Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04058/2020

THE IMMIGRATION ACTS

Heard remotely via video (Teams)	**Decision & Reasons Promulgated**
On 8 September 2021	**On 11 October 2021**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

ENTRY CLEARANCE OFFICER

Appellant

and

PAMELA NYAKATO
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the appellant: Mr C Avery, Senior Home Office Presenting Officer
For the respondent: Ms S Saifolahi, Counsel, instructed by Davies, Blunden & Evans

This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Microsoft Teams. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

DECISION AND REASONS

Background

1. This is an appeal by the Entry Clearance Officer ("appellant") against the decision of Judge of the First-tier Tribunal C.A.S. O'Garro ("the judge") promulgated on 27 January 2021 in which she allowed the human rights appeal of Pamela Nyakato ("the respondent") against a decision of the appellant dated 22 January 2020 refusing the appellant's human rights claim (in the form of an

application for entry clearance under the Immigration Rules involving a de facto adoption).

2. The respondent is a national of Uganda who was born on 15 January 2002. On 2 October 2019, when she was 17 years old, she applied for entry clearance to the UK under paragraph 310 of the Immigration Rules. She wished to join David Thomas (the 1st sponsor) and Phyllis Thomas (the 2nd sponsor), both of whom are British citizens, as their de facto adopted daughter. The sponsors were living in Uganda as missionaries. It is not in dispute that the respondent initially came to live with her sponsors in 2010 under a foster care placement authorised by the Masindi District Services in Uganda.

3. The appellant accepted that the respondent met the requirements of the immigration rules relating to de facto adoptions and that she was the de facto adopted daughter of the two sponsors, as per the requirements of paragraph 309A of the Immigration Rules which states:

> For the purposes of adoption under paragraphs 310-316C a de facto adoption shall be regarded as having taken place if:
>
> (a) at the time immediately preceding the making of the application for entry clearance under these Rules the adoptive parent or parents have been living abroad (in applications involving two parents both must have lived abroad together) for at least a period of time equal to the first period mentioned in sub-paragraph (b)(i) and must have cared for the child for at least a period of time equal to the second period material in that sub-paragraph; and
>
> (b) during their time abroad, the adoptive parent or parents have:
>
> (i) lived together for a minimum period of 18 months, of which the 12 months immediately preceding the application for entry clearance must have been spent living together with the child; and
>
> (ii) have assumed the role of the child's parents, since the beginning of the 18 month period, so that there has been a genuine transfer of parental responsibility.

4. The appellant accepted that the respondent had lived with her sponsors for 9 years continuously and that there had been a full transfer of parental responsibility. The appellant was not however satisfied that the respondent met the requirements of paragraph 310 (ix) or (x) of the Immigration Rules. Paragraph 310 sets out the requirements for indefinite leave to enter the United Kingdom as the adopted child of a parent or parents present and settled or being admitted for settlement in the United Kingdom. Paragraph 310 (ix) and (x) require that the respondent:

> (ix) was adopted due to the inability of the original parent(s) or current carer(s) to care for him and there has been a genuine transfer of parental responsibility to the adoptive parents; and
>
> (x) has lost or broken his ties with his family of origin;

5. In the Reasons For Refusal Letter the appellant explained that the respondent failed to provide any official documentation confirming her identity and that of her biological parents. Although the appellant acknowledge that court documents provided with the application gave the names of the respondent's biological parents and detailed the circumstances in which they abandoned the respondent, in the absence of a birth certificate the appellant was not satisfied as to the identities of the respondent's biological parents. The appellant was not therefore satisfied that they "have been or continue to be completely absent" in the respondent's life. I pause to note that there is no requirement in the relevant rules that the biological parents be "completely absent" in the respondent's life. The appellant indicated that she was not satisfied that the current whereabouts of the biological parents were unknown (I again note that this is not a requirement of the relevant rules) or that they consented to the respondent relocating to the UK. The appellant then stated that she was not satisfied that the respondent was adopted due to the inability of her original parents to care for her as the respondent provided no other evidence to substantiate the statements and the statements made in the court documents. Nor was the appellant satisfied, presumably for the same reasons, that the respondent had broken or lost her ties with her family of origin.

