



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

Appeal Number: OA/04923/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 21 August 2015**

**Decision and Reasons
Promulgated
On 07 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MASTER VCA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Parkin, counsel

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Thew (hereinafter referred to as the FTTJ) dismissing an appeal against a decision to refuse the appellant leave to enter the United Kingdom as a child of a person present and settled here.

Background

2. The appellant's application, made on 3 February 2014 under paragraphs 297(i)(e) and (f) of the Immigration Rules, indicated that he had never known his father and that he had been living for 4 years with a Mr

Conteh, his mother's friend. Mr Conteh was due to move away; the appellant had lost touch with his maternal grandmother aged 70 and if his application was refused he would be living alone in Sierra Leone in the most exceptional circumstances. It was said that the sponsor was solely responsible for his upbringing. There had been an earlier, unsuccessful, application made for settlement on 22 October 2009.

3. On 27 February 2014, the ECO refused the said application with reference to paragraphs 297(i)(a), 297(i)(e) and (f) of the Rules. The ECO did not accept that the appellant was related as claimed to the sponsor as it was said that his birth certificate was issued 12 years after his birth. The ECO was also dissatisfied with the evidence of contact between the appellant and sponsor. It was noted that a chat message between the appellant and sponsor made reference to the appellant's "dad," whose whereabouts were said to be unknown. Owing to this discrepancy, the ECO was not satisfied that the sponsor had sole responsibility for the appellant's upbringing. The ECO also considered that the appellant had a grandmother and aunt in Sierra Leone, as well as his father who could be responsible for his care and therefore was not satisfied that there were serious and compelling family or other considerations.
4. The appellant appealed and in his grounds it was explained that the birth certificate was a certified copy of an original certificate issued soon after his birth. The reference to "dad" was said to be a reference to the appellant's guardian, Mr Conteh. It was argued that the sponsor was solely responsible for the appellant's upbringing; that his aunt moved away in 2009; that his father's whereabouts since 2000 were "unknown" and that his grandmother did not live in Freetown and was an elderly dependant herself.
5. An Entry Clearance Manager (ECM) reviewed the decision to refuse entry on 18 June 2014, however the decision was maintained on all grounds. The ECM noted that DNA test results had been submitted as evidence of the appellant's relationship to the sponsor, however it was said that no evidence had been provided from the practitioners who took the samples in either country to demonstrate the identity of those tested. With regard to the reference to "dad" in the message, the ECM accepted this "*may explain this discrepancy*" but remained dissatisfied that the whereabouts of the appellant's father and his role in his upbringing had been adequately explained. Furthermore, the appellant had not provided any further evidence of contact, which would help to establish sole responsibility. It was said that the decision had taken into account the obligations to the appellant under the ECHR.
6. At the hearing before the FTTJ on 18 February 2015, the sponsor and a witness, Ms Thomas, gave evidence. The FTTJ rejected the DNA evidence but was prepared to accept that the appellant and sponsor were related as claimed. The FTTJ attached no weight to the evidence of the witness, owing to inconsistencies in her evidence. The FTTJ rejected the claim of sole responsibility and found the ECO's decision to be

proportionate. In deciding the Article 8 claim, the FTTJ considered that any family life could continue as it had and there was no evidence before the FTTJ to suggest that the sponsor and her daughter could not relocate to Sierra Leone to join the appellant.

Error of law

7. The grounds of application argue that the FTTJ materially erred in failing to have regard to the evidence before her, which supported a finding that the sponsor was solely responsible for the appellant. It was also said that the FTTJ failed to consider Article 8 in its totality.
8. Designated FTTJ Nicholson granted permission on the basis that the FTTJ did not take into consideration the best interests of the sponsor's British daughter in deciding that it was reasonable to expect her to live in Sierra Leone. Permission was not refused on the remaining grounds, however FTTJ considered that "*many lack merit.*"
9. The respondent sent a response to the grant of permission, which was received on 26 June 2015. The respondent opposed the appeal, stating that it was open to the FTTJ to find that the sponsor never had sole responsibility for the appellant given her very young age (12) at the time of his birth. In relation to the one ground isolated in the grant of permission, the respondent was of the view that there was no evidence before the FTTJ that the sponsor and her daughter could not relocate to Sierra Leone and in any event this was an alternative to the finding that family life could continue as it had since 2002.
10. On 15 July 2015, the Tribunal received a small bundle of documents from the appellant, which included an argument that the FTTJ had considered the wrong provisions of paragraph 297 of the Rules, in that the appellant's father "*is dead*" and therefore paragraph 297(i)(d) applied. There was no further reliance placed on paragraph 297 (i)(e) of the Rules. In addition it was claimed that the gentleman said to be caring for the appellant, Mr Conteh, had died on 15 May 2015. The circumstances of Mr Conteh's death were said to be that he was involved in a motorcycle accident after leaving his house in anger after an argument with his wife over the appellant. The appellant was said to have left Mr Conteh's house to stay, temporarily, elsewhere.
11. At the hearing before me, Mr Parkin rightly declined to rely upon the post-decision evidence relating to Mr Conteh. In addition, he was unable to point me to any part of the evidence or FTTJ's decision in which the claim had been made that the appellant's father died, as opposed to his whereabouts being unknown. Instead, Mr Parkin placed his emphasis on the reasonableness of the FTTJ's finding that the sponsor's British daughter, aged 10, could be expected to relocate to Sierra Leone. He invited me to find that no tribunal could have come to that conclusion regarding a British child or alternatively, that the best interests of the child were not properly considered. With regard to whether there was family life between the appellant and sponsor, Mr Parkin argued that the

