



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/02531/2017

THE IMMIGRATION ACTS

Heard at Fox Court  
On 10 December 2018

Decision & Reasons Promulgated  
On 16 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

[S L K]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A M Kanu, Counsel, instructed by League for Human Rights

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. By my decision promulgated on 17 October 2018 I set aside the decision of First-tier Tribunal Judge Cohen and determined that the appellant's appeal would be remade at a resumed hearing in the Upper Tribunal. I now remake the decision.
2. The appellant, a citizen of Sierra Leone born 21 September 2003, is appealing against the decision of the respondent to refuse to grant her entry clearance to settle in the UK with her mother ("the Sponsor") who is a British Citizen.

3. The appellant contends that she has a family life with her mother that engages the operation Article 8 ECHR, that she satisfies the requirements of Paragraph 297 of the Immigration Rules, and that refusing her entry to the UK would be disproportionate under Article 8 (2) ECHR.

### **Findings of Fact**

4. The following findings of fact are made having considered the oral evidence and witness statements (dated 14 March 2018 and 13 September 2018) of the Sponsor, along with the documentary evidence that was before the First-tier Tribunal.
5. The following facts are not in dispute:
  - a) The Sponsor entered the UK as a visitor in April 2005 and overstayed. She subsequently regularised her stay and is now a British Citizen.
  - b) The Sponsor left the appellant (aged under two at the time) in Sierra Leone in the care of a woman named Haja Sesay ("HS"). HS died on 15 July 2017 and since then the appellant has been under the care of a man called Abu Kamara ("AB").
  - c) The Sponsor came to the UK following the diagnosis of her sister (a British Citizen living in the UK) with cancer. After arriving in the UK the Sponsor cared for her sister's children who were born on 9 March 1995 and 30 July 1997. The Sponsor's sister died on 22 January 2010.
  - d) The Sponsor lives with her partner, [AK] ("AK") who is in the UK unlawfully. They entered into a relationship in August 2005.
  - e) The Sponsor has two daughters. Her younger daughter, born on 20 December 2007, is a British Citizen and lives with her and AK. The Sponsor's older daughter, born on 21 September 2003, is the appellant.
  - f) Since moving to the UK in 2005 the Sponsor has travelled twice to Sierra Leone to visit her daughter (in April 2009 and August 2017).
6. An issue in dispute is the identity and role in the appellant's life of her biological father. The Sponsor claims that he is a man called Mohamed Kaman ("MK") who abandoned her and the appellant before the appellant was born. However, the appellant's birth certificate (issued in 2013) names AK as her father and a school report for 2015/16 names as the appellant's parent/guardian a man called Lamin Kamara ("LK"). In Ms Everett's view, these are discrepancies which fundamentally undermine the sponsor's credibility such that I should not accept her claim that the appellant has no contact with her father, even if the evidence is unclear as to who the father actually is.
7. The Sponsor's explanation for her partner AK being named on the birth certificate is that the original certificate was lost and when obtaining a new one HS added AK as the 'father' as she thought it would assist the appellant (who thinks of AK as her father).

8. Ms Everett observed that the new birth certificate appears to have been obtained in 2013, several years before the appellant's application, and no explanation has been given as to why a new birth certificate was sought at that time. She also noted that the certificate states at the top that it is a "Certified true copy" and it is unclear what this means or whether it is a true version.
9. Ms Everett described the sponsor's evidence concerning the birth certificate as bewildering and I agree. It is unclear why a new birth certificate was obtained in 2013 (given an application for entry clearance was not contemplated at that time) and it is difficult to understand how AK could be named as the appellant's father when he clearly is not.
10. However, although I am not satisfied that the sponsor has been open and honest about the birth certificate, I am nonetheless satisfied that she is being truthful when she says that the appellant has not had any contact with her father. AK is clearly not the appellant's biological father and the fact that he is named on the birth certificate does not indicate one way or the other whether the appellant knows or has contact with her father. Likewise, the reference to LK on a school report tells us nothing about the identity or role in the appellant's life of the appellant's father. On earlier school reports HS is named as the appellant's guardian and I accept the Sponsor's explanation that LK is someone who assisted HS and is not the appellant's father. The documentary evidence supports the view that the appellant has been under the care of HS, not her father; and there is nothing to indicate the involvement of her father in her life. Having heard the Sponsor respond to Ms Everett's questions and considered the documentary evidence, I am satisfied, and find as a fact, that the appellant does not have (and throughout her life has not had) contact with her biological father. I find therefore that the Sponsor is the appellant's only biological parent who has had any involvement or role in her life.
11. A further issue in contention is the role of, and Sponsor's relationship with, HS. In her witness statements the appellant referred to her as a relative, but in oral evidence she described her as a neighbour. The Sponsor explained (and I accept) that the term "relative" is used out of respect and I find, as claimed by the Sponsor, that HS was a trusted neighbour (without children of her own) who lived in the same compound as the Sponsor and appellant.
12. I also accept, having considered the remittance receipts, correspondence and oral evidence, that the Sponsor has regularly sent funds to HS (and since her death to AB) to cover the cost of raising the appellant, as well as an additional small sum as remuneration for undertaking the role.
13. Based on the documentary evidence, I find that the Sponsor has remained involved in the appellant's life despite the distance and despite visiting her on only one occasion between 2005 and 2017.

