



IAC-CH- CK-V1

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

Appeal Number: OA/05712/2014 &
OA/05706/2014

THE IMMIGRATION ACTS

**Heard at Columbus House, Decision & Reasons Promulgated
Newport On 12th August 2015 On 28th August 2015**

Before

UPPER TRIBUNAL JUDGE POOLE

Between

**MISS MAGALI BITSHILUALUA AKULAYI
MISS KETSIA KASHAMA MUSUMBA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER - KINSHASA

Respondent

Representation:

For the Appellant: Miss Louise Fenney, Solicitor

For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

DECISION & REASONS

1. The two appellants both female citizens of the Democratic Republic of Congo (DRC) who have applied to enter the United Kingdom for settlement. Their application was based upon their adoption by Mrs Dounce Tshisungu, their Sponsor, who is a person present in the United Kingdom. Their Sponsor is a citizen of the DRC as is her husband Mr

Didwe. Both the Sponsor and her husband have been granted refugee status in the United Kingdom.

2. The respondent refused both applications upon the basis that any adoption order in the DRC was not recognised or accepted under UK Law and that the appellants could only be considered under "family reunion", but neither appellant satisfied the requirements.
3. The appellant's appealed against that decision and their appeal came before Judge of the First-Tier Tribunal Britton sitting at Newport on 12 December 2014. An oral hearing was held, both parties were represented. The judge heard evidence from the Sponsor and her husband.
4. In a determination dated 30 December 2014, Judge Britton dismissed the appeals.
5. The appellants then sought leave to appeal. The grounds alleging error lack structure and are difficult to identify the cause of complaint. However it is noted that there is criticism of the judge with regard to the waandy he dealt with the mention (or lack of it) of the appellants when the Sponsor and her husband were interviewed in connection with their asylum applications. The judge is criticised for failing to consider all the evidence to have paid insufficient attention to an adoption agreement "that is legal in the Democratic Republic of Congo". He had made no findings. It is suggested that the Entry Clearance Officer "did not deduce what they relied up to make such a statement (sic)". This relates to whether or not the adoption agreement was valid under UK Law. It is alleged the judge failed to have regard to the principles of "family unity". The judge erred (it is alleged) in not noting that the appellants had no permanent accommodation in the DRC and that he failed to give proper consideration to the best interests of minor children.
6. The application for leave came before First-Tier Tribunal Judge Robertson, who considered the application out of time and that such time limit could not be extended, but also found that the grounds lacked arguable merit. The reasons given for this decision are as follows:
 - "1. The Appellants seek permission to appeal against the decision of First-Tier Tribunal Judge Britton (the Judge), dismissing their appeals under the Immigration Rules and under Article 8 ECHR against the refusal by the Respondent to grant them leave to enter pursuant to the provisions of paragraph 352D of the Immigration Rules.
 2. The decision was provided to the Appellants on 31 December 2014. The application was not made until 3 February 2015, which is more than 28 days from the date on which it was provided to the Appellants (rule 33 of the Tribunal Procedure (First-Tier Tribunal) (Immigration and Asylum Chamber) 2014). The only reason given for lateness was that the decision was not received until 5 January 2015 but time, under the Rules, does not run from the date of receipt. However, in deciding whether or not to extend time, I have considered the strength of the grounds as follows:

3. It is not arguable, as submitted in the grounds, that the Respondent needed to adduce evidence to establish that the adoption of the Appellants in the DRC was not recognised in the UK (as this is provided for in The Adoption (Recognition of Overseas Adoption) Order 2013). Nor is it arguable that the Judge erred in his assessment that the Sponsor had not travelled to the DRC to visit the Appellants because this is clearly recognised at para 23. He found, as he was entitled to find, that Article 8 was not engaged because there was no evidence of contact between the Appellant and the sponsor (para 23). He gives clear reasons as to why he did not accept the Sponsor's explanation as to why she did not mention the Appellants in her screening interview (see para 33). Furthermore, it is not arguable that the Judge did not take into account all the evidence before him; as acknowledge in the grounds, he set out in detail the evidence that was before him and his findings were made on the evidence in the ground. The grounds disclose no arguable errors of law and are simply a disagreement with the findings of the Judge.

