



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/14495/2013  
OA/14496/2013  
OA/14497/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 12 August 2014**

**Oral determination given following the hearing**

**Determination  
Promulgated**

**On 15<sup>th</sup> Aug 2014**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**ENTRY CLEARANCE OFFICER**

**and**

**SAMUEL ABAYOMI SEGUN  
MAYOWA WILLIAM SEGUN  
LOLA LYDIA SEGUN**

Appellant

Respondents

**Representation:**

For the Appellant: Mr C Avery, Home Office Presenting Officer  
For the Respondents: Mr L Jegede, OJN Solicitors

**DETERMINATION AND REASONS**

1. This is an appeal by the Entry Clearance Officer who is the appellant in these proceedings. For clarification, I shall refer to the parties as they

were before the First-tier Tribunal. Applications were made by the three appellants who were born on 29 May 1995, 28 December 1997 and 2 October 1996 respectively, for entry clearance under paragraph 297 of the Immigration Rules to settle with a parent in the UK, namely their mother. The appellants are all citizens of Nigeria. Their applications were made on 21 March 2013 and the decisions to refuse their applications were made on 31 May 2013.

2. Their appeals were heard by First-tier Tribunal Judge Callow on 27 May 2014. The judge allowed their appeals under the Immigration Rules.
3. The decisions to refuse the applications were based in part on the question of whether the appellants' father is dead. They were also based on the issue of 'sole responsibility'. Both parties however, agreed that if the question of the death of the appellants' father was a matter that was the subject of sustainable conclusions by the First-tier Tribunal, there is no need to consider the grounds advanced by the Entry Clearance Officer in relation to sole responsibility. The issue in the grounds in relation to the judge's reasons in terms of adequate accommodation was a matter that was not pursued on behalf of the respondent before me and, if I may say, that was an entirely appropriate course in the light of the judge's findings and the evidence that was before him on that issue.
4. If there is no error of law in the judge's finding in relation to the death of the appellant's father, or none that requires the decision to be set aside, there is no need to consider further the ground in relation to the judge's finding on sole responsibility.
5. The notices of decision assert that in a previous application the appellants had stated that they did not know where their father was and they had at that time provided no documents to confirm his whereabouts. That implicitly contrasts with the present position whereby the appellants assert that their father is dead, and the death certificate provided in these proceedings. The Entry Clearance Officer remarked on the ease with which documents of that kind are obtainable in Nigeria. These are matters that are said to undermine the reliability of the death certificate which was produced in respect of this application.
6. Judge Callow heard evidence from the sponsor and from the sponsor's mother, the appellants' grandmother, Veronica Lloyd Oti. At [8] of the determination the judge stated that the authenticity or otherwise of the death certificate in relation to the appellants' father was "traversed" at the hearing before him. He then referred to the evidence that was given in relation to that death certificate. He noted at [8(a)] the evidence that it was obtained by the appellants' grandmother in a year that she could not remember (possibly 1978) and that she was uncertain as to the correct names of the appellants' father.
7. The judge further noted that a copy of the first appellant's application form submitted on-line on 28 February 2012, that is to say a previous

application, simply recorded the personal details of the father and made no reference to his whereabouts. The judge then heard evidence about the possible source for the assertion that the appellants did not know the whereabouts of their father.

8. In submissions on behalf of the appellant before Judge Callow, it was said that in the 2012 refusal there had been no mention of the father but that in the present decisions to refuse these applications that had been “misconstrued” in terms that it was said that the appellants had previously stated in their application form that they did not know where their father was. It was submitted to Judge Callow that it was this unsubstantiated allegation that led to the authenticity of the death certificate being challenged, amplified by the assertion that such documents were easily obtained in Nigeria.
9. The judge recorded the submissions made on behalf of the respondent in terms of the death certificate, those submissions being to the effect that no weight could be attached to it. The judge dealt with this issue directly at [14] whereby he stated as follows:

“Despite some imperfections in the grandmother’s evidence as to when she obtained the death certificate in issue and the correct names of the appellants’ father, I am satisfied that she has told the truth about the death of the appellants’ father.”
10. The judge went on to say that certainly no such person has played a role in the upbringing of the children. He referred to the degree of devotion and affection for the appellants with which the appellants’ grandmother had acted, and he went on to find that the sponsor too was a credible witness.
11. Mr Avery referred me to the notes of hearing made by the Presenting Officer at the hearing before the First-tier Tribunal, in order to support the assertion that the judge’s use of the word “imperfections” in the grandmother’s evidence was not an accurate characterisation of the evidence that she gave in the light of the deficiencies in her evidence.
12. However, it is clear the First-tier Tribunal Judge was best placed to make a decision on the credibility of the witnesses that he saw and heard. He expressed in clear terms that he found both witnesses credible. The issue of the death certificate was not only canvassed in evidence but was the subject of submissions which are recorded by the First-tier Judge. It was, and is, unquestionably a matter for the judge seized of the appeal to make his or her own assessment of the credibility of witnesses based on the evidence that is before that judge. I am satisfied that Judge Callow was entitled to come to the view that he did, for the reasons that he gave.
13. In those circumstances, having concluded that the appellants’ father is dead, the judge did not need to go on to consider the issue of sole responsibility. He did however do so, and his conclusion in that regard is

the subject of a separate challenge, as I have already indicated. It is not necessary for me to consider that challenge any further in the light of my conclusion that there is no error in the judge's determination in terms of the reliability of the evidence of the death certificate and consequently the death of the appellants' father. That conclusion was one which was sufficient to allow the judge to find in the appellants' favour in terms of paragraph 297(i)(d) of HC 395 (as amended).

14. It follows therefore, that I am not satisfied that there is any error of law in the decision of the First-tier Tribunal and the decision to allow the appeal under the Immigration Rules stands.

Upper Tribunal Judge Kopieczek

13/08/14