Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/10181/2013
OA/10180/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 14th July 2014	**On 11th Aug 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MISS OSARUGUE CYNTHIA OSAYAMWEN
(2) MISS OSAKPONMWEH PRECIOUS OSAYAMWEN
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss L Appiah (Counsel)
For the Respondent: Ms L Kenny (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Woolley promulgated on 16th April 2014, following a hearing at Hatton Cross on 4th April

2014. In the determination, the judge dismissed the appeal of Miss Osarugue Cynthia Osayamwen and Miss Osakponmweh Precious Osayamwen. The Appellants, subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are both citizens of Nigeria. They are sibling sisters. The first Appellant was born on 28th November 1996 and the second Appellant was born on 27th December 1995. Both applied on 27th November 2012 for settlement with their father in the United Kingdom. The father, Mr H P Emokpaie, is a person present and settled in the UK. The ECO was not satisfied pursuant to paragraph 297(i)(e) that the Appellants were related to their sponsoring father as claimed.

The Judge's Findings

3. The judge considered the question of whether the sponsoring father had taken "sole responsibility" for the Appellants. He followed the Tribunal decision in **TD (Paragraph 297(i)(e) (sole responsibility)) Yemen [2006] UKAIT 00049** which he purported to apply (see paragraph 22). He accepted that the Appellants' mother had abandoned the Appellants after they were born "and has had nothing more to do with them" (paragraph 23). He then considered the support provided by the sponsoring father for his children in Nigeria and noted that there were "a large number of copies of MoneyGram and Western Union receipts" and that "some originals had been provided" (paragraph 25). He noted that some of the money was sent to an adult (paragraph 26). Other amounts of money were given to other adults (paragraph 27) and the judge could not be satisfied that, given the large number of other individuals to whom money was apparently given, that it was given for the sole use of his children (paragraph 27).

4. However, he did also then conclude that, "I accept that the Sponsor has been sending some money to the Appellants, or at least to Precious certainly from 2011 onwards" (paragraph 28).

5. On the other hand, the judge had no breakdown of figures in front of him as to how the money was to be apportioned, with respect to the children's school needs, or medical bills, or the like (paragraph 29).

6. Evidence was provided before the judge which was "postdecision" in the form of a heads of nursery and infant school and from St Mary Dedication British International School confirming that the sponsoring father "has been responsible for the girls' upkeep and education through their grandmother … " (paragraph 33).

7. Moreover, the grandmother had sworn an affidavit which was before the judge (paragraph 35). The judge held that he was not satisfied that the father had taken sole responsibility for the children's upbringing (paragraph 37). He went on to consider other aspects of paragraph 297 but found that no decision favourable to the Appellants could be made. With respect to Article 8 ECHR, the judge gave

consideration to the Appellants' human rights and in particular had regard to Section 55 of the BCIA 2009 and held that the Appellants were well looked after in Nigeria and that there was no evidence that they would receive any better treatment in the UK (paragraph 50). The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge had erred in concluding that the money being sent to Nigeria had to be evidenced as going to the Appellants because in his statement, the sponsoring father had said that, "I send money to my children regularly through various people; including extended family members, friends and acquaintances … …". The grounds also state that although some of the money grams were illegible, the fact was that the judge did have all of the originals before her, "which were offered for consideration and declined to look at the original documents or retain them on file".

9. The judge also irrationally concluded that the Sponsor could not prove how he came to make decisions in the children's lives because there was a letter from the Mary Dedication British International School (at page 16) referring specifically to the first Appellant, Cynthia, confirming that "Mr Henry Osayamwen … is responsible for her upkeep and education …". It was also stated that if the judge was concerned to know about the sponsoring father's knowledge of his children's "likes, dislikes, hobbies, and interests" (see paragraph 32), this was a matter that the judge should specifically have put to the sponsoring father at the hearing, but chose not to do so.

10. Permission to appeal was granted on 20th May 2014 on the basis that the judge should have been guided by the well established case law in this jurisdiction of **Emmanuel [1972] Imm AR 69**; **Ramos [1989] Imm AR 148**; **Cenir [2003] EWCA Civ 572**; **NA (Bangladesh) [2007] EWCA Civ 128**; and **Sloley [1973] Imm AR 54**. In particular, however, the recent affirmation of the principles in these cases as confirmed by **Mundeba [2013] UKUT 88**, should also have been heeded.

