



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

Appeal Number: HU/10248/2015

THE IMMIGRATION ACTS

Heard at FIELD HOUSE

On 30th January 2018

Determination

Promulgated

On 9th February 2017

Before

**DEPUTY UPPER TRIBUNAL JUDGE
G A BLACK**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[J Hamzie]

NO ANONYMITY ORDER MADE

Claimant

Representation:

For the Appellant: Mr P Nath (Home Office Presenting Officer)

For the Claimant: No representation

The sponsor Mr J.A.K. [H] (in person)

DECISION AND REASONS

1. I refer to the parties as “the Secretary of State” and “the Claimant”. This is an error of law hearing to consider whether or not there is a material error of law in the decision of the First-tier Tribunal (Judge Amin) (“FTT”) promulgated on 28th June 2017, in which the Claimant’s appeal against a

refusal of entry clearance for settlement in the UK with his father, was allowed on human rights grounds.

Background

2. The Claimant is a citizen of Sierra Leone and is now aged 16 years. He applied for entry clearance in 2015 on the grounds that his mother had died in 2011 and that his grandparents were no longer able to look after him. His father was his sole surviving parent and/or he had sole responsibility for him.
3. The Secretary of State refused the application because he was not satisfied that there was evidence to show the cause of his mother's death in 2011, as no cause was recorded in the death certificate. Further the Secretary of State was not satisfied that the sponsor was related as claimed in the absence of DNA evidence.

FTT decision

4. The FTT found sufficient evidence to find that the claimant's mother was dead and that he had been looked after by his grandparents for the last 4-5 years and that his grandmother could no longer look after him. Although there was no DNA evidence the FTT found sufficient evidence to show the relationship was established [25]. The sponsor, who was found to be a reliable witness [22], provided a birth certificate, marriage certificate, evidence of contact and visits to Sierra Leone in 2008 and 2010, the death certificate for the mother and evidence of financial support. The FTT found that the sponsor had been involved in all decision making including choice of school, religion, medical care and had paid for school fees and other living expenses [24 & 28]. The FTT found that the absence of cause of death in the death certificate was not evidence that the mother was not dead. The sponsor gave evidence that she had died of the Ebola virus [29] which the FTT accepted. The FTT accepted the letter from the Claimant's grandmother as reliable evidence to show that she was no longer able to look after him [27].

Application for permission to appeal

5. In grounds it was contended that the FTT had erred in fact because the first reported outbreak of Ebola was not until 2014 according to the WHO report (2017). The FTT failed to give sufficient scrutiny to the cause of death. The lack of DNA evidence together with the uncertainty about the cause of death of the mother were factors that the FTT ought to have given greater scrutiny.

Permission grant

6. Permission was granted by FTJ Brunnen who found that there were arguable grounds that the FTT erred to the extent that where an

objectively demonstrable error of fact occurred it was capable of amounting to an error in law, and that was capable of undermining the credibility of the evidence of paternity and sole responsibility.

7. There was no Rule 24 notice produced.

Submissions

8. Mr Nath outlined the grounds for the application and made submissions. The sponsor attended the hearing in person and opposed the application. He confirmed that he understood the issues raised by the Secretary of State with reference to the decision and reasons of the FTT.

Discussion and conclusion

9. I heard the submissions made by Mr Nath and from Mr [H]. I decided that the Secretary of State failed to make out the grounds of appeal in terms of showing a material error of law. The finding made by the FTT that the Claimant's mother had died and this was supported by a death certificate was open to the FTT on the evidence before it. There was evidence to show that the Claimant was looked after by his grandmother since 2011 and considerable documentary evidence of the sponsor's input and which met the sole responsibility test. The cause of death was not material in the light of all the other evidence on which the FTT placed weight. Whilst accepting that there is now produced objective evidence from the WHO as to the first report of Ebola in 2014, that does not mean that the Claimant's mother had not contracted the disease or died of it. The sponsor believed that she had symptoms similar to Ebola. In any event there was no evidence to doubt the authenticity of the death certificate and it was not argued that this document was unreliable evidence. There was no objective evidence to show that in Sierra Leone death certificates do not give the cause of death. The FTT proceeded on the basis that the Claimant's mother had died in 2011 and that was central to the appeal. It was not necessary to prove the cause of death nor for the FTT to make a specific finding on that fact. Similarly it was not a requirement of the Rules to produce DNA evidence. The FTT looked at all the evidence in the round and reached findings that were open to it on the evidence adduced at the hearing. The sponsor was acting in person and understandably was unable to afford the cost of DNA tests. The FTT considered the appeal with reference to Article 8 outside of the rules and had regard to where the best interests of the child lay.

Decision

10. There is no material error of law disclosed in the decision which shall stand.

Signed

Date 5.2.2018

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

A FEE AWARD was made by the FTT and that was appropriate.

Signed Date 5.2.2018

GA Black
Deputy Judge of the Upper Tribunal