raikes, promulgated on 12<sup>th</sup> December 2017, following a hearing at Stoke-on-Trent on 5<sup>th</sup> December 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Nigeria, and was born on 28<sup>th</sup> June 1998. He appealed the refusal of entry clearance, which was dated 22<sup>nd</sup> July 2016, refusing him

permission to join his sponsoring mother in the UK, under paragraph 297(i)(e), (f) and (iv) and (v), to which the judge expressly referred at paragraph 3 of the determination.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that his mother left Nigeria in 2002, to come to the UK, where she was eventually granted indefinite leave to remain, together with the Appellant's eldest sister, Success Osagie, and his half-brother, R, both of whom were born in Liberia in 1996 and 2005 successively. The Appellant's current home situation in Nigeria was now becoming difficult for him to any longer stay there, where he had been living with his cousin (who was his mother's sister's son) who was around 40 years old.

### **The Judge's Findings**

4. The judge considered the evidence in this regard observing that the Appellant, who had been living now with his cousin for nearly fifteen years, was now maintaining that he lived in exceptionally deprived conditions because the things that were being sent to him from time to time by his mother in the UK were never truly given to him. Moreover, "he lost his father when he was little and his mother is his only surviving parent who has been responsible for everything including making every decision for him until now" (paragraph 14(b)). His mother had been in a position, after leaving Nigeria in 2002, to have his sister brought over to the UK in 2004, but she had been unable to bring her son, the Appellant, to join her in her family, so that the family could now be complete and all live together. The Appellant maintained that, "she has never ceased to have a relationship with him despite the years of separation and there has always been social and emotional contact" (paragraph 14(c)).

### **The Judge's Findings**

5. The judge dismissed the appeal on the basis that, although both the Appellant's sponsoring mother and her daughter, Success Osagie, had given evidence before him to say that most of the Sponsor's wages were spent on "her son's Henry's school fees, feeding, clothing, birthdays and many other things", the reality was that, "there is little evidence to support his assertion by her" (paragraph 16). Although the sponsoring mother maintained that she had sole responsibility for the Appellant, at the hearing she produced "a total of only nine Western Union money transfer receipts dated from just this year", although it was the case that there was "an airfreight invoice for unspecified goods dated 24<sup>th</sup> May 2012" (paragraph 17). The judge rejected the contention that the sponsoring mother had sole responsibility for her child's upbringing as claimed. This was in particular given that the evidence was "rather vague and indeed at times unclear" in terms of what the sponsoring mother herself knew about the Appellant's life in Nigeria (paragraph 19). Furthermore, the judge went on to hold that although the Sponsor had been granted ILR since 2010, "she has never sought to visit her son in Nigeria" and had also confirmed that she "did not take any steps to do so" (paragraph 21). She had actively sought to bring her daughter to the UK but she did not do so with the Appellant's son. The judge concluded that "she was unable to fully explain why she did not do so once granted status in the UK and in a position to do so then" (paragraph 21).

6. In relation to the Appellant's own position, the judge went on to observe how the Appellant's son had now embarked on a university degree course in computer science. Furthermore, what was no less surprising for the judge was the fact that the Sponsor was not even able to provide evidence of payments for the Appellant's fee or give any "clear indication of them being paid by her" (paragraph 22). The judge concluded properly that the reference in the Rules to there being "serious and compelling family or other considerations which make exclusion of the child undesirable" meant that the reference to "serious" was one where "there needs to more than the parties simply desiring a state of affairs" (paragraph 23). Accordingly, the judge also rejected that part of the Rules which deals with "exclusion being undesirable", having earlier rejected the fact that the sponsoring mother did not have "sole responsibility" for the Appellant's upbringing in Nigeria.
7. Finally, the judge went on to deal with the fact that with respect to "maintenance and accommodation" the sponsoring mother was not able to demonstrate that the bank statements produced indicates the regular weekly income that she claims to earn because "there is limited evidence of the regular wage as claimed and no corresponding salary slips have been produced that may assist" (paragraph 25).
8. The appeal was dismissed.
9. The grounds of application submit that the judge failed to focus upon paragraph 297(1)(d) which in terms refers to the criterion of "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". It was said that the Respondent Secretary of State did not dispute the fact that the Appellant's other parent was dead. Therefore, the judge was in error in failing to consider this provision. The grounds also go on to make more generalised comments (at paragraphs 5 to 6, which I have to say, are not relevant for me to decide the issue before this Tribunal).
10. Permission to appeal was granted on 28<sup>th</sup> March 2018 on the basis that the judge failed to consider the fact that the sponsoring mother was now the Appellant's sole parent, and that he did not have a father in Nigeria, which was a matter of some significance, given that it had been specifically included in the Immigration Rules.

