



IAC-AH-DP-V2

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

Appeal Numbers: OA/14343/2014
OA/14345/2014

THE IMMIGRATION ACTS

**Heard at Upper Tribunal Decision & Reasons Promulgated
Manchester On 21st October 2015 On 3rd November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MASTER B.O. (A MINOR) (FIRST APPELLANT)
MASTER M.O. (A MINOR) (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Timpson, Counsel

For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Nigeria born respectively on 4th October 1997 and 15th June 2000. At date of application both Appellants are minors and the First-tier Tribunal made anonymity directions which are maintained. The Appellants have made application for entry clearance to join their mother pursuant to paragraph 297 of the Immigration Rules.

Their applications had been refused by the Entry Clearance Officer on 23rd August 2014.

2. The Appellants had appealed and the appeal had come before Judge of the First-tier Tribunal Davies sitting at Manchester on 4th June 2015. In a determination promulgated on 11th June 2015 the Appellants' appeals were allowed. Judge Davies found that all three witnesses who had given testimony before him were credible, that the Appellants discharged the burden of proof upon them and satisfied him that the United Kingdom based Sponsor had sole responsibility for their upbringing and therefore they met the requirements of paragraph 297 of the Immigration Rules.
3. On 16th June 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those Grounds of Appeal contended that the Judge had failed to give reasons or adequate reasons for findings on a material matter namely that the Judge had made inadequate and speculative findings by accepting that the Appellants' mother had no responsibility for the Appellants despite the fact that she had contact with them.
4. On 18th August 2015 First-tier Tribunal Judge Chohan granted permission to appeal. He noted that it was argued that the Judge had erred in law by finding that the Appellants' mother had no responsibility for them in Nigeria and that because she continued to exercise contact with the Appellants and therefore the Appellants' father the Sponsor did not have sole responsibility. It was contended that there was a letter from the Appellants' mother and that this is not mentioned in the Judge's findings and that no weight had been given to that evidence. Furthermore Judge Chohan concluded that the Judge had not made findings on whether or not the Appellants' mother had any contact with the Appellants but found that had the Judge dealt with that particular point then there would be no arguable case for an error of law.
5. It is on that basis that the appeal comes before me solely to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellants appear by their instructed Counsel Mr Timpson. The Secretary of State appears by her Home Office Presenting Officer Mr Harrison.

Submissions/Discussion

6. Mr Timpson points out that the documents have to be looked at in isolation from the letter from the mother and that this letter which is dated 16th December 2013 is important for two factors. Firstly there is no mention therein as to contact and secondly when the issue is considered by the Judge he takes contact into account in reaching his findings. He points out that the Judge heard evidence from the children's father, brother and wife and that the Home Office Presenting Officer cross-examined the Appellants' father. The fact that he did not cross-examine other witnesses was a matter for his choosing.

7. Mr Timpson takes me to paragraph 14 of the First-tier Tribunal Judge's determination. The Judge has stated:

"He confirmed that his wife, the Appellants' mother, still had contact with the children on the telephone and saw them about once every six months. He did not want them to have a lot of contact with their mother because he wanted them to concentrate on their school work."
8. Mr Timpson therefore emphasises that the Grounds of Appeal are not just inaccurate they are plainly therefore wrong and that the Judge had taken into account contact. So far as the letter is concerned he submits the fact that it was not referred to does not make any difference because the letter does not take the issues any further. He submits there is no error of law and asked me to dismiss the appeal.
9. Mr Harrison in response acknowledges that the Judge in his determination has clearly commented both with regard to contact and the letter and does no more than seek to rely on the grounds.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

12. This is a well constructed determination. The submission made on behalf of the Secretary of State is that the Judge was wrong to conclude that there was sole responsibility and seeks to rely on purported inadequate and speculative findings by accepting that the Appellants' mother has no

responsibility for the Appellants when she has contact. With the greatest of respect to the Secretary of State the grounds amount to little more than disagreement. The Judge has given at paragraph 14 due consideration to the letter and acknowledgement of the limited contact which the Appellants' mother has by way of telephone. The letter in question does not I am satisfied, as put by Mr Timpson and indeed not pushed further by Mr Harrison, add anything to the Secretary of State's basis for appeal.

13. This is a Judge who has taken oral testimony from a number of witnesses. He has found those witnesses to be credible. The Secretary of State through her Home Office representative at the hearing has chosen only to cross-examine the Appellants' father. That of course is a decision that was totally open to the Home Office Presenting Officer. There is nothing to suggest that the approach adopted by the Home Office Presenting Officer was wrong. However it does not sit well following a full hearing for the Secretary of State to seek to raise objections to the findings of the Judge seemingly on the basis that the Judge has erred his analysis of the evidence when he has set out in considerable detail the basis upon which he reached his decision, has considered all witness evidence and found that the Appellant can discharge the burden of proof and remain satisfied that the United Kingdom based Sponsor has sole responsibility for the Appellants' upbringing. In such circumstances the determination discloses no material error of law and the findings are ones that the Judge was perfectly entitled to reach namely that the Appellants met the requirements of paragraph 297 of the Immigration Rules.
14. These are Appellants who seek to join their Sponsor in the UK. This appeal very nearly did not take place on 21st October due to the administrative error the Sponsor not been served at the correct address. The administration has referred to the fact that the Sponsor's address is 14 [-] and not as set out on the notices, nor indeed endorsed on the court file as 4 [-]. Unfortunately however with the very considerable assistance of Mr Harrison, for which I am most grateful, and by the pure coincidence that Mr Timpson happened to be in court earlier that day the matter was able to proceed and I hope the administrative error can now be corrected and the parties properly served with notice of this decision.

Notice of Decision

The decision of the First-tier Tribunal discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal is maintained.

Anonymity

The First-tier Tribunal made an anonymity order. No application is made to vary that order and it is maintained.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris