IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: OA/10024/2014
OA/10026/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 27th October 2015	**On 6th November 2015**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MISS G N M (FIRST RESPONDENT)
(ANONYMITY DIRECTION MADE)

MISS C M B (SECOND RESPONDENT)
(ANONYMITY DIRECTION MADE)

Respondents

Representation:
For the Appellant: Mrs R Pettersen
For the Respondents: Mr M Patel

DECISION AND REASONS

1. The Appellant before the Upper Tribunal is the Entry Clearance Officer and is, hereinafter, simply referred to as "the Entry Clearance Officer". The two Respondents are, hereinafter, referred to as the first claimant and the second claimant. The First-tier Tribunal made anonymity orders with

respect to each claimant and I have continued those orders. That is why they are not named in full above.

2. This is the Entry Clearance Officer's appeal to the Upper Tribunal directed against a decision of the First-tier Tribunal (Judge Cox) promulgated on 15th June 2015 allowing the appeals of each claimant against decisions of the Entry Clearance Officer, both made on 25th July 2014, refusing to grant them entry clearance to come to the UK for the purposes of settlement as children of a parent settled here.

3. The first claimant was born on 7th July 1997, and the second claimant on 20th September 1998. They were, therefore, as at the date the original decisions of the Entry Clearance Officer were made, minors. The applications were refused because the Entry Clearance Officer did not think the requirements of paragraph 297(i) had been met. In particular, the Entry Clearance Officer was not satisfied that the UK based Sponsors were the parents of the claimants.

4. The relevant Immigration Rule reads as follows:

> "297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:
>
> (i) is seeking leave to enter to accompany or join a parent, parents or relative in one of the following circumstances:
>
> (a) both parents are present and settled in the United Kingdom; or
>
> (b) both parents are being admitted on the same occasion for settlement; or
>
> (c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or
>
> (d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or
>
> (e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; or
>
> (f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and
>
> (ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and

(v) can, and will, be maintained adequately by the parent, parents or relative the child is seeking to join, without recourse to public funds; and

(vi) holds a valid United Kingdom entry clearance for entry in this capacity; and

(vii) does not fall for refusal under the general grounds for refusal".

5. In this case, only paragraph 297(i) has ever been placed in issue.

6. The First-tier Tribunal held a single oral hearing of the two appeals on 28th May 2015. The claimants and the Entry Clearance Officer were both represented. It was said on behalf of the claimants that their two Sponsors were married to each other, that the male Sponsor (the first Sponsor) was the father of the first claimant, that the female Sponsor (the second Sponsor) was the mother of the second claimant, that the mother of the first claimant and the father of the second claimant were deceased and that, consequently, the requirements set out at paragraph 297(i)(d) were met in respect of each of them. There was some DNA evidence available which supported the claimed family relationships and which had not been available to the Entry Clearance Officer when the original decisions were made.

7. The First-tier Tribunal, in general terms, found the evidence presented on behalf of the two claimants to be credible. As to that, it said this;

"15. I note that the report states that the probability of the First Sponsor being the First Appellant's father is described as 99.999% and the probability of the Second Sponsor being the Second Appellant's mother is 99.90%. Further, the report states that the DNA results are 1,000 times more likely if the Second Sponsor is related to the Second Appellant as her mother than if they are unrelated and ten times more likely if the Second Sponsor is related to the Second Appellant as the mother than as an aunt or grandmother.

16. The Presenting Officer stated that the DNA does not conclusively establish the claimed relationships. I agree, but on balance, I am satisfied that it is more likely than not that the First Sponsor is the First Appellant's father and the Second Sponsor is the Second Appellant's mother.

17. The Sponsors explained, in their witness statement, that the Appellants were children from earlier relationships. However, they have always

considered themselves as their parents, especially as the other parent has had no involvement in the Appellants' upbringing.

18. The First Sponsor stated that they starting living together in 1999, when the Second Appellant was only about 1 or 2 months old. The Sponsors married in November 1999 and the family unit continued living together until the Second Sponsor fled Congo.

19. The First Sponsor also stated that after the Second Sponsor fled to the UK, he sought to formally adopt the Appellants. He took the proceedings on behalf of the Second Sponsor as well, even though she was in the UK and was unaware of what actual steps he took. During this time, the First Sponsor and the Appellants stayed with the First Sponsor's neighbour, who is also a close friend. The Appellants continue to live with the First Sponsor's close friend.

20. The First Sponsor went to court and once the adoption orders were issued in 2002, he left Congo. Since his arrival in the UK the Sponsors have had three children and have regularly sent money back to Congo to support the Appellants. They also speak to the Appellants over the telephone two or three times a week.

21. The Sponsors obtained British citizenship in 2010 and after obtaining his passport, the First Sponsor has returned to Congo every year. He stays for about three weeks and lives with the Appellants. Whilst the Second Sponsor stays in the UK to look after their other children.

22. In relation to the other parents of the Appellants, the Sponsors explained that they have both passed away. The First Sponsor told me that the First Appellant's mother had not had any involvement with the Appellant's upbringing and passed away about four years ago. He also told me that he had never seen the Second Appellant's father.