14. I also find that the Sponsor had confidence in HS to keep the appellant safe and manage the practical aspects of her life, but since her death has been worried about the appellant being adequately cared for by AB.
15. I also find that the Sponsor does not have family or friends able to take on the role previously undertaken by HS, which is why she now finds herself reliant on AB.
16. In respect of the Sponsor's present finances and accommodation position in the UK, the appellant relies on copies of pay slips and bank statements that were before the First-tier Tribunal, the veracity of which have not been challenged, and which I accept are genuine.

### **Relevant Law**

17. The standard of proof is the balance of probabilities and the burden lies with the appellant.
18. The appellant must establish that denying her entry to the UK to join the Sponsor is contrary to Article 8 ECHR. She therefore, firstly, must show that she and the Sponsor have a family life which engages Article 8(1) ECHR. If Article 8(1) is engaged, consideration must then be given to whether interfering with her family life by refusing entry is proportionate. If the appellant is able to show that she would be entitled to leave to enter under the Immigration Rules that will determine the Article 8 proportionality issue in her favour. See *TZ (Pakistan) [2018] EWCA (Civ 1109 at [34]*.
19. The relevant paragraph of the Immigration Rules is 297, which provides:
  297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:
    - (i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:
      - (a) both parents are present and settled in the United Kingdom; or
      - (b) both parents are being admitted on the same occasion for settlement; or
      - (c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or
      - (d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or
      - (e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; or

- (f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and
- (ii) is under the age of 18; and
- (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
- (iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and
- (v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and
- (vi) holds a valid United Kingdom entry clearance for entry in this capacity; and
- (vii) does not fall for refusal under the general grounds for refusal.

### **Decision**

20. It was not in dispute that the appellant and Sponsor, as parent and minor child who have an ongoing relationship, have a family life within the meaning of Article 8(1) ECHR.
21. I now turn to consider proportionality, where my starting point is to assess whether Paragraph 297 is satisfied.
22. The first question, under 297(i)(e), is whether the Sponsor has "sole responsibility" for the appellant's upbringing. As explained in *TD (Paragraph 297(i))* [2006] UKAIT 00049, sole responsibility is a factual matter where the test is whether the Sponsor (as the only parent taking any responsibility for the appellant) has continuing control and direction over the appellant's upbringing, including making all important decisions in her life.
23. The appellant has resided with HS (and now AB) who have cared and taken responsibility for her on a day to day level, attending to matters such as her food, clothing, medical and school attendance. However, the Sponsor has covered the financial cost of raising the appellant and has maintained a close level of involvement and interaction. The decision about where and with whom the appellant has lived (first with HS and then with AB) has remained with the Sponsor; and the Sponsor, as the only parent (or, indeed, family member) taking any responsibility for the appellant, has retained ultimate control of the appellant's upbringing. I am therefore satisfied that the Sponsor has direction and control over the appellant's upbringing such that she has "sole responsibility" under paragraph 297(i)(e).

24. Paragraphs 297(ii) and (iii) are clearly satisfied given the appellant's age.
25. Paragraphs 297(iv) and (v) are satisfied given the evidence of income and accommodation that was in the bundle of evidence before the First-tier Tribunal. Although this evidence was not up to date (in that it only showed the position at the date of the First-tier Tribunal hearing, I accept the evidence of the Sponsor that the position is unchanged.
26. I am satisfied that the appellant meets the requirements for indefinite leave to enter the UK under Paragraph 297. Accordingly, there is no public interest in denying her entry to the UK and therefore refusing her entry is a disproportionate interference with her and the Sponsor's right to respect for their family life under Article 8 ECHR. The appeal is therefore allowed.

**Notice of Decision**

The appeal is allowed.

No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 8 January 2019