6. The respondent appealed the appellant's decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002.

The Decision of the First-tier Tribunal

7. The judge had before her two bundles of documents produced by the respondent that included, inter alia, statements from the two sponsors, a birth certificate issued to the respondent on 28 July 2010, various official documents issued in 2010 relating to the respondent's foster placement with the sponsors (including correspondence from the District Probation/Welfare Officer of Masindi District, the Application and Undertaking Forms, a Prospective Foster Parent Record, a letter dated 25 October 2012 from a Community Development Officer addressed to a Magistrate requesting a Care Order in respect of the respondent and her sponsors and which indicated that the sponsors were being supported by the Probation Office, the Care Order issued by the Magistrate, letters from the respondent's schools and photographs of the respondent with her sponsors. The appellant's bundle of documents included, inter alia, an Assessment Report dated 4 August 2017 in respect of the sponsors written by the District Probation and Social Welfare Officer, and an Order of the Ugandan High Court dated 6 September 2018 relating to the sponsor's adoption of the respondent under Ugandan law. The judge additional had an email from the sponsors' lawyer in Uganda dated 23 January 2021. The judge heard oral evidence from both sponsors.

8. In her decision the judge accurately summarised the reasons for the appellant's decision refusing entry clearance and the relevant legal provisions. The judge summarised the evidence from the sponsors. This included evidence that the

sponsors had been informed when they fostered the respondent that her biological parents separated when she was 5 months old due to the biological father's violent behaviour caused by his drinking, and that although the respondent lived with her father for the first 5 years of her life, her father then passed her to different homes. It was the sponsors' evidence that, in the 10 years that the respondent lived with them in Uganda, neither biological parent made any contact with her apart from when required to attend the Welfare Offices and Court appointments. The judge recorded the sponsors' evidence to the effect that the Ugandan Welfare Services had approved and supervised the foster placement in consultation with the biological parents, followed by the grant of the Care Order and finally the Adoption Order, and that none of this would have taken place if the Ugandan authorities were not satisfied as to the identity of the respondent's birth family and their claimed relationship.

9. In the section of her decision headed 'Consideration and Findings' the judge accurately referred to the appropriate burden and standard of proof and properly indicated that, in assessing whether the appellant's decision breached Article 8 ECHR, she applied the principles enunciated in TZ (Pakistan) and PG (India) v SSHD [2018] EWCA Civ 1109.

10. The judge noted the appellant's acceptance of a de facto adoption, which necessarily included an acceptance that there had been a genuine transfer of parental responsibility to the sponsors. In assessing whether the respondent had lost or broken her ties with her biological parents the judge considered the approach taken by Mr Justice Collins in Boadi v ECO – Ghana [2002] UKIAT 01323, at paragraphs 15 and 16:

> 15. We are satisfied that 'ties with his family of origin' does not have the wide meaning the adjudicator has applied. It is intended to ensure that the adoption is not as it were temporary and that, once the child has obtained the entry to the United Kingdom which the adoption will achieve, the family of origin takes back responsibility. There must be a loss or break of the ties of responsibility. Those of affection may remain. Were it otherwise, a child of a single parent who was smitten with a terminal illness and was wholly unable to care for him or her could not join adoptive parents merely because he or she retained affection for and visited the dying parent.
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> 16. The existence of the wider ties referred to by the adjudicator may throw doubt on the genuineness of the adoption and may justify in a particular case a finding that Paragraph 310(ix) or (xi) has not been satisfied. But if an Entry Clearance Officer is satisfied that 310(ix) and (xi) are satisfied he should only refuse under 310(x) if not satisfied that the adoption is intended to be permanent and that the family of origin is not going to take back responsibility when the entry is achieved. We doubt that a refusal based solely on 310(x) would save in exceptional circumstances be justified since the lack of permanency would usually result in a failure to meet the requirements of 310(xi). While we have not considered Article 8 of the European Convention on Human Rights directly, we are sure that any other construction of 310(x) would not meet its requirements. This fortifies us in our construction of 310(x).

