



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

Appeal Number: OA067572015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26<sup>th</sup> April 2017**

**Decision &  
Promulgated**

**On 5<sup>th</sup> May 2017**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**[T O]**

**~~(ANONYMITY DIRECTION NOT MADE)~~**

Respondent

**Representation:**

For the Appellant: Ms A Fijiwala, Senior Home Office Presenting Officer

For the Respondent: Mr A Burrett, Counsel

**DECISION AND REASONS**

1. The Secretary of State on behalf of the Entry Clearance Officer (“the ECO”) appeals with permission against the decision of a First-tier Tribunal (Judge Wylie) promulgated on 19<sup>th</sup> August 2016, allowing the appeal of the

Respondent against the ECO's refusal to grant him entry clearance as the dependent child of his aunt, [CI].

2. For the purposes of this decision I shall refer to the Respondent as "the claimant" and to his aunt [CI] as "the sponsor".

### **Background**

3. The claimant is a national of Nigeria born [ ] 2001. He made application to enter the United Kingdom in order to join the sponsor as her dependent relative. The claimant's mother died in November 2014 and on 18<sup>th</sup> December 2014 his father signed an affidavit consenting to the sponsor being his legal guardian. This was on the basis that the claimant's father has a drink problem is therefore unable to care for him.
4. At the time of the application for entry, the claimant was being cared for by a local pastor and his wife. It was his case that this was meant as a temporary measure only and by the time of the FtT hearing he was being cared for by an unrelated elderly woman who lives in the same family village. His welfare is funded by money sent from his sponsor in the UK.
5. The ECO refused the application under paragraph 297 of the Immigration Rules because he was not satisfied on several issues:
  - First that the claimant and the sponsor are related as claimed.
  - There was no evidence of the current care arrangements concerning the claimant; nor any evidence of why the current care arrangements could not continue.
  - There was nothing to show that the sponsor provided the claimant with all the emotional, financial and other needs which he may have, nor whether the sponsor exercised full control over the major aspects of the claimant's life such as schooling, religion, medical care etc.
6. Drawing all these threads together, the ECO noted the lack of detail regarding the claimant's current living circumstances in Nigeria, a country where he had lived his whole life, the majority of the time without the sponsor. The ECO was not satisfied therefore that there were serious and compelling family or other considerations making the claimant's exclusion undesirable and that suitable arrangements had been made for his care.
7. The claimant appealed that decision and his appeal came before the First-tier Tribunal. The FtT took evidence from the sponsor and also noted the affidavit which had been submitted from the claimant's father.
8. After setting out the claimant's case [8 to 16] the judge said the following:

"19. Although there was no evidence from anyone except the sponsor and no documents apart from the affidavit from the appellant's father relating to the appellant's current circumstances in Nigeria, I accept the sponsor's evidence that the appellant's father cannot care for him and there are no family members in Nigeria to take over his care. In

the circumstances, where his grandmother, aunts and an uncle all reside in the United Kingdom, and the sponsor has been given guardianship by the appellant's father, I consider that there are serious and compelling considerations which make his exclusion from the United Kingdom undesirable."

Following that paragraph, the judge allowed the claimant's appeal. The ECO sought permission to appeal.

### **Onward Appeal**

9. The grounds seeking permission are succinct and are set out under the heading "**Failing to give reasons or any adequate reasons for findings on material matters.**" In summary the grounds claim that the judge failed to make findings that the sponsor was a credible witness or that the affidavit from the claimant's father is a reliable document. In the absence of such findings, it is said that the judge has failed to give adequate reasons for allowing the appeal.

Permission to appeal was granted in the following terms:

- "2. It is arguable that the Judge has erred in law and has misdirected herself by failing to provide adequate reasons for her decision when it was noted by the Judge there was no oral evidence except from the Sponsor and an Affidavit from the Appellant's father setting out his circumstances in Nigeria. The Judge has gone on to state that she accepts this evidence without providing any reasoning why she prefers this account over the ECO's decision. The Judge makes no findings that she accepts the Sponsor is a credible witness or that she finds the affidavit to be a reliable document."