relationship between the appellant and sponsor subsisted notwithstanding the years apart. This was evidenced by a previous unsuccessful application for the appellant's entry in 2009.

12. Mr Duffy had nothing to add in respect of the new claim that the appellant's father was dead. Otherwise he stressed that the Rules were not met and there was an absence of compelling circumstances, which could lead to the appeal being allowed outside the Rules. With regard to the FTTJ's findings in relation to the sponsor's daughter, Mr Duffy argued that there was no evidence before the FTTJ to support a finding that it would be unreasonable to expect her to accompany the sponsor to Sierra Leone.
13. Mr Parkin had little to say in response, but argued that the FTTJ misdirected herself, notwithstanding the absence of any evidence before her in relation to the sponsor's daughter.
14. The skeleton argument forwarded by the appellant's solicitors for the hearing before me, placed reliance on paragraph 297(i)(d) of the Rules and claimed that the appellant's father was deceased. There was no reference to this claim or argument in the visa application, the representations accompanying that application, which were written by the current solicitors, the grounds of appeal or any of the evidence or submissions placed before the FTTJ.
15. The appellant's case has always been that his father's whereabouts were unknown, since the year 2000. Mr Parkin rightly had very little to say about this late change to the basis of the appeal. Mr Parkin also had no criticisms of the findings of the FTTJ on the issues of sole responsibility or the lack of any serious and compelling family or other considerations for making the exclusion of the appellant undesirable.
16. In view of the fact that the appellant was unable to demonstrate that he met the requirements of the Rules, it was necessary for compelling reasons to be shown to justify a positive conclusion outside the Rules. Nonetheless, in the absence of any argument to that effect, the FTTJ applied the principles in Razgar and proceeded on the basis that there was family life between the appellant and sponsor notwithstanding the fact that she left Sierra Leone without him in the year 2002 and had not visited him since 2011.
17. In considering proportionality, the FTTJ gave sound reasons for finding that it was open to the appellant and sponsor to continue their family life as it had been over the preceding twelve years or, alternatively, there being no evidence otherwise, the sponsor and her daughter could relocate to Sierra Leone "*if she wished to do so.*"
18. While the FTTJ did not set out the best interests of the sponsor's daughter, there was no evidence or arguments before her, which could advance a case that it was or was not in her best interest to relocate to Sierra Leone. It was only in the application for permission that any evidence regarding the sponsor's daughter was put forward. I should

add that additional and recent evidence relating to the father of that child was also sent to this tribunal on 15 July 2015. However, none of that information was before the FTTJ.

19. It is not automatically the case that it would not be in the best interests of a British child aged 9 (as she was at the time of the decision) to live in the country of her mother's birth. In addition, it was not open to the FTTJ to speculate about any reasons why the best interests of the sponsor's daughter would be for her to remain in the United Kingdom. In any event this was not the FTTJ's main finding in relation to Article 8 and her findings made it clear that this was an option open to the sponsor if she wished to do so. It is clear that the FTTJ was adopting a belt and braces approach in considering the option of family life being continued in Sierra Leone.
20. Given that the FTTJ's finding regarding the lack compelling family or other considerations was not challenged and the absence of any argument regarding compelling considerations at the hearing before me, I find that it could not be said that the FTTJ erred in concluding that the decision to refuse the appellant leave to enter the United Kingdom was proportionate.
21. The FTTJ made no material error of law and her decision is upheld.
22. No anonymity direction was made by the FTTJ. In view of the fact that the appellant was a minor at the time of the decision, I consider it appropriate to make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. "

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The FTTJ's decision is upheld.

Signed

Date: 30 August 2015

Deputy Upper Tribunal Judge Kamara