



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/10440/2019 (P)

THE IMMIGRATION ACTS

Decided Without a Hearing Under Rule 34
On 13th November 2020

Decision & Reasons Promulgated
On 17th November 2020

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

RHEMA NGOH AKUM
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Cameroon who was born on 4th May 2002. He applied for entry clearance to come to the UK on 14th January 2019 as the adopted child of the sponsor, his aunt, Mrs CA Georgestone, who is a British citizen settled in the UK. The application was refused on 3rd May 2019 with reference to paragraph 297 of the Immigration Rules. His appeal against this decision was dismissed by First-tier Tribunal Judge Lucas in a determination promulgated on the 23rd March 2020.
2. Permission to appeal was granted by Upper Tribunal Judge Finch on 27th July 2020 on the basis that it was arguable that the First-tier Tribunal erred in law because it was arguable the First-tier Tribunal failed to determine the appeal with reference

to paragraph 297(1)(f) of the Immigration Rules and failed to take into account with any particularity the evidence contained in the appellant's bundle; there was a failure to consider what status the certificate of adoption accorded the appellant in Cameroon and there was a failure to give weight to the fact that the appellant was a child when he applied for entry clearance.

3. In light of the need to take precautions against the spread of Covid-19 and with regard to the overriding object set out in the Upper Tribunal Procedure Rules to decide matters fairly and justly directions were sent out to the parties on 15th September 2020 from Upper Tribunal Judge Norton-Taylor setting out that it was his provisional view that the decision of Judge Lucas should be set aside and the appeal remitted for a complete rehearing before the First-tier Tribunal with directions that the respondent should provide written submissions within 10 days relating to this preliminary view and if she disagreed with that view set out written submission as to why the decision of the First-tier Tribunal was sustainable. If the respondent argued the decision was sustainable provision was also made for the appellant to respond. Nothing was received from the respondent in response to these directions, but a response was received from the appellant dated 8th October 2020 noting that the respondent had made no submissions and urging that the proposed cause of allowing the appeal should proceed without further delay.
4. I must determine whether it is in the interests of justice to decide this matter without a hearing, and if so then determine whether the First-tier Tribunal has erred in law. The appellant does not object to the matter being determined on the papers and the respondent has made no submissions despite being given the opportunity to do so. I give weight to the fact that serious human rights issues relating to a young adult are raised in this appeal, but find that it is appropriate that this stage of the proceedings is dealt with on the papers as I find that this is an issue which can fairly and justly be decided in this way.

Conclusions – Error of Law

5. I note that the respondent has failed to comply with directions but I am satisfied that they were sent to the Presenting Officers Unit on 15th September 2020 and that the opportunity was therefore given to the respondent to make any submissions that she wished in relation to this appeal, and thus that it is fair and just for me to proceed.
6. I find, in keeping with the provisional findings of Upper Tribunal Judge Norton-Taylor, that the First-tier Tribunal Judge failed to apply the substantial evidence before him from the sponsor and Cameroonian sources and make relevant findings of fact so as to conclude whether the appellant could meet the requirements of paragraph 297(1)(f) of the Immigration Rules, and thus whether ultimately the appellant qualified for entry in accordance with Article 8 ECHR.
7. The appellant is referred to as female at many points in the decision when he is in fact male, which I find is indicative of the lack of care taken in preparing this

decision and engagement with the evidence. There is insufficient reasoning as to why DNA was required to show the relationship between the appellant and his aunt, particularly as there is no finding on the credibility of the sponsor who attended the First-tier Tribunal and who gave evidence. Likewise, it is unclear why the certificate of adoption was not accepted just because other documents from the proceedings were not before the First-tier Tribunal. A key question under paragraph 297(1)(f) was whether there were serious and compelling family or other considerations which made the appellant's exclusion undesirable. In these circumstances it was irrational of the First-tier Tribunal to have placed little or no weight on material about violence in the Cameroon on the basis that it was not a protection appeal and the appellant was not in any different position to any other 18 year old. The First-tier Tribunal also fails to make it clear that it was understood that when considering whether the appellant could meet the requirements of the Immigration Rules, a matter highly relevant to the public interest in the Article 8 ECHR proportionality exercise, it was his age at the time of application which was relevant.

8. As I find that the appellant has not had a proper determination of the facts of his case in relation to the legal framework in any shape or form, and thus that there will be extensive fact finding, I find that it is proper to remit this appeal back to the First-tier Tribunal for a complete re-hearing with no findings preserved.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal dismissing and all of the findings.
3. I remit the appeal to the First-tier Tribunal for remaking before any First-tier Tribunal Judge other than Judge of the First-tier Tribunal Lucas.

Signed *Fiona Lindsley*
Upper Tribunal Judge Lindsley

13th November 2020