Thus the matter comes before me to decide if the decision of the FtT discloses material error requiring it to be set aside and re-made.

### **The UT Hearing**

10. Before me Ms Fijiwala appeared for the Secretary of State and Mr Burrett for the claimant. Ms Fijiwala's submissions kept to the lines of the grounds seeking permission. She argued that the FtT had failed to consider and make reasoned findings on a number of matters, all of which were central to the ECO's decision.
11. Firstly, there were no findings made on whether the claimant and his sponsor are related as claimed. Secondly there was no finding made on what are the current care arrangements for the claimant, nor any on why those arrangements cannot continue. There was only minimal evidence of contact shown between the claimant and the sponsor.
12. She drew my attention to **Mundeba (S.55 and paragraph 297(i)(f)) [2013] UKUT 00088 (IAC)**, which she said was authority for saying that in cases such as the present one what is required is an assessment of whether the claimant is living in an unacceptable social and economic

environment. The focus should be on the circumstances of the child in the light of his age, social background and developmental history.

- 13.** She said that the evidence before the FtT was that the claimant was being cared for in a country where he had lived all his life with his father and it would seem his basic needs were being met. She submitted that the lack of reasoning by the FtT rendered the decision unsustainable and it should therefore be set aside for material error.
- 14.** Mr Burrett on behalf of the claimant submitted it was open to the judge to allow the appeal on the evidence before her. On a reading of the decision the judge had made a finding that the sponsor and claimant are related as claimed [7]. She had taken into account the affidavit of the claimant's father. The arrangement with the pastor to look after the claimant was a temporary one and the FtT accepted that. The grounds seeking permission amount to no more than a disagreement with the FtT's decision and it should therefore stand.

### **Consideration**

- 15.** I find I am satisfied that the decision of the FtT contains error of law and I now give my reasons for this finding. I find that there is force in Ms Fijiwala's argument and there is a conspicuous lack of evidence in this case which has led to a lack of reasoned findings on the part of the FtT.
- 16.** The Entry Clearance Officer refused this application on the grounds that he was not satisfied that the claimant had demonstrated that there are serious and compelling family and other considerations making his exclusion undesirable. Despite Mr Burrett urging me otherwise, I find that it is not clear that the judge has made findings at [7] to [16]. I find that those paragraphs read as the judge simply setting out the sponsor's evidence. I find any findings as such are limited to those set out in [19] and amount to a conclusion that the sponsor's evidence is to be taken on face value without any consideration given to the factors set out in the Entry Clearance Officer's refusal. To consider only one side of an argument amounts to an error, requiring the decision to be set aside. I hereby set aside the decision for a lack of reasoning. The decision will need to be re-made.
- 17.** Ms Fijiwala submitted that because this case centred on a "reasons argument" and because the judge had not made proper credibility findings, then the matter should be remitted to the FtT for a fresh hearing. Mr Burrett agreed to that course but asked that I preserve the finding which, he said, the FtT had made at [7] setting out that the claimant and his sponsor are related as claimed.
- 18.** Having considered that request I find that as the credibility of the sponsor will need to be evaluated at the fresh hearing, it is not appropriate for me to preserve that finding. I therefore set aside the FtT's decision in its entirety. The matter will be remitted to that Tribunal for the decision to be

re-made. It follows therefore that the Secretary of State's appeal is allowed insofar as the matter is now to be remitted to the First-tier Tribunal.

**Notice of Decision**

The decision of the First-tier Tribunal allowing the appeal of [TO] against the Entry Clearance Officer's refusal to grant him entry clearance to the UK is set aside. The matter is remitted to the First-tier Tribunal (not Judge Wylie) for that Tribunal to re-make the decision.

No anonymity direction is made.

Signed

C E Roberts

Date

04 May 2017

Deputy Upper Tribunal Judge Roberts