Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/18811/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27th January 2015	**On 12th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

MASTER EMMANUEL ASAFO-ADJEI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Asafo-Adjei, Sponsor
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Ghana who was born on 1st February 1998. He appeals with permission against a decision of First-tier Tribunal Judge Oakley, which was promulgated on 15th September 2014. In that decision, Judge Oakley dismissed the Appellant's appeal against the Respondent's refusal to grant his application for entry clearance to the United Kingdom as a dependent child of a person, namely his father, who is present and settled in the United Kingdom. His father, to whom I shall refer hereafter as the Sponsor, is Mr David Asafo-Adjei.

2. The issue in the appeal before the First-tier Tribunal was whether the Appellant had proved that the Sponsor had had sole responsibility for his upbringing. It is important to focus upon that from the outset in view of the point that is raised in this appeal.

3. In support of his son's application, the Sponsor wrote a letter to the Entry Clearance Officer. The ground upon which permission was granted to appeal to the Upper Tribunal turns entirely upon the terms of that letter. I shall therefore quote it in full. The letter is dated 10th June 2013 and is addressed to the Visa Section of the British High Commission in Accra.

> "Dear Sir/Madam,
>
> Application for settlement visa for Master Emmanuel Asafo-Adjei born 1st February 1998
>
> I am writing to inform you that the above-mentioned is my son and that I want to apply for a settlement visa for him to come and join me in the UK. He has been under the care of his guardian who is also my friend since the time I left Ghana to be with my wife in the UK. The guardian had previously indicated in several letters to me that he cannot continue to cater for him because of his plans to travel out of Ghana.
>
> I have discussed it with my wife and that I have decided to bring him to come and live with me in the UK since I do not have anybody to continue looking after him. I will be very grateful if the necessary assistance is given to enable him come and live with me. I have given him the necessary documentation in support of his application and that if you need further clarifications do not hesitate to ask. The whereabouts of his biological mother is not known hence the need to let him come to the UK.
>
> I am looking forward to your cooperation and assistance thank you.
>
> Yours faithfully
>
> (Mr David Asafo-Adjei)".

4. I am bound to confess, that had it not been for the fact that both the Presenting Officer and the judge appear to have considered it necessary to seek clarification, I would have thought that the terms of this letter were clear enough. The part of the text supposedly requiring clarification, and around which much of the discussion in the First-tier Tribunal appears to have revolved, was the phrase "I have discussed it with my wife". The judge interpreted this (and, to be fair, the Sponsor appeared to confirm it in his evidence) as a reference to the Appellant's mother, to whom the sponsor has never been married. However, it is plain from the text that this was <u>not</u> in fact the person to whom the Sponsor was referring. I say this for two reasons. Firstly, in the first paragraph of the letter, the Sponsor explains that he had left the Appellant in the care of his guardian, "since I left Ghana <u>to be with my wife in the UK</u>" [Emphasis added]. So, from the very outset, it was clear that the Sponsor was referring to his wife

in the UK. Therefore, and without more, it was likely that any further reference by the Sponsor to his "wife" would be to his wife in the UK. Secondly, if there could have been any remaining doubt as to whom the Sponsor was referring, this was dispelled by the final sentence in the second paragraph: "the whereabouts of [the appellant's] biological mother is not known hence the need to let him come to the UK." [Emphasis added]. I cannot therefore see however anybody could have construed the letter in a way that suggested that the Sponsor might have discussed matters with a person whose whereabouts were described as, "not known".

5. The terms of the letter were nevertheless regarded as sufficiently unclear for the Presenting Officer and the judge to question the Sponsor about it. The results of this questioning are summarised at paragraph 19 of the determination.

> "I am less than satisfied that the Appellant does not have some contact with his biological mother. The reason that I state that is that the Sponsor referred specifically to the fact of speaking to his wife in a letter that he sent to the High Commission. I put that statement to the Sponsor at the time of the appeal hearing and he started to become extremely evasive and stated that this was not a statement that he had spoken to his wife but that he had spoken to the family of his wife. That is not what the letter says and as a result of that inconsistency in the Sponsor's evidence I am not entirely satisfied that notwithstanding the fact that I accept that the Appellant no longer lives with his biological mother that he has not in the past since she left and does not now have some contact with her."

6. In deciding that the Sponsor was being extremely evasive, the judge appears not only to have failed to view the Sponsor's references to his "wife" within the context of the letter as a whole (see above) but also to have discounted the possibility that the Sponsor was genuinely confused as to what and to whom the judge was referring. It is unclear, for example, whether the Sponsor had a copy of the letter before him when he was being questioned about it and, if so, whether he was first given the opportunity to refresh his memory. Be that as it may, as a result of the Sponsor's replies to those questions, the judge was not satisfied that the Appellant had lost contact with his mother.

