



IAC-FH-AR-V2

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

Appeal Number: OA/03730/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30 July 2015**

**Decision & Reasons Promulgated
On 21 August 2015**

Before

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY
UPPER TRIBUNAL JUDGE WARD**

Between

ECO - NAIROBI

Appellant

and

**REGINE MVUMBI BINDA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Miss J Isherwood, Senior Presenting Officer

For the Respondent: Miss G Kiai, Counsel, instructed by J D Spicer Zeb (87 Kilburn)

DECISION AND REASONS

1. In this decision the Respondent is referred to as the Claimant and the Appellant is referred to as the ECO.
2. The Claimant, a national of the DRC, appealed against the decision of the ECO, dated 30 July 2013, to refuse entry clearance for the purposes of settlement with reference to paragraph 297 of the Immigration Rules HC 395 as amended. The appeal against

that adverse decision came before First-tier Tribunal Judge Wellesley-Cole (the judge) who allowed the appeal presumably under paragraph 297 of the Rules.

3. Permission to appeal that decision was given by First-tier Tribunal Judge A D Baker on 4 March 2015.
4. The grounds on which permission was sought contain under the heading ' Ground 1' (there is no Ground 2) paragraph 2 a recitation of paragraph 297 of the Rules which does not of itself identify any error of law. The paragraph numbered 3 essentially became the core issue of whether or not the judge had properly addressed the Sponsor's sole responsibility for the Claimant.
5. It was ultimately a 'reasons' challenge. The judge was taken to and recited various parts of the evidence , the counter submissions and ultimately said:-

"There were Western Union remittances, I appreciate that financial support is not the only criteria. But he did say in his evidence (the Sponsor's), which I place weight on as I find it to be credible, that he took key decisions in relation to her school and science trips and he consulted with the niece."
6. The niece had been for many years the day-to-day carer of the Claimant and it was a striking feature of this case given that she was said to have cared for the Claimant since 2003. Yet there was no evidence from her at all other than her claim of being the carer and confirming her relationship to her uncle, the UK Sponsor. There was no evidence, other than showing the Claimant's attendance at school in Kinshasa and being signed on to some form of GP surgery in Kinshasa.
7. There was no evidence of how the funds sent to the niece have been applied, nothing in relation to how and what the expenditures were incurred by the Claimant or how they were addressed. The lack of such evidence had been noted by the ECO and the judge. Ultimately there was a considerable gap in the evidence to address the claim of sole responsibility and the extent to which the niece had day-to-day care of the Claimant.
8. Having looked carefully at the matters recorded it was also notable that the judge, for example, failed to deal with an issue in dispute, namely the extent of the claimed contact by telephone between the Claimant and the Sponsor: a matter raised by the Presenting Officer but which was never resolved. This illustrated, as does a fair reading of the decision as a whole, that the judge signally failed to provide adequate and sufficient reasons to support the conclusion that the Sponsor had sole responsibility for the Claimant.
10. In the circumstances we have considered whether or not enough has been done by the judge in her findings to save the decision. It is with great reluctance we have come to the view that quite simply the failures by the judge had led to an unsatisfactory decision. It is trite law that proper and sufficient reasons must be provided so that each party to an appeal can understand the basis of the reasons given, a matter the judge did not do.

11, In these circumstances we find the Original Tribunal decision cannot stand. The Original Tribunal's decision will have to be remade.

Directions

- (1) Re-list for hearing first available date before Deputy Upper Tribunal Judge Davey
- (2) Parties to serve any further evidence relating back to the decisions, the relevant date of decision, and similarly if additional documentation is to be produced, it should be served not later than 10 working before the further hearing.
- (3) Time estimate 1½ - 2 hours
- (4) The parties to give notice of any witnesses to be called and in particular their immigration status or nationality.
- (5) Interpreter who can interpret with reference to the French spoken in the Democratic Republic of Congo.

NOTICE OF DECISION

The appeal is allowed to the extent that the matter is to be remade.

No anonymity direction is made.

Signed

Date 10 August 2015

Deputy Upper Tribunal Judge Davey