11. The judge applied the approach taken by Mr Justice Collins and found that the sponsors had been making all the decisions in respect of the respondent for the previous 9 years, a point already accepted by the appellant in respect of the existence of a de facto adoption. The judge was consequently satisfied that the respondent's ties with her biological parents had been broken.

12. The judge then noted that, although a birth certificate relating to the respondent had been provided, the date of issue was not clear and it was agreed by the parties that limited weight could be accorded to the document. At [35] the judge found that the respondent's full history of involvement with the Ugandan Welfare Services from the time she was fostered with the sponsors to when she was adopted by them according to Ugandan law, with reference to the documents before the First-tier Tribunal, to be of "some assistance" in determining the respondent's identity and that of her birth parents. At [36] the judge had no doubt that the Ugandan Welfare services who placed the respondent with the sponsors would only have done so once they had done a full and proper assessment of the respondent's family background and her care needs, and that they would have identified the biological parents as part of that assessment, with particular reference to the Welfare Assessment. The judge found that the relevant courts would have been satisfied that the biological parents were properly identified in the granting of the Care Order and then the Adoption Order. At [39] the judge additionally noted the email from the sponsors' lawyer in Uganda confirming that the biological parents were present at the High Court and that their consent was obtained in relation to the Adoption Order. At [40] the judge stated:

> "There is also the credible evidence of the sponsors who met the [respondent's] birth parents and would have been satisfied by Uganda's Welfare authorities of the identity of the [respondent's] birth parents when the [respondent] was placed in their care."

13. At [41] the judge indicated that she was satisfied of the identities of the respondent's biological parents, and at [42] the judge indicated her satisfaction that the requirements of paragraph 310 of the Immigration Rules were met. The appeal was allowed.

The challenge to the judge's decision

14. The grounds of appeal, which are poorly drafted, contend that the judge's decision runs counter to the Hague Convention 1993 and effectively disregards the relevant provisions of the Adoption and Children Act 2002 and the Adoption Order 2013 which confirms that a Ugandan adoption is not recognised in the UK. The written grounds contend that the judge should have scrutinised the proceedings undertaken by the Ugandan Welfare authorities more carefully. The grounds contend that the judge was not entitled to her 'bare' acceptance of the sponsors' evidence that the Ugandan welfare services would not have placed the respondent with them as foster carers, or issued the Care Order and Adoption Order unless there had been consultation with the

biological parents in which their identities were ascertained, in the absence of a verifiable birth certificate. It is claimed the judge accorded weight to the evidence from the Ugandan Welfare services "without further explanation and scrutiny." The grounds contend that, although it was a matter for the judge as to what weight was accorded the evidence, her findings did not assuage the appellant's concerns as to the identity of the biological parents and their relinquishment of all contact with the respondent. In challenging the judge's acceptance of the validity of the processes undertaken by the Ugandan welfare services the written grounds claimed there was clear evidence of corruption regarding adoption processes in Uganda and reference was made to a Guardian newspaper report that the appellant accepted had not been before the judge (nor was it provided to the Upper Tribunal or the respondent's representatives). The grounds referred to the risk of modern slavery and child trafficking in situations where adoptions were used as a cloak for children being brought to the UK against their will and that a more robust application of the evidential requirements should have been undertaken.