Submissions

11. At the hearing before me on 14th July 2014, Miss Appiah, appearing on behalf of the Appellants relied upon her skeleton argument, which was before the original judge, and which did refer to the cases that I have set out above, especially the older cases (see pages 3 to 4). She submitted that the ECO did find that the mother had abandoned the children. The ECO then went on to conclude that the responsibility of the sponsoring father was shared with the grandmother. Miss Appiah submitted that the judge should have concluded that, on balance, given the standard of proof was on a balance of probabilities, that the burden of proof had been discharged in the light of the fact that a large number of copies of MoneyGram and Western Union receipts were before the judge (see paragraphs 25 to 26).

12. Secondly, it was well accepted that "sole responsibility" can arise at a later stage, and does not have to be shown consistently during the continuum of a number of years, and this was set out at page 5 of the skeleton argument, according to Miss Appiah.

She emphasised also that Grounds 3, 5, and 6, of the Grounds of Appeal before this Tribunal confirmed that "sole responsibility" had indeed been exercised by the sponsoring father in this case.

13. For her part, Ms Kenny submitted that the findings were adequate in all respects. The judge had found that money was being sent to a number of individuals. For example, it was sent to Sally Osayuki and the judge concluded, "it is not clear who this person is" (paragraph 26). However, if the judge had considered the witness statement of the Sponsor, it would have been abundantly clear that this is a family friend. The witness statement confirms this. Be that as it may, the judge had then also concluded that from 2011 onwards there was evidence, which the judge accepted, that money was being sent to the Appellants. It was the sponsoring father's evidence that he made all the main decisions in the children's life. Since 1995, he had been back to Nigeria four times. Ms Kenny submitted that the judge was right to conclude that it was unclear how the money was being spent because there was no breakdown about the schooling fees, the medical bills, and other such matters (paragraph 29). Similarly, the judge took note of the fact that there was a letter from the medical centre which stated that Cynthia had been registered with the practice since 2001, but there was no mention of the treatment received by the daughter. (Paragraph 34).

14. In reply, Miss Appiah submitted that the sponsoring father had submitted evidence that he was exercising responsibility with respect to his children. He gave oral evidence. He explained how he exercised responsibility. He explained also how the money transfers were sent every year. Each one of the money transfers were counted out before the judge. Miss Appiah submitted that she was at the hearing and she well recalls this. It was unrealistic to cast doubt on the money transfers.

15. As for the core decisions, it was equally unrealistic to reject the sponsoring father's evidence, because this had been set out in his witness statement (see paragraph 4) and nothing he had said had been impugned. He had given evidence about his role in the children's school, who they live with, and their religion. At paragraph 6, he had explained that there is no one else left to look after his children and that he provides them with emotional support. He refers to the father's love for his children. The judge had said (at paragraph 34) that the sponsoring father had not been able to visit his children because of his lack of status in the UK.

16. Yet, notwithstanding this, the witness statement makes it clear (at paragraph 4) that the sponsoring father had indeed visited his children in 2001, 2002, and 2003, and then again in 2011 after he had got British citizen status in this country. The fact now was the grandmother had died and was unable to look after the children and the sponsoring father had done what any responsible father would do, which was to apply for the children to join him in this country. She asked me to allow the appeal.

Error of Law

17. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside

the decision and remake the decision. The older cases, which Miss Appiah has referred to in her skeleton argument, confirm that "sole responsibility" can never be established in a literal and absolute sense. Inevitably, responsibility, in circumstances where the child is living abroad, has to be shared with another adult person in that country. Fundamentally, the judge has erred in two respects.

18. First, the judge had before her "a large number of copies of MoneyGram and Western Union receipts" which she appeared to doubt because "some originals had been provided but they do not all contain the year the money was sent" (paragraph 25). The fact was that all the originals were provided before the judge. Indeed, the judge failed to give them their due credence in the light of the fact that she also concluded that, "I accept the Sponsor has been sending some money to the Appellants, or at least to Precious certainly from 2011 onwards" (paragraph 28), which was strong evidence in favour of the Appellants and their sponsoring father.

19. Second, the judge also doubted that the money was being sent to persons who could not confirm the use of the monies in favour of the children. For example when reference is made to Sally Osayuki, the judge states, "it is not clear who this person is" (paragraph 26). However, the witness statement of the Sponsor explains that this is a family friend. The same applies to the other individuals that are referred to at paragraph 27. On a balance of probabilities, there is no reason why a person such as the sponsoring father, who has children in Nigeria, would send monies to a number of other individuals, in preference to his own children, in circumstances where the ECO had accepted that their mother had abandoned the two Appellant children. In short, there is a degree of scepticism which is unwarranted in the findings of fact.