4. As the grounds lack arguable merit, time is not extended".

7. The appellants then renewed their application to the Upper Tribunal. The grounds were repeated save for challenge to Judge Robertson's refusal.
8. The matter then came before Upper Tribunal Judge Blum who granted the application without an oral hearing. Judge Blum found the application to have been in time. He found that the appellants could not have succeeded under the "adoption route" as adoptions from DRC are not recognised in the United Kingdom. However Judge Blum found that it was arguable that Judge Britton had failed to take into account mention of the children during the asylum process. Additionally the judge found possible error with regard to the way Judge Britton treated the ability of the family members in the DRC to care for the appellants.
9. Hence the matter came before me in the Upper Tribunal.
10. Miss Fenney in her submission said that the judge had not considered Article 8. There was error with regard to the treatment of the contact that had been maintained. The fact that the adoption was legal in the DRC should have been considered in the consideration of "family life". Miss Fenney referred me to page 21 of the appellant's original bundle, where mention is made by the Sponsor's husband of the two appellants (in fact page 20).
11. Mr Richards in his submission said that no material error of law is contained in the decision of Judge Britton. The judge was clearly aware of the relationship and there are very clear findings. At paragraph 36 of the determination Judge Britton finds any interference proportionate. Any minor error of fact would not be material to the outcome.
12. In response Miss Fenney referred to paragraph 35 which showed the judge had failed to consider the evidence and that the children were being passed from one relative to another.

13. At the conclusion of the hearing I indicated that for the reasons I now give I found no material error of law in Judge Britton's determination.
14. I do not consider that any of the allegations of error have been made out. Miss Fenney in her submission alleged that Judge Britton had not dealt with Article 8. Paragraph 23 onwards shows the consideration Judge Britton gave to that article of the Convention. The judge properly directed himself and carefully reviewed the evidence before him before concluding (36) that any interference was proportionate. This shows that the judge clearly covered the whole situation, even though he had previously found that no family life had existed.
15. Dealing with the substantive issue before Judge Britton he was clearly correct in coming to the conclusion that he did with regard to the question of adoption. Adoptions in the DRC are not recognised in the United Kingdom. That is the law and it is not necessary for the respondent to adduce evidence of that. Judge Blum at paragraph 3 of his reasons has made the position very clear.
16. As to the family reunion position, Judge Britton fully considered that aspect. It is said that he failed to engage with the evidence that the Sponsor had mentioned the children in the second interview. He clearly accepted that evidence as is shown in paragraph 25 of his determination. At paragraph 33 the judge considered it significant that the Sponsor had not mentioned the appellants during her screening interview. The judge was perfectly entitled to give that evidence significance. He explains that by saying that if the appellants had been members of her family it would have been "in the forefront of her mind to mention it". He was entitled to reach that conclusion.
17. It is possibly an error on the part of the judge that he omitted reference to Mr Didwe's evidence in claiming asylum with regard to the two appellants, but I do not consider that error to be material to the outcome when reading the determination as a whole. At page 20 of the appellant's bundle Mr Didwe explains that the two appellants are "nieces of my wife" and that they looked after them. That does not confirm the relationship that the Sponsor now claims to have with the two appellants. There are clearly a group of people in the DRC who look after the two appellants and all are relatives of the Sponsor.
18. Criticism was levelled at Judge Britton with regard to his treatment of the evidence that Mr Didwe returned to "Congo". Judge Britton deals with this at paragraphs 29 and 30, and he then gives an explanation of his findings at paragraph 33.
19. As indicated above, I find that none of the allegations alleging error of law are made out. The one mistake that could be attributed to Judge Britton is not material to the outcome, which clearly would have been the same if that error had not been made.

20. In finding no material error of law, I accordingly dismiss this appeal and the decision of Judge Britton must stand.

Signed

Date

Upper Tribunal Judge Poole