



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

Appeal Number: OA/20797/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 18<sup>th</sup> December 2014**

**Determination  
Promulgated**

**On 28<sup>th</sup> April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**MR BANGA COLLINE KARAMIRA  
(ANONYMITY NOT RETAINED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Klear of Counsel

For the Respondent: Miss Holmes

**DETERMINATION AND REASONS**

**Introduction**

1. The Appellant born on 27<sup>th</sup> March 1999 is a citizen of Uganda. The Appellant was represented by Mr Klear of Counsel. The Respondent was represented by Miss Holmes, a Home Office Presenting Officer.

### **Substantive Issues under Appeal**

2. The Appellant had applied for settlement as the dependent child of a British citizen present and settled in the United Kingdom on 12<sup>th</sup> September 2013. The Respondent had refused that application on 14<sup>th</sup> October 2013. The Appellant had appealed that decision and the appeal was heard by First-tier Tribunal Judge Malone sitting at Taylor House on 19<sup>th</sup> September 2014. The judge had allowed the appeal under the Immigration Rules.
3. The Respondent had made application for permission to appeal dated 6<sup>th</sup> October 2014. Permission to appeal was granted by First-tier Tribunal Judge Cox on 13<sup>th</sup> November 2014. Permission was granted on the basis that it was arguable that the judge had materially misdirected himself in law and failed to give adequate reasons in respect of material matters. Directions were issued for the Upper Tribunal to decide firstly whether or not an error of law had been made and the matter came before me in accordance with those directions.

### **Submissions on Behalf of the Respondent**

4. Miss Holmes presented submissions in line with the Grounds of Appeal submitted by the Respondent namely that the judge had firstly erred in law in respect of his understanding at paragraph 320(7A). It was further said that the judge had failed to give adequate reasons for findings on material matters relating to the issue of sole responsibility.

### **Submissions on Behalf of the Appellant**

5. It was submitted that the Appellant had been unrepresented at the hearing but the judge had found the Sponsor to be credible and honest. There were little further submissions on the question of paragraph 320(7A) but it was submitted that in terms of sole responsibility the judge had dealt properly with that matter.
6. At the conclusion of the hearing I reserved my decision to consider the evidence and submissions presented. I now provide that decision with my reasons.

### **Decision and Reasons**

7. There were two matters for the judge to decide in this case. Firstly did the Appellant's application fall for mandatory refusal under paragraph 320(7A) of the Immigration Rules, and secondly in any event did the Appellant succeed under paragraph 297 of the Immigration Rules where the issue was the question of sole responsibility.
8. In respect of the first matter a first birth certificate of the Appellant had been presented to the Entry Clearance Officer. The Entry Clearance Officer having obtained a document verification report concluded that that birth certificate was false. It was on the basis of that first false birth

certificate the Respondent refused the application under paragraph 320(7A). At a later stage a second birth certificate was presented to the Entry Clearance Manager on review. A further document verification report was obtained which disclosed that document was genuine. However the Appellant's alleged father's name was recorded on the birth certificate inconsistent with the Sponsor's evidence she did not know the name or identification of the Appellant's father. That had led the Entry Clearance Manager to question the veracity of the Sponsor's account of the conception of the Appellant but he did not find that second birth certificate to be a false document.

9. The judge somewhat erroneously at paragraph 23 appears to have believed that the Respondent relied upon both birth certificates as founding the refusal under paragraph 320(7A). That was clearly not the case.
10. The judge accepted the first birth certificate was indeed false. He accepted the document verification report but went substantially further at paragraphs 13 to 16 by setting out the reasons why that certificate was patently a false document. Indeed at paragraph 16 he said "The Entry Clearance Officer did not need to go to the trouble of getting a document verification report to confirm the document's falsity. Its falsity was plain to see".
11. Thereafter the judge had referred himself to paragraph 76 of **AA (Nigeria) [2010] EWCA Civ 777** in respect of paragraph 320(7A). That was potentially an unfortunate reference as paragraph 76 of **AA** was concerned with "false representations" rather than false documentation and was in itself a reference back to paragraph 68. In the context of this case the more pertinent paragraph within **AA** was paragraph 67 which stated:

"First, false representation is aligned in the Rule with false documents. It is plain that a false document is one that tells a lie about itself. Of course it is possible for a person to make use of a false document (for instance a counterfeit currency note but that example used for its clarity is rather distant from the context of this discussion) in total ignorance of its falsity and imperfect honesty. But the document itself is dishonest. It is highly likely therefore that where an applicant uses in all innocence a false document for the purpose of obtaining entry clearance or leave to enter or to remain it is because some other party, it might be a parent or Sponsor or agent has dishonestly promoted the use of that document. The response of a requirement of mandatory refusal is entirely understandable in such a situation. The mere fact that a dishonest document has been used for such an important application is understandably a sufficient reason for a mandatory refusal. That is why the Rule expressly emphasises that it applies whether or not to the applicant's knowledge."