15. The written grounds further contend that the judge failed to conduct a careful and holistic assessment of the welfare of the respondent. Refence was made to paragraph 310(xi) despite this particular subparagraph, relating to 'adoptions of convenience', never being raised as an issue either in the Reasons For Refusal Letter, or the Entry Clearance Manager's (ECM) Review, or before the First-tier Tribunal hearing itself. The grounds contend that the requirements of paragraph 310(xi) and (x) (and (xi)) were not resolved by the judge who failed to ensure the welfare of the respondent in accordance with the spirit of s.55 of the Borders, Citizenship and Immigration Act 2009. The failure by the respondent to provide official documentation confirming the identities of the respondent and her biological parents was relevant in assessing whether the biological parents were present or not in the respondent's life.

16. The written grounds additionally included assertions relating to the 1st sponsor that were not made in the Reasons For Refusal Letter or in the ECM Review or in the First-tier Tribunal hearing itself. The First-tier Tribunal refused permission to proceed in respect of these grounds, but permission was granted in respect of the other grounds on the basis that it was arguable that, given that the UK did not recognise Ugandan adoptions, the judge should not have attached the weight she did to the Ugandan court processes.

17. At the outset of the 'error of law' hearing Mr Avery confirmed that, despite the promulgation of EH (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 00117 (IAC), he did not wish to rely on the grounds in respect of which permission had already been refused. Nor were any submissions made by Mr Avery on the basis of paragraph 310(xi) given that this had never been identified as an issue in contention.

18. In clear and economical submissions Mr Avery explained that the purpose of paragraph 310(ix) and (x) was to prevent the trade in children, for example

where a family may 'sell' a child because of their impoverished conditions. It was therefore necessary to have solid information about the biological parents. Mr Avery submitted that the judge accepted the evidence before her without question and that her observation that she had 'no doubt' that the Ugandan Welfare authorities would only have placed the respondent with the sponsors as foster parents once they had undertaken a full assessment of the family background was an assumption not open to her, although Mr Avery accepted that the appellant had not identified any particular aspect of the official documents that undermined their validity or reliability. The judge failed to apply the spirit of s.55 of the Borders, Citizenship and Immigration Act 2009 (requiring a decision-maker, including a tribunal, to take into account the best interests of children as a primary consideration) in assessing whether the requirements of paragraph 310 (ix) and (x) were met.

19. On behalf of the respondent Ms Saifolahi adopted a skeleton argument produced to the Tribunal shorty before the hearing. She argued that the judge found that the documents before her were of 'some assistance', indicating that the judge did not place great significance on the Ugandan adoption process in making her findings of fact. The judge was entitled to consider, having regard to the evidence before her in the round, that the identities of the biological parents would have been known during the foster placement process and the process for obtaining the Care Order and the Adoption Order, having particular regard to the evidence from the sponsors whose credibility was not challenged. The appellant failed to acknowledge that a birth certificate had been produced, although the year of its issuance was unclear from the copy. The judge was entitled to attach weight to the evidence from the sponsors and the email from Susan Zemeisu, the lawyer who acted for them in Uganda who confirmed that she met and interviewed the birth parents. The contention by the appellant that the judge should have adopted a more cautious approach to the various processes undertaken by the Ugandan authorities failed to appreciate the entirety of the judge's approach where she considered the written and oral evidence from the sponsors whose credibility had not been challenged. Ms Saifolahi submitted that the appellant accepted at the outset that there had been a genuine transfer of parental responsibility and that the sponsors had been making all the decisions in relation to the respondent's welfare for over 9 years.

20. I reserved my decision.

Discussion

21. There is no merit in the written grounds of appeal to the extent that they may suggest that the judge's decision disregards the relevant provisions of the Adoption and Children Act 2002 and the Adoption Order 2013. At no stage of her decision does the judge suggest or indicate in any manner that she regarded the Ugandan adoption as one recognised in the UK. The application was made on the basis that there had been a de facto adoption, and the existence of a de facto adoption was recognised by the appellant herself.