23. The Second Sponsor told me that the Second Appellant's father passed away, while she was pregnant with the Second Appellant.

24. The Presenting Officer accepted that step-children can qualify under 297(i)(a), but stated that this is a question of fact. He noted that the Appellants have not provided any evidence of the claimed adoption procedure or provided any evidence to show that the Appellants' other parents have passed away. I also note that there is a lack of direct evidence from the Appellants.

25. The Presenting Officer also submitted that the Sponsors' evidence in respect of the other parents was vague. I agree. For example, although the Second Sponsor knew that the First Appellant's mother had passed away while she was in the UK, she could not tell whether it was before or after the birth of her youngest child (seven years ago). Further the First Sponsor could not tell me whether the Second Appellant's father had passed away before or after he came to the UK. In my view this damages their credibility.

26. I am also troubled by the lack of supporting evidence, nevertheless on the totality of the evidence, I am satisfied that the Sponsors and the Appellants were a family unit, prior to the Second Sponsor fleeing Congo, for the following reasons.

27. Although some aspects of their oral evidence were vague, generally, I found the Sponsors credible. In particular I found the First Sponsor an

impressive witness. He generally answered the questions clearly and without hesitation. For example, he described in detail the steps he had taken after the Second Sponsor had left Congo to try to 'resolve' the Appellants' circumstances. In summary he had gone to see a number of officials and had been questioned extensively. Finally he went to court and obtained an adoption order. He said that unfortunately, he had to leave Congo in a hurry and had not been able to bring any personal documents with him.

28. The Sponsor also explained why the birth certificates listed the Sponsors as the Appellants' parents. He told me that, when he returned to Congo in 2012, he had checked with the authorities that the Sponsors were still recorded as the Appellants' parents and the authorities had confirmed the position. He then sought to get the birth certificates issued and recalled that having set out the background, the Congo official asked him a number of questions, including who are the parents now and he replied the Second Sponsor and himself. I found his evidence has the ring of truth.

29. Further the Appellants provided some evidence to support the application. In particular the Appellants provided international calling cards and at the hearing (copied at pages 90-99 of the Respondent's bundle for the Second Appellant). The Sponsors confirmed that they used international calling cards to phone the Appellants two or three times a week, as they are the cheapest form of communication.

30. In addition, the copy of the First Sponsor's British passport shows that since 2010 he has gone to Congo every year and stayed for about three weeks (pages 43 to 76 of the Respondent's bundle for the First Appellant). The First Sponsor confirmed that he stayed with the Appellants.

31. The couple also provided money transfer receipts with the application (pages 71 to 89 of the Respondent's bundle for the Second Appellant). Unfortunately, the handwriting for some of the receipts is illegible but there are others that clearly show that the Sponsors have been sending money back to the Appellants since 2012. In my view this is significant. Why would the Sponsors, who have three young children to support and are working hard, send money to Congo to the Appellants, if they did not consider themselves as their parents.

32. Finally, and in my view significantly, the Sponsors told me that they had mentioned the Appellants during their previous immigration applications. In particular, the First Sponsor told me that he had been interviewed in relation to his asylum claim and specifically told the interviewing officer that he was the Appellants' father. I note that the Sponsors also applied for British citizenship. In my experience in these types of cases, the Respondent often cross-references the information provided in earlier applications, with the information now being provided. In addition, the Respondent regularly refuses applications, when the information provided is not consistent with earlier applications. I do not know if the Respondent undertook such checks in the present appeals, but it seems to me that the Respondent could have checked the information in the Sponsors' immigration files. As a footnote, it seems to me that as part the Respondent's duties under Section 55, the Respondent ought to have considered any information available, prior to making the decision.

33. I note that the Respondent has not suggested that the Sponsors claim that they are the Appellants' parents is inconsistent with information held on the Sponsors' immigration files. I find that I have no reason to doubt the Sponsors' claims that they have consistently told the Home Office that they are the Appellants' parents.

34. On the totality of the evidence, I find that the Appellant has discharged the burden of proof. I attach significant weight to my positive credibility finding and to my finding that the Sponsors have consistently described themselves as the Appellants' parents.

35. In particular, I am satisfied that the Second Sponsor is the First Appellant's step-mother and that the First Sponsor is the Second Appellant's step-father".

8. An application for permission to appeal followed. The grounds, essentially, contended that the First-tier Tribunal had failed to adequately explain its findings and its favourable credibility assessment bearing in mind difficulties with the documentary evidence. Further, at paragraph 32 of its determination it had generalised and speculated and, given that the other parents of the two claimants might still be alive, had failed to consider the "sole responsibility" issue.

9. Permission to appeal was granted by a Judge of the First-tier Tribunal. The salient part of the grant reads as follows;

> "It is arguable that the judge failed to give adequate reasons for allowing the appeal despite his express concerns (at 26) about the lack of supporting documentary evidence that was material to the core of the Appellants' appeals. The Appellants did not provide their parents' death certificates; the Appellants' birth certificates only reflected what information the DRC officials were told; there was no evidence before the judge to show why the Sponsors had failed to obtain adoption order whilst they were in the DRC. The judge failed to give reasons why he accepted the money transfer receipts as reliable evidence when the recipients were not known. The judge accepted that the Sponsors claim that they had mentioned the Appellants in their asylum interviews when the relevant interview records were not before him".

