Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19659/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 September 2019	**On 17 September 2019**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MISS BOLUWATIFE OYEBANJO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Ms H Gore, instructed by Aminu Aminu Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity direction was made as none was requested.

2. This is the appellant's appeal against the decision of First-tier Tribunal Judge Raymond promulgated 2 May 2019 dismissing her appeal against the decision of the Secretary of State dated 31 August 2018 to refuse her application made on 26 May 2018 for entry clearance as a child of a person settled in the UK.

3. Upper Tribunal Judge O'Callaghan granted permission on 1 August 2019, setting out a number of directions in relation to the issues raised in the grounds. The grounds themselves are unhelpfully not paginated or paragraph-numbered and they are somewhat confused. As Judge O'Callaghan noted, the author of the grounds appears to confuse the requirement that there be an error of law with an issue of the appeal ought to be granted "in the interests of justice." The grounds appear to seek to rely on evidence that was not put before the First-tier Tribunal.

4. Judge Raymond dealt with this case on the papers, at the express request of the appellant and therefore could only decide the appeal on the documentary information presented on the appellant's behalf. The judge pointed out that whilst there was a DNA report, it was incomplete, missing copies of the proof of identity which would have been used to demonstrate that the samples compared are between the relevant persons. In the circumstances, very little weight could be given to a report that was absent that evidence of identity.

5. Also missing in terms of documentary evidence was proof that the guardian was deceased. Whilst Judge O'Callaghan noted that the Entry Clearance Manager may have had the death certificate, it is not at all clear that that document was put before the First-tier Tribunal. It was for that reason that, when granting permission, Judge O'Callaghan directed a solicitor from the appellant's representatives to file and serve a witness statement explaining why copies of the documents now relied on such as the death certificate were not filed with the First-tier Tribunal under circumstances where it was apparent several weeks before the hearing that they had not been placed within the Entry Clearance Officer's bundle. Judge O'Callaghan also directed the appellant to refile the bundle that had been relied upon in the First-tier Tribunal. Whilst an appellant's bundle has been submitted, under cover of letter dated 27 August 2019, I am not satisfied that this was the bundle that was before the First-tier Tribunal. This bundle comprises 73 pages, indexed and paginated, but looking at the Tribunal's case file itself, it very much appears as though there was no actual bundle put before the First-tier Tribunal because the case file simply contains a number of loose documents, unpaginated, unindexed and not including either the original of the death certificate or the missing DNA identity documents. It is clear that the information put before the First-tier Tribunal was not that now relied upon by the appellant.

6. The statement from the solicitor dated 6 September says as they were not involved in the preparation of the paper appeal, they cannot say why some of the documents now relied on were not before the First-tier Tribunal. It is not positively asserted that the documents were put before the Tribunal; the fourth paragraph of that statement says it is the sponsor's explanation, as contained in his witness statement, that he gave all his documents to his friend who at the time was helping him prepare his appeal. He believed that his friend submitted all the documents to the First-tier Tribunal. I am afraid that evidence is entirely adequate to demonstrate that the documents mentioned were in fact submitted to the Tribunal.

7. Issue was taken that the judge made an error as to how the sponsor came to acquire his status in the UK. The judge suggested at paragraph 6 that the sponsor had arrived in the UK in March of 2008 before achieving residency in December 2016. The judge thought that suggested he achieved permanent residency as a result of overstaying for twenty years. It is said that that is not the case; he obtained his status through being a family member of an EEA national exercising treaty rights in the UK. There is no merit in the ground that this adversely affected the rest of the judge's findings. I accede to the submission of Mr Avery that the error, if it is such, is not material to the determination of the issues in the appeal. There is no evidence that this observation influenced any other part of the decision.

8. The grounds also challenge the burden and standard of proof applied by the judge, suggesting that the judge did not apply the correct standard of proof. The ground is confused and, in my view, unarguable. There is nothing to suggest that the judge applied an incorrect standard and burden of proof.

9. The final issue is one of sole responsibility. The judge concluded on the limited evidence that was before him that even if the other problems in relation to documents had not taken place, the judge could not be satisfied that on the evidence there was sufficient evidence of sole responsibility. Whilst the decision is fairly brief in relation to that issue, the judge noted the lack of any satisfactory evidence of contact between the sponsor and the alleged long-term carer, and the lack of any direct evidence to show that the sponsor had been responsible for things such as the school fees or the hospital admission, and there was no evidence in relation to the recipient of the funds, which were themselves "episodic," as the judge described them. Taken together, the judge concluded that the evidence was not of sufficient weight to establish on the balance of probabilities that the sponsor did have sole responsibility for the appellant. On considering the limited evidence before the First-tier Tribunal, I find that the judge was entitled to and justified by cogent reasoning the conclusion that sole responsibility had been made out on the balance of probabilities.

10. As stated above, this case has been poorly prepared throughout, from the application through to the appeal to the First-tier Tribunal and, despite the valiant efforts of Ms Gore to persuade me to the contrary, I am not satisfied that there is any material error of law in the decision and therefore the decision will stand as made. Rather than appealing to the Upper Tribunal, the appellant would have been better served to have resubmitted her application, taking care to ensure that all the correct evidence was with the application and if refused any appeal.

Decision

11. The making of the decision of the First-tier Tribunal did not involve the making of an error of law such as to require it to be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

Signed
Upper Tribunal Judge Pickup

Dated 9 September 2019

To the Respondent
Fee Award

I make no order for costs, having dismissed the appeal.

Signed
Upper Tribunal Judge Pickup

Dated 9 September 2019