### **Submissions**

11. At the hearing before me, Mr Izeubizua, the Appellant's representative, placed reliance upon his skeleton argument. He submitted that paragraph 297(i)(d) in terms referred to a situation, where one parent was present in the UK, but the other was dead, then the Appellant child in the overseas country became eligible for entry under paragraph 297. He erroneously submitted before me that this was all that needed to be satisfied, because although it is the case that paragraph 297(i) is then followed by six subparagraphs containing a number of situations, all of which are expressed in the alternative, these are then followed by another six set of stipulations which have to be satisfied conjunctively. Only then, would a person whose parent was dead would succeed under paragraph 297. Mr Izeubizua did, however, go on to explain that the Appellant's father died shortly before he was born, and given that this was not

contested by the Respondent at the hearing, the failure of the judge to give this proper consideration amounted to an error of law.

12. For his part, Mr McVeety submitted that, although it was an error for the judge not to have focused upon the fact that the Appellant's father had died, such that the situation in this appeal was caught by paragraph 297(i)(d), this would not be a material error of law because, of the six subsequent stipulations that followed paragraph 297(i), the Appellant was only able to satisfy one of them, and this was that he had been, at the time of the application, "under the age of 18" (see sub-paragraph (ii)). The judge had in terms come to the conclusion that the Appellant "was not leading an independent life" and could not "be accommodated adequately by the parent". Although the judge's conclusions with respect to whether the Appellant could be "maintained adequately by the parent" in the UK, were rather vague in their finding, nevertheless, the fact was that the Appellant could not succeed under paragraph 297, when taken as whole, because of the very specific findings made by the judge.
13. In reply, Mr Izeubizua submitted that the evidence with regard to the Appellant in these respects had all been submitted in the bundle but had failed to persuade the judge. He also submitted that there had been a difficulty in the sponsoring parent in the UK being able to collate the necessary evidence over a number of years.

### **Error of Law**

14. I am only just satisfied that there is an error of law in this determination. I come to this conclusion, notwithstanding the fact that the determination of Judge Raikes is otherwise carefully constructed and crafted in the manner that is on the whole clear and comprehensive. The judge began at the outset by focusing upon what the sponsoring mother would have to show for a case involving "sole responsibility", namely, that "his mother had and has continuing control and direction of his upbringing including making important decisions in his life" (paragraph 2), which was a fact that was not always appreciated on the Appellant's side. The judge also properly accepted the DNA evidence showing that the sponsoring mother was the Appellant's natural mother (paragraph 8). The entirety of paragraph 297 was also set out for full consideration (at paragraph 13). The leading case law was moreover fully focused upon (paragraph 13(viii)). The evidence and contentions being put forward by the Appellant's mother were also properly referred to (paragraph 14(c)). The judge was clear, that notwithstanding the sponsoring mother's contention that she had paid her son's school fees, feeding, clothing, and providing for him, "there is little evidence to support this assertion by her" (paragraph 16). Importantly, the judge did not accept why the sponsoring mother, ever since having acquired ILR in 2010, did not even make an attempt to go and visit the Appellant in Nigeria (paragraph 21).
15. Be that as it may, however, the omission of paragraph 297(i)(d) by the judge in the deliberations that followed the setting out of the Rule (at paragraph 13) is such as to give some cause for concern. It is something, which I note, the judge granting permission to referred to as a matter, that "with a heavy heart," led him to grant permission (see paragraph 3 of the grant of permission), because that aside, the determination is very well structured.

16. The error, such as it is, is a formal and rule based one. As a matter of law, a consideration should have been given to the fact that the Appellant's natural father had died, because that may well have a bearing on the way in which the rest of the evidence was to be interpreted by the judge, and not least the fact that the sponsoring mother was a single mother, who was having to provide for all her children in whatever way she could. The possibility that this is the case can be gleaned from a part of the determination. For example, there is a reference by the judge to "an airfreight invoice for unspecified goods dated 24<sup>th</sup> May 2012" (paragraph 17), which is a good five years before the determination. In the Appellant's Bundle, there was evidence, as the judge noted, of "a limited number of entries into his bank account [namely the Appellant's bank account] which the Sponsor states are from her" in relation to the payment of the Appellant's university fees (at paragraph 22).
17. None of this, of course, can account for the fact that the sponsoring mother displayed insufficient knowledge of her son's life in Nigeria (see paragraph 19). Even so, all things considered, the fact remains that this specific provision in the Rules, which the judge did set out (at paragraph 13) relating to the fact that as she had been a single parent, and that the Appellant's father had died in Nigeria, was not considered, and ought as a matter of law, to have been considered. On this basis the Appellant succeeds narrowly in persuading me that there is an error of law.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Raikes, under Practice Statement 7.2(a) of the Procedure Rules.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

8<sup>th</sup> September 2018