



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

Appeal Number: VA/34070/2012

THE IMMIGRATION ACTS

Heard at Field House

On 3 April 2014

Determination

Promulgated

On 9 April 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

**MRS SOPHIE NTALA KIMENA
(No Anonymity Direction Made)**

Appellant

and

ENTRY CLEARANCE OFFICER - NAIROBI

Respondent

Representation:

For the Appellant: the appellant was not legally represented
For the Respondent: Mr C Avery a Senior Home Office Presenting
Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of the DRC who was born on 25 November 1946. She has been given permission to appeal the determination of First-Tier Tribunal Judge A J M Baldwin ("the FTTJ") who dismissed her appeal against the respondent's decision of 22 August 2012 to refuse to grant her a visit visa to come to the UK as a family visitor under the provisions of paragraph 41 of the Immigration Rules.

2. In the refusal of the application the respondent said that the appellant had stated that she was retired and had no income from employment. She had no assets such as property or savings. She had no family dependent on her in the DRC. She was reliant on funds from her family in the UK where her son daughter and grandchildren all lived. There was little to encourage her to leave the UK at the end of the proposed visit. The application was refused under the provisions of paragraphs 41 (i) and (ii).
3. The appellant appealed and the FTTJ heard the appeal on 2 January 2014. The appellant was not represented. The respondent was represented. The appellant's son and daughter attended the hearing and the FTTJ heard oral evidence from the daughter. The FTTJ found that the information given by the appellant and the oral evidence given by her daughter were highly inconsistent. The appellant had said that she was retired and had no income from any employment, savings or property and that she was reliant on money provided by family and friends. The sponsor said that her mother had a total income of \$1000 per month from all sources. She still ran a bar and rented out three properties. The FTTJ found that the position was probably as stated by the appellant. He concluded that the appellant's daughter was not a credible witness who "gave the appearance of simply making things up as she went along". The appellant had not discharged the burden of proving that her intentions were genuine and that she would return to the DRC at the end of her visit. The FTTJ dismissed the appeal.
4. The appellant applied for permission to appeal which was refused by a judge in the First-Tier Tribunal. However, permission was granted on the renewal of the application to the Upper Tribunal. Regrettably, the grounds of appeal which are likely to have been prepared without legal help are not at all clear. The Upper Tribunal Judge showed considerable insight when deducing; "Although a little difficult to understand, it appears that the grounds seeking permission to appeal are alleging that one of the appellant's witnesses was prevented from giving oral evidence. The assertions with regard to the inconsistencies in the evidence are unclear but had oral evidence from both witnesses been given this may not have been the case. It may be that the final outcome of the appeal would not have been any different but permission is granted."
5. The appellant's son and daughter attended the hearing before me. Her command of English was not good but his was better. I had to ask them a number of questions to find out what they were saying happened at the hearing. This was that at the start of the hearing they were sitting together. The FTTJ asked which of them was the sponsor. They replied that it was both of them. The FTTJ looked at the papers which showed that the daughter was the sponsor, asked her to remain in place and invited the son to sit at the back of the hearing room. The daughter gave evidence and was cross examined. At some stage during her evidence the son put his hand

up because he wished to say something. It is not clear whether this was not noticed or ignored but he did not speak. Both of them accepted that at no stage did they say that the son wished to give evidence. He told me that he expected to be asked to give evidence. They said that in the original letter to the respondent they made it clear that they were both sponsoring the appellant. I was shown a copy of the letter which the daughter wrote to the respondent on 20 July 2012 which says that both of them wished to invite their mother to visit the UK. On the other hand, the letters to the First-Tier Tribunal were written by the daughter and her name appears as the sponsor on Tribunal notices and documents.

6. The sister told me that she gave evidence in English which was her third language. Her first language was Lingala and her second language French. With hindsight she should have asked for a Lingala speaking interpreter. She did not think that she understood all the questions adequately. Some of the questions in cross examination were put to her more than once and she asked for some of them to be repeated.
7. Mr Avery submitted that there were major inconsistencies between what the appellant said and what her daughter said in writing and oral evidence. The FTTJ reached conclusions open to him on all the evidence and there was no error of law. I was asked to uphold the determination.
8. On the face of all the documents before me I would, in the absence of anything more, have concluded that the FTTJ reached conclusions clearly open to him on all the evidence including the adverse credibility finding in relation to the evidence of the appellant's daughter. There are serious inconsistencies between the evidence of the appellant and that given by her daughter in writing and at the hearing. I have also considered whether what happened at the hearing amounted to procedural unfairness, whether or not this was apparent to the FTTJ. I accept that at least in lay rather than legal terms both the daughter and son wanted to support their mother's application to visit the UK. This is sufficiently clear from what they said to me and a letter which they wrote to the respondent. However, my attention has not been directed to any letter or documents which make it clear that they wished to be joint sponsors in the proceedings before the Tribunal. Correspondence was written by the daughter who gave her name as the sole sponsor on the form of appeal to the First-Tier Tribunal. Thereafter, and in the absence of any application to change this, the Tribunal and the FTTJ were entitled to treat the daughter as the sponsor.
9. In any event the question of whether the son, the daughter or both of them was the sponsor is not at the core of the appeal to be Upper Tribunal. The issue is whether the son was prevented from giving evidence and if so whether this would have made any

difference to the outcome. I find that even if the son might have wished to give evidence he was not prevented from doing so. Putting his hand up at some point during the daughter's evidence was not a clear indication that he wished to give evidence. Crucially, neither he nor the daughter told the FTTJ that he wished to give evidence. Whilst they might have thought that the invitation to give evidence would have come from the FTTJ, he was under no obligation to make any invitation or enquiry at least in the absence of some indication that there was a wish to give further evidence.

10. I can find nothing in the grounds of appeal or in what was said to me at the hearing by the son or the daughter which provides any understandable explanation for the inconsistencies between the evidence of the appellant and her daughter or indicates why any oral evidence from the son would have shed any light on this or made any difference.
11. I have studied the record of proceedings made by the FTTJ which contains no indication that the daughter had any difficulties in giving evidence. Whilst I accept that the daughter's command of English is not good I am not persuaded that she did not understand the questions put to her or that she was unable to give sufficiently coherent answers.
12. I have not been asked to make an anonymity direction and can see no good reason to do so.
13. I find that the FTTJ did not err in law and I uphold his determination.

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Signed
Upper Tribunal Judge Moulden

Date 4 April 2014