20. This is clear from other observations by the judge. For example, when consideration is given to the fact that Cynthia is registered with the medical centre since 2001, it is said that, "there is no mention of treatment received by either daughter or what inputs their father has had" (paragraph 34). It was a matter that could easily have been put to the sponsoring father at the hearing. There is, indeed, no reason why it should be assumed that Cynthia was having treatment of any serious nature. Similarly also, where it is said that there was no evidence about the children's schooling, their medical bills, and other such expenses, as being paid by the sponsoring father (see paragraph 29), this assumes that when the grandmother was looking after the Appellant children, she needed to have a breakdown of the relevant figures, such that they could then be presented to the sponsoring father in the UK.

21. Such a state of affairs would undoubtedly exist if there was a degree of distrust between the person receiving the monies and the person sending them. In the instant case, it would have been enough for the sponsoring father just to send the monies to his grandmother to deploy for the upkeep of the children (who are also the grandchildren of the recipient of the monies).

22. It has to be remembered that the standard of proof is only on a balance of probabilities. It is not beyond all reasonable doubt. These errors arise on account of

a failure to consider the old authorities, such as **Emmanuel** and **Sloley**, which were referred to in the skeleton argument.

Remaking the Decision

23. I have remade the decision on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today. I am allowing the appeal for the following reasons.

24. First, on the judge's express findings of fact, the sponsoring father "has been sending some money to the Appellants, or at least to Precious certainly from 2011 onwards" (paragraph 28).

25. Second, there was evidence before the judge, of all the original receipts for the MoneyGram and Western Union remittances, confirming the monies sent.

26. Third, there was additionally evidence that money was being given to individual adults for the use of the Appellant children. Once it is accepted that the Sponsor had been sending some money to the Appellants (see paragraph 28 again), it is a reasonable assumption that this money was remitted just as much through official remittances as through individuals going to and fro from Nigeria to the UK. Indeed, when the judge refers to "one Sally A. Osayuki" (paragraph 26), this person is expressly explained in the sponsoring father's witness statement as being a family friend. At the very least, the existence of these individuals, who are being given money, takes nothing away from the judge's express finding that some money was being sent to the Appellants from 2011 onwards.

27. Fourth, the judge had accepted that the Appellants' mother did abandon them not long after they were born (paragraph 23), which is relevant in the construction of the requirement of "sole responsibility" under the Rules, because the responsibility then inevitably fell upon the sponsoring father, and through him, to the grandmother. I accept that this is the case at least from 2011 onwards.

28. Fifth, the sponsoring father's own evidence in his witness statement at paragraph 5 was that, "I send money to my children regularly through various people; including extended family members, friends and acquaintances who I trust to give money to my mother for their upkeep …".

29. Sixth, given that this is the case, it is immaterial whether the money is subsequently apportioned into school fees or medical fees or the like. This would only be the case if money was expressly requested for school fees or for medical fees. The evidence is that this is not how the money was either requested or being sent. The sponsoring father sent the money for his children's regular maintenance. The standard of proof, being on a balance of probabilities, requires nothing more than this, on facts such as the present.

30. Sixth, there is a letter (at page 16 of the bundle) from the Mary Dedication British International School, where the first Appellant attended school, which is to the effect that,

> "We would appreciate any assistance rendered her to enable her to secure a visa to travel to the UK in order to be with her father, Mr Henry Osayamwen, who is responsible for her upkeep and education through the grandmother, Mrs Osayamwen Mary Ikiol her guardian here in Nigeria".

This letter was not expressly referred to by the judge but it is clearly of utmost importance. Similarly, a letter from the Greater Tomorrow Nursery and Primary School (which appears at page 19 of the bundle) also stated that the sponsoring father had been responsible for the first Appellant's education.

31. Indeed there were similar letters for the second Appellant (appearing at pages 21 and 24 of the bundle) which have also not hitherto been given proper consideration, but are plainly of very great significance.

32. In short, the requirement of "sole responsibility," as set out in the Tribunal determination of **TD (Yemen) [2006] UKAIT 00049** is satisfied. It is precisely in circumstances such as these that the case of **Singh v ECO [2002] UKIAT 05102** is applicable as it is stated (at paragraph 37) that there cannot be a literal translation of the word "sole responsibility". Here the day-to-day responsibility lay with the grandmother whilst she was alive. But the decisions in respect to the children's overall upbringing plainly lay with the sponsoring father, after their mother had abandoned the children. This appeal is allowed.

Decision

33. 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.

34. No anonymity order is made.

Signed Dated

Deputy Upper Tribunal Judge Juss 11th August 2014