Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **OA 09749-12**

THE IMMIGRATION ACTS

At **Field House** Decision signed: **06.08.2013**
on **06.08.2013** sent out: **07.08.2013**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Nevil Gilbert LUTAKOME

appellant

and

Entry Clearance Officer, NAIROBI

respondent

Representation:

For the appellant: Mr Olufemi Olajinmi, (working under the supervision of OA, solicitors)
For the respondent: Mr Tony Melvin

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Geoffrey Onoufriou), sitting at Hatton Cross on 17 April, to dismiss a dependent relative appeal by a citizen of Uganda, born 4 March 1995. The appellant had applied, well before he reached 18, to settle here with his mother, the sponsor, and needed to show she had sole responsibility for him, following her divorce from his father in 2002, and the ill-health which was said to have overtaken his grandmother, with whom he had been living, in 2010. He was refused a visa on 22 February 2012.

2. The judge found against the appellant on sole responsibility, for the reasons he gave at paragraph 18:

    a. a letter from a local authority in Uganda, confirming that the appellant had been living with his grandmother, was not in proper form;

    b. medical evidence that she had become unwell was illegible;

    c. the appellant's father had been involved, to the extent of getting a birth certificate for him in 2010.

3. Reason (a) is challenged, on the basis that the judge failed to make the necessary allowances for conditions in Uganda in the degree of formality he required in the letter. I have some sympathy with this point: a handwritten letter, validated by a rubber stamp, may be the best evidence available in rural east Africa. However, it does not cover the decisive issue, so far as the appellant's grandmother was concerned, which was whether by the date of the decision she had become unfit to take whatever responsibility was by then required for him.

4. That point is covered by the medical evidence: the judge does not list or describe what was before him, other than by calling it "totally illegible". So far as pp 40 – 41 of the appellant's present bundle are concerned, while that view may not be literally correct, I have very considerable sympathy with it. The difficulty arises on p 39, which is a computer-generated printed document, from the Mulago Hospital in Kampala, headed 'Medical Report', and dated 23 September 2010.

5. The subject is the appellant's grandmother, by then 65: the report gives the results of a medical examination and laboratory analysis. The examination is said to have given positive results, not only for diabetes, not uncommon in a person of that age, and what may be rather high blood-pressure, equally usual; but also for 'Guillain-Barr syndrome'. Guillain-Barré syndrome, as it is properly called, is a serious condition: the Wikipedia article describes it as follows:

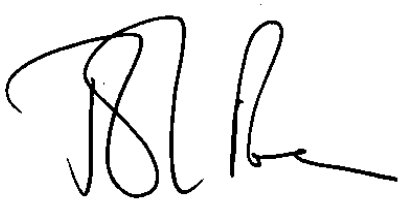
> **Guillain–Barré syndrome** … is an acute polyneuropathy, a disorder affecting the peripheral nervous system. Ascending paralysis, weakness beginning in the feet and hands and migrating towards the trunk, is the most typical symptom, and some subtypes cause change in sensation or pain as well as dysfunction of the autonomic nervous system. It can cause life-threatening complications, in particular if the respiratory muscles are affected or if there is autonomic nervous system involvement. The disease is usually triggered by an infection.
>
> The diagnosis is usually made by nerve conduction studies and with studies of the cerebrospinal fluid. With prompt treatment by intravenous immunoglobulins or plasmapheresis, together with supportive care, the majority will recover completely. Guillain–Barré syndrome is rare, at 1–2 cases per 100,000 people annually, but is the most common cause of acute non-trauma-related paralysis. The syndrome is named after the French physicians Georges Guillain and Jean Alexandre Barré, who described it in 1916.

6. The Mulago report certainly is legible, and dates from well before the date of the decision, though because of the way the judge dealt with the medical evidence, it is not clear what was before him. In my view his decision on sole responsibility needs to be re-made because of this. Both sides sensibly agree that this will be the only point for decision; so if the appellant succeeds on it, then the appeal is likely to be allowed, and if not, then dismissed. The judge will wish to consider the point in the light of *TD* (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049, and the other authorities referred to in that decision.

7. Mr Melvin quite rightly drew my attention to the appellant's age, nearly 17 by the date of the decision, which is the relevant time. While by then his grandmother would have hardly needed to take much responsibility of a practical kind for him, he would no doubt have needed the usual oversight and guidance required by any teenage boy, and the question will be whether he has shown that she was no longer able to provide this by then. The appellant's solicitors should not think that my extract from the Wikipedia article on Guillain-Barré syndrome is enough to show that: some proper medical evidence is required to show the effects of the condition on the appellant's grandmother in particular.

8. So far as the appellant's father is concerned, the decree absolute dissolving his marriage to the sponsor gave her custody of the appellant; but the judge noted that he had got a birth certificate for him in 2010. The judge does not seem to have considered what the purpose of that might have been: the sponsor's present witness statement, undated, but clearly made since his decision, claims at paragraph 8 that the appellant's father only did this because his grandmother was already unwell, and apparently so that the sponsor could bring him to this country. If that is right, then the fact that the appellant's father got the certificate does not seem to me to amount to a resumption of parental responsibility.

Appeal allowed: first-tier decision set aside
Decision to be re-made on fresh hearing in First-tier Tribunal, not before Judge Onoufriou



(a judge of the Upper Tribunal)