



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10681/2015

THE IMMIGRATION ACTS

Heard at Field House
On 21 August 2017

Decision & Reasons Promulgated
On 8 September 2017

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MS NADIA SARAH CARREY
(ANONYMITY DIRECTION NOT MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Appiah, Counsel, Vine Court Chambers

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Ghana, born in 1998, challenges a decision of First-tier Tribunal (FtT) Judge Moore sent on 19 May 2017 dismissing on human rights grounds her appeal against a decision made by the respondent on 1 October refusing to grant entry clearance as a dependant of her mother, pursuant to paragraph 297 of

the Immigration Rules. The judge did not accept that the appellant's mother had sole responsibility for the appellant.

2. The appellant's written grounds allege four errors in the judge's reasoning.
3. The first error alleged is that the judge placed weight on an erroneous belief that the sponsor had failed to provide evidence to corroborate that she had visited the appellant in Ghana on an annual basis. I do not find this ground made out. The judge was clearly aware that the evidence showed that the sponsor had travelled to Ghana: that had been accepted by the respondent in the refusal decision. Indeed the judge himself accepted that the sponsor had visited Ghana on "numerous occasions". The judge also had photos showing the appellant and sponsor together in Ghana at different times over the past decade or so. What the judge did not accept – and was entitled not to accept – was the sponsor's claim that her visits were annual (on some occasions twice a year) nor her claim that on these visits she stayed with the appellant. The photographic evidence comprised ten photos but "very few photographs taken over the years showing the appellant growing up and her development" (paragraph 26). The judge was entitled to consider that if the sponsor's visits and contact with the appellant had been as frequent as claimed, she could have produced more photos, but that the sponsor had not provided them despite saying more were on her laptop at home. (I observe that no further photos have been adduced with the grounds of appeal either). Given that the sponsor identified that she had a number of family members in Ghana that she cared about, I see no legal error in the judge's assessment that the sponsor had failed to substantiate the claim to annual visits and visits during which she stayed with the appellant.
4. The second ground takes further issue with the judge's treatment of the significance of the photographic evidence, as a record of both the appellant's growth and development and of the fact that the appellant visited the sponsor during the latter's visits to Ghana. It is said the judge failed to "consider or attach any weight to this aspect of the evidence". In my judgment this ground cannot succeed. For one thing, it is simply incorrect that the judge failed to attach "any weight" to such evidence. At paragraph 26 the judge finds the photographic evidence to be of "limited value". That is not the same as no value. For another, this body of evidence was correctly described by the judge as identifying only a very few times when the two were together during the year since the sponsor left Ghana in 2009.
5. The appellant's third ground takes issue with the judge's findings at paragraph 24 regarding evidence of online money transfers. The grounds state that

"[t]he sponsor's evidence was that between 2009 and 2014 she had receipts for the over the counter remittances ... and from therein until 2015 when the EC application was made, she had bank statements for the remittances made online to "First African Remm". The purpose and use of the remittances was corroborated by the appellant's statement"

and also, it was stated, by the sponsor's oral evidence.

6. I do not consider that the grounds grapple correctly with the judge's concerns about the money transfer remittance receipts. At paragraph 24 the judge noted that if the reason for the lack of money transfer receipts after 2014 was that the sponsor had shifted to paying remittances online, it was reasonable to expect online documentation to have been provided. It was not. The judge identified additional problems with the money transfer receipts in that there was a lack of correspondence between the bank statements and the money transfer payments and the sponsor had not given any explanation for this. A further overall difficulty the judge had with the financial evidence was that on the sponsor's own evidence the money transfers were not only intended for the welfare of the appellant but also "to help our family" in Ghana.
7. Ms Appiah sought to argue that the judge's treatment of the financial evidence failed to factor in that the sponsor would take amounts in cash when she visited Ghana. Leaving aside that this was not a point raised in the written grounds, the fact remains that the sponsor was required to substantiate her financial support and what she relied on in order to do so, failed to demonstrate that she had sent money on a regular basis or that the amounts were for the appellant specifically.
8. The fourth point of challenge raised in the written grounds concerns the judge's assessment of the two letters - one a letter of consent dated 27 July 2015 signed by the appellant's father, the other the letter signed by the appellant's aunt, Ms A V Carrey. At paragraph 23 the judge found these to be unreliable because both had clearly been typed by the same person and the sponsor herself had confirmed that they were typed by someone helping the aunt. The judge considered that the unreliability of these two letters was confirmed by the following features identified in paragraph 23:

"There is no ID document in relation to the father of the appellant despite the apparent letter of consent. The sponsor explained in evidence that she had contacted Abena (the aunt) despite the absence of any evidence of such contact. It would have been by e mail or telephone and Abena would have told the appellant's father that the appellant was in the custody of her aunt. I do not accept such an account as reliable, I would have expected the appellant's father to have known of the appellant's situation and that he was not relying on his own sister to inform him as to the whereabouts and residence of his daughter."
9. The appellant's written grounds say this treatment of the two letters is fundamentally flawed because

"[the] IJ failed to consider, address or attach any weight to the witness statement and ID document of Ms V Carrey (paragraph 2). The statement directly addressed the concerns raised by the IJ as to the veracity of the two

letters and therefore ought to have been considered, addressed and appropriate weight attached”.

