



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

Appeal Number: OA/05252/2014

THE IMMIGRATION ACTS

**Heard at Taylor House
On 8 October 2015**

**Decision & Reasons Promulgated
On 12 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**THN
(ANONYMITY ORDER MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER -BANGKOK

Respondent

Representation:

For the Appellant: Mr Jacobs of Counsel

For the Respondent: Mr Nath a Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent notified the Appellant of her decision to refuse to grant leave to enter as a dependent relative of her sister on 20 March 2014. Her appeal against that decision was dismissed by First-tier Tribunal Judge Boyes ("the Judge") following a hearing on 26 March 2015. This is an appeal against that decision.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order preserving that already in force. 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 appellants. This direction applies to all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to preserve the anonymity of the Appellant who is a child.
3. First-tier Tribunal Judge Hollingworth granted permission to appeal (20 August 2015) on the ground that;
 - “1. An arguable error of law has arisen in relation to the extent of the Judge’s reasoning for the conclusion set out at paragraph 28 of the decision that he was not persuaded that the Appellant would be put out on the street if she was not brought to the UK by the Sponsor.
 2. The Judge has set out a number of findings under the heading of “My Conclusions” but states at paragraph 28 in connection with not being persuaded that the Appellant would be put out in the street that this was particularly so bearing in mind that on the Sponsor’s own account (sic - it should be “she” instead of “he”) he had been sending quite considerable funds to Vietnam for the Appellant’s benefit.
 3. At paragraph 23 the Judge states that he does not say that it is implausible that she did not know (sic - it should say “about the existence” instead of “in the context”) in the context of her sister. This was the first issue the Judge considered at paragraph 23 in relation to the question of whether serious and compelling family or other considerations had been established.
 4. At paragraph 24 the Judge has referred to inconsistencies which raised questions regarding the overall reliability of the evidence both witness and documentary. This was with reference to the dates referred to. One set of dates was late 2011/early 2012 and the other December 2012.
 5. At paragraph 25 the Judge refers to the raising of a possibility that the relationship between the Appellant (sic - it should say “and NGD”) is actually one of niece and uncle. At paragraph 26 the Judge refers to various other issues being raised by the Respondent regarding the documents but the Judge considered these could have been caused by errors in translation or were ambiguous in their wording so he placed no weight upon them.
 6. At paragraph 27 the Judge accepted that the Sponsor had been sending funds to Vietnam for the benefit of the Appellant. He accepted there was communication by Skype and telephone.
 7. The extent of the Judge’s reasoning in relation to his credibility findings set against the context of paragraph 28 is arguably insufficient. This has a bearing on the extent of the consideration as to whether there would be a breach of Article 8.”

Respondent’s reply

4. The Respondent contends (15 September 2015) that the grounds are nothing more than a disagreement with the outcome. The findings are sustainable on the evidence and the reasons given are sound.

Particularly noteworthy is the finding that the address at which the Appellant resides with her uncle is the same address as that known for the Appellant's mother in 1991 and 2002.

Discussion

Ground 1 - inadequate reasons for finding the Appellant would be rendered homeless

5. The relevant part of paragraph 297 of the Statement of Changes in Immigration Rules HC395 ("the rules") states that
"The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of...a relative present and settled...in the United Kingdom are that he
 - (i) is seeking leave to enter to ... join a ... relative in one of the following circumstances ...
 - (f) ... a relative is present and settled in the United Kingdom ... and there are serious and compelling family or other considerations which make exclusion of the child undesirable ..."
6. The Judge recorded that [23] "... it seems to me surprising that the Sponsor did not know that her mother was pregnant or that she gave birth to a baby even though she was living with her. Whilst she was a child, she was 11 years old at the time so was old enough to have an awareness of what was happening around her. I do not say that it is implausible that she did not know. However, when this is considered along with the other concerns that arise from the other evidence before me, I am not persuaded that the Sponsor only became aware that she had a sister in 2010. I think it more likely that she has been aware of her sister's existence all along...".
7. The Judge stated that [25] NGD "...who has been acting as her guardian, is referred to as her uncle, she as his niece, and it is said that he was a very close friend of her father but is not related...the address specified for" NGD "is the same one recorded as the mother's address on both the Appellant's and Sponsor's birth certificates, but is not the address recorded for the father. This does raise the possibility that the relationship between the Appellant (sic - should say "and NGD") is actually one of niece and uncle, bearing in mind that it does appear that the Appellant's mother is also living at that address both in 1991 and 2002."
8. The Judge stated [27] "I accept...that the Sponsor has been sending funds to Vietnam for the benefit of the Appellant, although I do not discount the possibility that some of those funds are for one or more other family members. I accept that the Appellant and Sponsor communicate with one another by Skype and telephone and that the Sponsor has an interest in the Appellant's wellbeing, welfare and education. However, there is nothing unusual about that sort of relationship existing between younger and older siblings."