22. Although the UK does not recognise adoptions conducted through the legal processes in Uganda, this does not mean that only little weight should always be attached to court documents and processes relating to Care Orders and Adoption Orders and processes undertaken by the Ugandan authorities in relation to foster placements, or to the documents issued by the Ugandan welfare services. The appellant herself relied on "multiple social services documents issued by the authorities in Uganda" in concluding that there was a de facto adoption in line with the requirements of paragraph 309A of the Immigration Rules.

23. In this particular appeal the appellant has not identified any particular aspect of the various welfare documents and court Orders, including the Assessment Report conducted by a District Probation and Social Welfare Officer, which identified the respondent and her biological parents, that was either capable of undermining the accuracy of the content of the documents or the assertions contained therein. The various documents identified at paragraph 7 above were prima facie reliable and valid. At the First-tier Tribunal hearing the appellant did not introduce any evidence tending to undermine the authenticity of these specific documents. The Assessment Report indicated that the respondent was well known to the author of the report, who was a District Probation and Social Welfare Officer. The Social Welfare Officer outlined the respondent's background and her early childhood and gave the names and ages of the biological parents and their places of residence. The report noted that the respondent and her biological parents had not lived together for 10 years, a point confirmed by the sponsors. In these circumstances, and in the absence of any particular identified reason to doubt the authenticity of the official documents issued by the Ugandan authorities, the judge was rationally entitled to attach weight to the official documentation that identified the respondent and her biological parents.

24. The judge did not however just rely on the official documents relating to the foster placement, the Care Order and the Adoption Order. The judge's assessment of the evidence before her was conducted 'in the round', as indicated by her at [25]. I note from the judge's record of proceedings that no challenge was levelled against the sponsors in respect of their credibility. The sponsors confirmed that the respondent was placed in their care as a foster child in 2010 and that her care was supervised by the Masindi District Welfare Services in Uganda. In their evidence the sponsors confirmed that the respondent's biological parents were identified and consulted in relation to both the foster placement and the Ugandan adoption and that they met with the relevant Welfare Officer and the sponsors' own lawyer. The 1st sponsor explained in his statement that both biological parents were in attendance at the High Court hearing when the adoption order was issued and that the High Court judge explained to the biological parents what had been said by the Welfare Officer and the sponsors' lawyer, and that the sponsors had been informed that the biological parents agreed to the adoption. The 1st sponsor had also personally met the biological father when obtaining the respondent's birth

certificate. The sponsors stated that, for the 10 years that the respondent lived with them in Uganda, neither biological parent made any contact with her apart from when required to attend the Welfare Offices and Court appointments. The judge was rationally entitled to attach weight to this evidence in the absence of any credibility challenge to the sponsors.

25. The judge additionally attached weight to the email from the sponsor's lawyer confirming that she met and interviewed the biological parents and that they were present at the adoption hearing. No challenge was raised by the appellant to this particular evidence and the judge was rationally entitled to accord it weight. I note that the documents issued by the respondent's schools in Uganda further supported the her claim that her biological parents no longer had ties with her, and I note the absence of any challenge in the grounds to the judge's consideration and application of Boadi v ECO – Ghana [2002] UKIAT 01323.

26. I accept Ms Saifolahi's submission that the judge's overall findings were based on a holistic assessment of all the evidence before her, and not, as Mr Avery submits, on an unwarranted assumption that the official documentary was reliable and a failure to adequately scrutinise that evidence. Whilst any assessment of any application involving children requires anxious scrutiny given a child's inherent vulnerability and the legitimate concerns of child trafficking and exploitation, I am satisfied that the judge did exercise the requisite degree of scrutiny, that she applied the spirit of s.55 of the Borders, Citizenship and Immigration Act 2009, that she undertook a careful and holistic assessment of the evidence before her, and that she was rationally entitled to find that the requirements of paragraph 310 (ix) and (x) were met.

Notice of Decision

The First-tier Tribunal's decision does not contain any error on a point of law requiring it to be set aside.

The Entry Clearance Officer's appeal is dismissed.

D.Blum 10 September 2021

Signed Date
Upper Tribunal Judge Blum