10. I find this ground to also fail. In the first place, it is clear that the judge did consider the sponsor’s purported explanation as to why the two letters had been prepared by the same person. At paragraph 27 the judge found:

“I should return to the issue of the two letters of consent to be found in the Respondent’s bundle. The sponsor gave further explanation that these two documents had been put together by a travel agent friend of hers in Accra, Ghana. This friend told the sponsor that he had done this and that the father of the appellant and Abena had done her letter of consent, and the sponsor’s understanding was that she did not know whether the friend travel agent had typed the letters himself or not, but that Mr. Carrey and Abena had signed the letters themselves and given those letters to the travel agent friend. Such an explanation adds further confusion as to the reliability of either of these documents.”

11. I consider the judge was entitled to find this explanation added confusion, rather than confirming reliability.
12. Secondly, whilst the appellant’s documentation included an ID of Ms V Carrey and whilst her witness statement attested that the appellant’s father “signed [the] letter”, that evidence did not overcome the glaring omission of any identity documents relating to the father, nor indeed has any further statement or affidavit from him been adduced with the grounds. The judge was fully justified in considering it had simply not been proven that the appellant’s father had given his consent – let alone that he had done so (as the witness statement from Ms V Carrey claimed), because “he could not take care of [the appellant] himself”.
13. In the skeleton argument Ms Appiah produced for the hearing it was contended that the judge did not consider adequately the role (if any) of the appellant’s father. It is clear from what I have set out above that the judge was not satisfied the evidence established (as was claimed) that the father had no role. It was for the appellant to prove her case. The judge was entitled to conclude that the claimed complete absence of the father had not been demonstrated.
14. Ms Appiah’s skeleton argument also took issue with the judge’s treatment of the evidence regarding the appellant’s schooling and who took the key decision regarding it. Leaving aside that this point of challenge was not identified in the written grounds, I consider it amounts to a mere disagreement with the judge’s findings. What the judge properly took account of was:
 - (i) The fact that the financial evidence did not identify that the sponsor had paid the appellant’s school fees, only that “some” of the monies sent by the sponsor would have been for payment of any school fees.

- (ii) The failure of the sponsor to produce any school reports or explain why she had not asked the school for them.

It was entirely open to the judge to find that the sponsor's account that she kept in touch with the school via a gentleman "who works in the finance of the school" to be an inadequate basis to show that the sponsor made the important decisions regarding the appellant's schooling. There is no basis for considering that in reaching his findings the judge failed to take account of the evidence of the witness statements and of the sponsor.

15. Ms Appiah's skeleton highlights that the judge made no finding about who chose the school, but I do not see, even if the judge had considered the sponsor did, that this would have overcome the failure to show ongoing concern with the quality of her education. Ms Appiah's skeleton argument also alleges that the judge made no findings about "who decided who the appellant should live with and move from the home of Abena Konadu to the home of [Ms N Carrey]". It is clear however that whilst the judge did not fully accept the account presented by the appellant as regards her residence (see e.g. paragraph 23), he accepted that the appellant had first resided with Abena Konadu and subsequently with her aunt (see paragraphs 28 and 29). Indeed it is clear that the judge considered that important decisions about the appellant's upbringing had been made by these carers, rather than the appellant. That assessment was entirely within the range of reasonable responses.
16. In light of the judge's principal findings of fact - in my judgement findings free of material error - the appellant plainly could not satisfy the requirements of the sole responsibility Rule. The judge's decision was entirely in accordance with the guidance given in **TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049** and other leading cases on paragraph 297. Nor can the appellant derive any assistance from the relevant IDIs set out in chapter 8, Section FM 3.2. The fact that the judge did not deal with each bullet point set out at 4.3 of the above simply reflects the state of the evidence adduced. Given the judge's findings of fact on para 297, I also find no error in the judge's findings the appellant could not establish any compelling evidence outside the Rules.
17. For the above reasons I conclude that the FtT Judge did not materially err in law and that his decision must stand.

No anonymity direction is made.

Signed:

Dated: 6 September 2017