10. A hearing before the Upper Tribunal was convened so that it could be decided whether the decision of the First-tier Tribunal, with respect to both claimants, involved an error of law such as to justify its setting aside. Provision was also made for the remaking of the decision should that prove necessary.

11. Mrs Pettersen, for the Entry Clearance Officer, indicated that she would rely upon the Grounds of Appeal. The birth certificate issue was significant. On the face of it the certificates contained incorrect information since they had indicated that both Sponsors were the parents of both claimants. There was a lack of documentary evidence supporting what the two Sponsors and the claimants had asserted. There was no proof that the other parents had passed away. The First-tier Tribunal had

acknowledged that it was troubled by a lack of supporting evidence but had then simply swept those concerns aside. Mr Patel, for the two claimants, submitted, essentially, that the First-tier Tribunal had reached findings and conclusions which had been open to it and which it had adequately explained.

12. I have concluded that the First-tier Tribunal did not err in law and that its decision, with respect to both claimants, shall stand. I have explained why I have reached this view below.

13. The above passage demonstrates that, in general terms, the First-tier Tribunal set about its task with care and diligence. It acknowledged that there were some difficulties with respect to the evidence presented to it and, in particular, it set out a concern at paragraph 26 regarding the lack of supporting evidence (it may have had in mind in particular the lack of death certificates) and with respect to the vagueness of aspects of the oral evidence (paragraph 27). It was proper for it to make it clear what concerns it had and the fact that it did have concerns did not mean it had to, ultimately, reject the thrust of the contentions which had been made on behalf of the two claimants.

14. The First-tier Tribunal clearly did find the oral evidence it heard to be credible. Although it did not say very much about why it found the oral evidence of the second Sponsor, as opposed to the first Sponsor, to be credible, its assessment of the oral evidence was a matter for it. It was entitled to believe what it had been told notwithstanding deficiencies within the documentation.

15. As to the claimed deaths of the two other parents, it did accept a submission that the evidence of the two Sponsors, in this respect, had been vague (paragraph 25 of the determination). Indeed, I did find myself wondering whether it had in fact decided that it was not able to accept the evidence of the claimed deaths and that that might be why it had, at a later point in the determination, focused upon the question of whether the female Sponsor was the stepmother of the first claimant and the male Sponsor was the stepfather of the second claimant. The determination might have benefited from a little more clarity in this regard. However, as I say, it is clear that the oral evidence was accepted. It seems to me that if the First-tier Tribunal was deciding to reject a discrete part of the evidence, being the claimed deaths of the other parents, it would have said so. I do, therefore, read the determination as containing a finding that the two other parents were deceased and Mrs Pettersen did not urge upon me a different interpretation. It is true that no death certificates had been provided, as was noted in the grant of permission, and as was also noted by Mrs Pettersen in her submissions to me, but that did not mean the First-tier Tribunal was obliged to reject the claims which had been made in this regard. It properly took into account all of the evidence, including the oral evidence, and, having done that, it was entitled to conclude that the other parents had passed away. That is what it did.

16. Having reached that finding it was, despite what is said in the grounds, not obliged to go on to consider any issue with respect to "sole responsibility". That is because once it had made sufficient findings for it to conclude that paragraph 297(i)(d) was met it was relieved of considering the other possibilities set out in (e) and (f).

17. I did have some concern with respect to what had been said at paragraphs 32 and 33 of the determination. In particular, I wondered whether the First-tier Tribunal had simply taken the view that because the Entry Clearance Officer had failed to produce documents evidencing what the Sponsors had said concerning their own previous immigration applications that it should be assumed they had mentioned the two claimants, and the claimed family relationships, when making those applications. However, it seems to me that, in fact, all it was saying was that the two Sponsors had given oral evidence to the effect that they had mentioned the claimed family relationships when making those applications, that they could be believed about that, that there was nothing produced by the Entry Clearance Officer to suggest otherwise and that, therefore, the finding that they had mentioned them was a factor supportive of their overall credibility. The First-tier Tribunal was entitled to take that view.

18. In light of all the above it seems to me that the grounds, notwithstanding the grant of permission, amounted to no more than a determined disagreement with findings and conclusions which the First-tier Tribunal was entitled to make on the evidence before it and which it adequately explained. Accordingly, I conclude that it did not err in law and that its decision, with respect to both claimants, shall stand.

Conclusions (both Claimants)

The decision of the First-tier Tribunal did not involve an error of law.

Its decision shall stand.

Anonymity

The First-tier Tribunal did make an order, with respect to both claimants, pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue, with respect to both claimants, that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed Date

Upper Tribunal Judge Hemingway

TO THE RESPONDENT
FEE AWARD

I make no fee awards.

Signed Date

Upper Tribunal Judge Hemingway