9. The Judge stated [28] "... I am not persuaded by the Sponsor's evidence that the Appellant is not being properly cared for at present. As I am not persuaded that the relationship between the Appellant and" NGD "is as claimed, I am not persuaded that the Appellant will be put out on the street by him if she is not brought to the UK by the Sponsor. This is particularly so bearing in mind that, on the Sponsor's own account she has been sending quite considerable funds to Vietnam for the Appellant's benefit."
10. It was submitted by Mr Jacobs that evidence had been given (and I note here that I checked the record of proceedings for the wording which I record here) that NGD lives with his wife and 2 children and made very firm statements he will not look after the Appellant any more. He cannot emotionally support her. The house is not big enough. He promised her father he will keep her in the short term. Mr Jacobs submitted that the only reason he has not evicted the Appellant is due to the money sent by the Sponsor. There is not enough money or space. He has threatened to throw her out but is waiting for the appeal. The Judge has speculated as to the whereabouts of the Sponsors mother. There is no finding regarding whether she is in Vietnam or not.
11. Mr Nath submitted that the findings were open to the Judge and must be read cumulatively. The Judge dealt with the discrepancies and credibility issues. There is no letter from NGD to confirm he will evict the Appellant. The financial support is the reason she has been there. It was open to the Judge to find that the Sponsor has not been transparent.
12. I agree with Mr Nath that the whole of the findings need to be read together. The Judge was entitled to make the findings he did regarding the credibility of the Sponsor. In addition, there was a complete lack of direct evidence from NGD of his intentions despite the Sponsor being in touch with him. I bear in mind the multiple methods by which evidence from abroad can be obtained, and the guidance in TK (Burundi) v SSHD [2009] EWCA Civ 40 that where (as here) there were circumstances in which evidence corroborating the Appellant's (and in my judgment Sponsor's) evidence was easily obtainable, the lack of it affects the assessment of credibility. It is not a case of evidence being sought from "a persecutory home" as in asylum cases, but a case where the Sponsor is in regular touch with an adult in Vietnam, and indeed I was told is visiting Vietnam in November.
13. Given the dearth of evidence from Vietnam, I am satisfied that the Judge was entitled to make all the findings he did. The grounds amount to nothing more than a challenge to those findings.
14. In my judgement there was therefore no material error of law in the decision regarding adequacy of reasons.

Ground 2 – inadequate consideration as to whether there would be a breach of Article 8 ECHR

15. The Judge stated [42] “I am not satisfied that the Appellant’s background and upbringing is as presented to the Respondent and the Tribunal... I am not satisfied that” the Sponsor “has no knowledge at all of her mother’s whereabouts. I would go so far as to say that even if it is the case that the Appellant’s mother has taken only limited responsibility for her upbringing, it is still necessary for it to be demonstrated that every effort has been made to establish the Appellant’s mother’s whereabouts and ... to confirm that she consents to the Appellant being removed from Vietnam and being brought permanently to the UK to settle, as well as providing a proper detailed account of her involvement, or otherwise, in the Appellant’s upbringing.”
16. The Judge stated [43] “Whilst any such evidence is being obtained to clarify the position, contact can continue between the Appellant and Sponsor as it has before, (sic – should be “and”) the Sponsor can continue to send funds. As a further entry clearance application can then be made the decision does not result in the Appellant and Sponsor being permanently separated.”
17. Mr Jacobs submitted that there had been no assessment carried out pursuant to s55 of the Borders, Citizenship and Immigration Act 2009.
18. Mr Nath submitted that the Article 8 assessment was thorough, and clear findings had been made regarding s117 of the Nationality, Immigration and Asylum Act 2002.
19. The Judge stated [45] that he had considered and applied s55 and s117. The Judge plainly found that the Appellant is being adequately housed and provided for, including financially, and that there was no evidence that the Appellant’s mother consented to her removal from Vietnam. The findings the Judge made were sufficient to establish that no “serious and compelling” circumstances exist within the rules. Those findings were also open to him within the Article 8 proportionality balancing exercise which were added to in detail [42 and 43] and were evidence based, and, in my judgement, more than adequate to establish that the relevant assessments were undertaken.
20. In my judgement there was therefore adequate consideration of Article 8 and no material error of law in the decision.

Decision:

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

I do not set aside the decision.

Signed:
Deputy Upper Tribunal Judge Saffer
9 October 2015