12. The judge in his examination of that birth certificate at paragraphs 20 to 21 made a number of errors. Firstly he noted at paragraph 20 that there was no evidence to show how the false birth certificate came to be before

the Entry Clearance Officer. However later in the same paragraph he noted the Sponsor had told him that she had had to pay to get the document, which at least provided some evidence as to the generation of that document in the first instance. Secondly the judge concluded that there was no evidence the false document had been created by someone operating at arm's length from the Appellant, his relatives or agent. That is somewhat inconsistent with the admission from the Sponsor outlined above. Further the judge does not say how he arrived at that conclusion or in the absence of all of the above, who was left to have submitted the document or had any motive in so doing. Thirdly the judge noted that the Appellant or his agents had to be shown by the Respondent to have been dishonest. That is not the test contained within paragraph 320(7A) nor within the terms of paragraph 67 of **AA** referred to above.

13. Having concluded the first birth certificate was patently a false document and that it had been submitted by or on behalf of the Appellant as part of the documents for his application for settlement and concluding as indeed it must be concluded that the document itself was dishonest it was not a material consideration whether the Appellant had acted dishonestly himself or knew the document was dishonest. It was therefore an error for the judge to have concluded there was no merit in the Entry Clearance Officer's refusal under paragraph 320(7A). He was bound to have upheld the mandatory refusal under paragraph 320(7A) in respect of that first birth certificate.
14. In respect of his consideration of sole responsibility the second birth certificate more properly needed to be considered as part of the evidence as a whole in relation to the question of sole responsibility. The judge had considered this matter between paragraphs 24 and 39 of the decision. The judge was entitled to find the Sponsor to be a credible witness having had the advantage of seeing and hearing her oral evidence. However it was incumbent upon the judge to provide reasons why he reached the conclusion that the Sponsor had had sole responsibility of the Appellant within the terms of sole responsibility discussed in the case of **TD Yemen [2006] UKAIT 00049**. The judge referred to certain features within the evidence concerning the Appellant's upbringing.
15. Firstly although erroneously referred to within the context of paragraph 320(7A) the second birth certificate potentially showed the Appellant's maternal grandfather as being named on the birth certificate possibly because of the finding made by the judge at paragraph 22 that the maternal grandfather had always been in the background to protect his grandson. The judge had also noted that when the Appellant was born the Sponsor was essentially a child herself and wholly unable to care for him and he was therefore looked after by her elder sister. He had further noted that money transfer receipts from the Sponsor to the Appellant were restricted to two months in 2011 and 2012. It was also noted the Appellant had always lived with his aunt Juliette. In terms of schooling the Appellant had chosen the latest school himself which had been confirmed by Juliette and that it was Juliette who visited the Appellant at school

during the visits that were allowed. It was further noted that Juliette provided the day-to-day care of the Appellant and although the judge referred to the Sponsor stating that she had always been responsible for the big decisions in the Appellant's life there were no examples provided. Indeed the only example of a big decision was the choice of school which was noted to have been a decision taken by the Appellant himself. Whilst there were certainly features that demonstrated the Sponsor having a contact and a care of the Appellant there were inadequate reasons provided when set against the evidential background of how that translated into the Sponsor having had sole responsibility for the Appellant. It was further significant that although there was limited evidence of financial support in the period referred to above there had been no evidence of financial support throughout the year 2013 given the application itself had been made in September 2013. There were in this case inadequate reasons given by the judge for finding that the Sponsor had exercised sole responsibility particularly when set against the evidential background.

### **Notice of Decision**

I find for the reasons given that the judge made a material error of law in this case such that the decision of the First-tier Tribunal needs to be set aside and a fresh decision made.

No anonymity direction is made.

Signed

Date **30<sup>th</sup> December 2014**

Deputy Upper Tribunal Judge Lever