



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

Appeal Number: HU/19965/2016

THE IMMIGRATION ACTS

Heard at Field House

On 12 April 2018

**Decision & Reasons
Promulgated
On 17 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

[S J]

(~~ANONYMITY DIRECTION NOT MADE~~)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Gambia. He was born on [] 2007.
2. He appealed against the respondent's decision dated 21 July 2016 to refuse him entry clearance in accordance with the respondent's family reunion policy under paragraph 352D of the Immigration Rules.
3. Judge Fox (the judge) dismissed the appellant's appeal in a decision promulgated on 21 August 2017. The judge found that there was no

credible evidence that the appellant was a member of the sponsor's household prior to her departure from Gambia.

4. The grounds appear to have been prepared by the sponsor and read as follows:

"In paragraph 21, the judge stated that I the sponsor [FS] have not address the remaining issues to confirm that the appellant [SJ] was declared as a member of my household prior to my departure from the Gambia. The judge have not considered all the documents that were in front of him regarding the information I had given about my son. I had enclosed pages 11, 13, 22 and 23 of my asylum interview notes in my original application which has not been addressed. I had given full information about my son's birth and the fact that we had been living with my mother ever since his birth. I had also stated that I left [SJ] with my mother when I left Gambia. There was also information on my statement which was submitted along with [SJ]'s visa application about the contact and support that I have with my son. On the 15/08/17 at 15:02 I sent copies of my asylum interview notes to the Tribunal by recorded delivery. Please find a copy of proof of delivery of these documents from Royal Mail. Copy attached.

Paragraph 22, the judge has stated that I the sponsor of [SJ] did not stay for the rest of the hearing and did not send the documents he requested for. From what I understand, the judge wanted a copy of my asylum interview where I had mentioned my son [SJ] and given his name. When he spoke to me, I understood that it was all that was expected of me, to send copies of the asylum interview. I understood that the hearing was not necessary because the judge said 'I have your DNA test and two letters, the only thing I need now is a copy of the asylum interview where you mentioned your son'. There was no instruction for me to stay in the Tribunal building after the hearing on the 14/8/2017. I did what I thought the judge wanted. I came back home and looked for the documents he asked for and sent them on a recorded delivery. I have enclosed the proof of this documents delivered and signed for. The documents I sent were included in original application which the judge had or should have had.

Paragraph 23, the judge had made an error in stating that I have not given reasons why my son [SJ] should not live with his grandmother. I explained at my asylum interview the main reason why my son was not with me which is because I could not bring him with me at the time. I did not leave my son with my mother because I wanted to but because I did not have a choice.

I have provided DNA test to prove that [SJ] is my son and my interview notes give details of his birth and the fact that he lived with me in my mother's house when I was in Gambia. The judge is wrong to state that there is no reason why my son should be allowed to live with me. I am his mother. It is my duty to look after my son [SJ]. I have proven that [SJ] is my son and that I was living with him before I left Gambia. It's been five good years now since I last saw my son.

My son and I have a right to enjoy our family life. The judge did not consider the evidence in front of him in arriving at his decision.

For these reasons I ask that the judgment be set aside.”

5. Judge Beach granted permission to appeal on 1 February 2018 inter alia as follows:

“3. The grounds (which are drafted by the sponsor) state that the sponsor believed that she had to file her asylum interview notes with the Tribunal but that she did not need to remain in the Tribunal building whilst that was done. The sponsor has provided evidence to show that documents were sent to the Tribunal and received by them on 16th August 2017 (only two days after the date of the hearing which is consistent with the sponsor’s explanation that she believed she was meant to file the evidence with the Tribunal after the hearing rather than remain at the hearing centre for it to be filed that afternoon). The sponsor has provided a copy of an extract of her asylum interview with her grounds and states that these were the documents sent to the Tribunal after the hearing. There is evidence contained with the asylum interview which arguably would have addressed the remaining issue before the judge as to whether the appellant formed part of the pre-flight family unit. It appears that there was a misunderstanding by the sponsor as to when that evidence had to be filed. The grounds disclose an arguable error of law.”

6. There was no Rule 24 response.

Submissions on Error of Law

7. The appellant, represented by the sponsor, his mother, relied upon her grounds I have set out at [4] above. Mr Tufan accepted that the documentation lodged subsequent to the hearing showed reference to the appellant as the sponsor had claimed.

Conclusion on Error of Law

8. It is worthwhile setting out the relevant sections of the judge’s decision:

“8. The appellant’s representative elected not to attend the hearing. DNA evidence has been filed but this does not address the remaining issue of the appellant’s inclusion in the sponsor’s pre-flight family unit.

9. The sponsor confirmed that she recalls that she declared the appellant within her screening interview during her asylum claim. The appellant’s current representatives represented the sponsor during her asylum claim and they will have the screening interview on file.

10. I informed the sponsor that the appellant’s inclusion within her screening interview would address the remaining issue conclusively. The matter was put back for the sponsor to contact the representative to file the screening interview.

11. *By 2pm no communication had been received from the appellant's representatives. Nor could the sponsor be located despite the clerk's repeated attempts to find her inside and outside the hearing centre building."*

9. I find there was clearly a misunderstanding between the sponsor and the judge. They each assumed a different outcome. The judge assumed the sponsor would go straight to her solicitors to obtain the corroborative documentation and come back to court. The sponsor understood she was to obtain the documentation and send it to the Tribunal, which she did.
10. I find in the circumstances that the judge erred if only because it was incumbent upon him to ensure the sponsor understood his expectations of her and that failure to effectively communicate those instructions led to a procedural unfairness.

Notice of Decision

11. The making of the decision of the First-tier Tribunal involved a material error of law. I set aside the decision and remit the appeal for a de novo hearing.

No anonymity direction is made.

Signed

Date 12 April 2018

Deputy Upper Tribunal Judge Peart