7. I turn now to the Grounds of Appeal upon which permission to appeal has been granted to the Upper Tribunal. There are essentially three grounds, although two of them are really the same ground expressed in different ways. Those grounds are contained in paragraphs 5, 6 and 7 of the application.

> "5. The Appellant will contend that the determination is against the weight of the evidence that there were fatal errors which affected the Immigration Judge's decision.
>
> 6. In paragraph 15 of the determination, the judge in her consideration stated that there was a letter dated 10th June 2013

from Sponsor addressed to Respondent in which the Sponsor stated that the application had been discussed with his wife. The Appellant will contend that the contents of the letter did not relate to Appellant's mother. It was meant for the Sponsor's spouse who lives in the United Kingdom. The Sponsor could not have *refused* [this should presumably read "referred"] to Appellant's mother as his wife. They were never married.

7. It is submitted that there are factual errors which affected the judge's decision."

8. Paragraphs 5 and 7 are really an expression for the same idea; namely, that the Appellant disagrees with the judge's findings and contends that she ought to have reached different conclusions. Those paragraphs do not thereby identify any error of law.

9. However, permission to appeal was granted upon the ground which is contained in paragraph 6. It was granted in the following terms:

> "An arguable error of law has arisen in relation to the analysis of a letter referred to at paragraph 6 in the permission application and the impact of the analysis made in relation to this letter on the outcome of the appeal."

10. I have made plain my view that there was only one sensible interpretation of the letter that featured so largely at the hearing before the First-tier Tribunal. Had it not been for the Sponsor's evidence at that hearing, therefore, I might well have been persuaded that the judge's interpretation of the letter was perverse. However, in light of the evidence that the Sponsor gave at the hearing, such a finding is not now open to me. It is fair to point out that the Sponsor provided me with credible reasons for believing that his evidence in this regard was unreliable rather than untruthful. This was essentially for the reasons that I canvassed at paragraphs 4 to 6 (above). Nevertheless, plausible though this explanation is, it cannot assist me in determining whether the First-tier Tribunal made an error of law concerning the evidence that was before it at the time of the hearing.

11. However, even if the judge wrongly interpreted the contents of the sponsor's letter, I am satisfied that this was not material to the outcome of the appeal. This is because the judge ultimately dismissed the appeal because she found that the Appellant had not discharged the burden of proving that the Sponsor had had sole responsibility for his upbringing. That was the sole issue that had been raised by the Respondent under paragraph 297 of the Immigration Rules. The judge's consideration of it is to be found in paragraphs 20 and 21 of her decision.

> "20. I accept that the Appellant has been living with two teachers from the school during the time that he is not boarding but again I do not accept that they are merely caretakers for him. In particular, the Sponsor has stated that he personally has no contact with the school and merely sends the money for the

boarding fees and therefore the Appellant's education and all dealings with the school are clearly carried out by those teachers with whom he has resided and therefore they have had some responsibility for the Appellant's upbringing in particular and consequently the Sponsor cannot establish that he has had sole responsibility.

21. He has in fact entrusted a very important part of the upbringing and development of his son to those teachers with whom the Appellant has resided, notwithstanding the fact that they are not blood relations and are merely in the case of one a friend and a teacher at the school and in the other merely a teacher at the school and that they have clearly had a large measure of responsibility for the Appellant's education, upbringing and day-to-day care and I therefore concluded that the Appellant cannot satisfy that the Sponsor has had sole responsibility for the Appellant."

12. It has not been argued that those findings were not open to the Tribunal upon the evidence that was before it. Moreover, those findings ultimately had little if anything to do with the question of whether the Appellant had retained contact with his mother or with whether his mother had given her consent to him residing in the United Kingdom. Indeed, such matters do not fall directly within the ambit of the requirements in paragraph 297 of the Immigration Rules.

13. So, albeit with a degree of hesitation, I hold that the judge did not err in her interpretation of the letter that the sponsor wrote to the British High Commission. This is because she was entitled to have regard to the evidence about it that had been given by its author. Whether it was ever necessary to seek his assistance in interpreting the letter is another matter entirely. Furthermore, and any event, this particular aspect of the judge's reasoning had little if any bearing upon the reasons why she dismissed the appeal and was thus immaterial to its outcome.

14. All that I am able to say by way of some comfort to the Sponsor, who argued his son's case with great skill and courtesy, is that the Appellant is still not quite 17 years of age. He thus has time to make a fresh application for entry clearance as a dependent minor child of a person with leave to remain in the United Kingdom.

Notice of decision

15. The appeal is dismissed

No anonymity direction is made.

Signed Date

Deputy Judge of the Upper Tribunal