



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

Appeal Numbers: OA/21190/2013
OA/21191/2013

THE IMMIGRATION ACTS

Heard at Field House

On 20 January 2015

**Decision & Reasons
Promulgated**

On 29 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**OLAGOKE BALOFIN
OLANREWAJU OLABOYE BALOFIN
(ANONYMITY ORDERS NOT MADE)**

Appellants

and

**ENTRY CLEARANCE OFFICER,
SHEFFIELD**

Respondent

Representation:

For the Appellants: Ms R Baruah of Counsel instructed by Cahill De Fonseka Solicitors

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. These are linked appeals against the decision of First-tier Tribunal Judge Raymond promulgated on 21 August 2014 dismissing the appeals of the Appellants against decisions made by the Respondent on 4 November 2013 to refuse entry clearance as the children of Ms Omalara Balofin.

2. The Appellants are brothers and citizens of Nigeria. Their personal details are a matter of record on file and accordingly I do not set them out here.
3. The Appellants made applications for entry clearance as the children of Ms Balofin ('the sponsor'), which were refused on 4 November 2013 with reference to paragraphs 297(i)(e) and (f) of the Immigration Rules. They appealed to the IAC and their appeals were dismissed for the reasons given in the determination of the First-tier Tribunal Judge. Thereafter they made applications for permission to appeal to the Upper Tribunal which were granted by First-tier Tribunal Judge Levin on 27 October 2014.
4. The bases of the challenge that is brought against the decision of Judge Raymond broadly come under the umbrella that the Judge erred in law in that he drew negative inferences as to the sponsor's credibility based on matters not put to the sponsor or the Appellants' representative in order for them to address such matters.
5. In particular, four issues are raised under this broad umbrella. In no particular order of priority these are:
 - (i) The Judge had been in error to infer that the sponsor had been married to the father of the Appellants by reason of a common surname alone, without having raised such an issue with the sponsor in evidence for her comment.
 - (ii) The Judge was wrong to attach adverse weight to an apparent discrepancy between the sponsor's description of the Appellant's father's nationality - which at one point was said to be American and elsewhere said to be Nigerian.
 - (iii) The Judge had wrongly relied upon concerns over letters written by the Appellants that had been submitted as supporting evidence.
 - (iv) The Judge had raised issues in respect of evidence relating to remittances said to be from the sponsor in circumstances where the Respondent had not raised any such issue, and the matters had not been put at the hearing.
6. In respect of the third of these matters, it is now acknowledged on behalf of the Appellants that such an issue was raised in the review of an Entry Clearance Manager dated 29 April 2014 and accordingly reliance is no longer placed on this aspect of the challenge.
7. The matter came before the Upper Tribunal on 3 December 2014. There was an issue between the parties as to the evidential basis of the grounds of challenge. Consequently an 'Order and Directions' was issued by Deputy Upper Tribunal Judge Plimmer. The 'Order and Directions' fully sets out this dispute between the parties at that time and is a matter of record: accordingly I do not repeat its contents here. Suffice to say that Directions were issued requiring the Appellants' representatives to file and serve a

witness statement from Counsel who had appeared before the First-tier Tribunal.

8. A Direction requiring a witness statement from the Respondent's Presenting Officer who had appeared before the First-tier Tribunal was also made.
9. A witness statement has now been filed from Ms Kerry Ann Currie who represented the Appellants before Judge Raymond. The witness statement is dated 23 December 2014 and essentially supports the factual premises of the grounds - which were drafted by Ms Currie - in support of the application for permission to appeal, save that within the witness statement Ms Currie acknowledges her error in respect of the third ground identified above.
10. The Respondent has not filed a witness statement from the Presenting Officer, although there is on file the Presenting Officer's 'preparation form' from the First-tier hearing. Ms Holmes, however, has taken instructions on the matter and has had communication with the Presenting Officer who, in turn, has had sight of Ms Currie's witness statement. I am told today that the Presenting Officer does not seek to challenge anything in that witness statement, and in the circumstances Ms Holmes accepts it at face value on behalf of the Respondent.
11. Given those circumstances Ms Holmes acknowledges that she is presented with difficulty in resisting the appeal of the Appellants to the Upper Tribunal. To that end Miss Holmes concedes that there is substance in the grounds of challenge and that the Tribunal should find an error of law.
12. I accept that concession.
13. I observe that it will not be in every circumstance that a First-tier Tribunal Judge will be required to raise each and every adverse point eventually relied upon. However on the particular facts of these linked cases it seems to me that there are areas of sufficient concern to warrant setting aside the decision of the First-tier Tribunal for error of law by reason of procedural unfairness.
14. In my judgement the First-tier Tribunal Judge's observations in respect of the remittances are unclear. It was not apparent to either of the representatives and it is not apparent to me exactly on what basis the Judge considered the evidence in relation to the sponsor's various addresses to undermine the credibility or veracity of the documents that had been advanced on behalf of the Appellants and submitted with their application. Moreover, the Judge's conclusions in respect of these remittances - based on matters which were not put to the Appellants or their representative during the course of the hearing - ultimately run contrary to the Respondent's apparent acceptance of the remittances as valid evidence of financial support from the sponsor for the Appellants.

15. Further, I also consider there is particular merit in the ground in respect of the Judge's approach to the question of whether the sponsor and the Appellants' father had been married. Whilst it is the case that the role of the Appellants' father in their lives was a matter of contention, this particular aspect was not something that was raised or obviously stood out as requiring to be addressed by the Appellants.
16. In all the circumstances and bearing in mind the sensible and realistic approach taken by the Respondent this morning, I conclude that there was a material error of law in the decision of the First-tier Tribunal requiring that it be set aside.
17. It is common ground between the parties that in such circumstances the decisions require to be remade afresh with all issues at large, and that the most appropriate forum for this is the First-tier Tribunal.
18. Accordingly the decisions in the appeals will be remade before the First-tier Tribunal in front of any judge other than First-tier Tribunal Judge Raymond. I do not propose to give any particular Directions: standard Directions apply. However the Appellants and the sponsor will now be acutely aware if they were not hitherto that it would be helpful - if possible - to have some input into the proceedings from the Appellants' father by way of evidence.

Notice of Decision

19. The decisions of the First-tier Tribunal contained material errors of law and are set aside.
20. The decisions in the appeal are to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Raymond.

The above represents a corrected transcript of an ex tempore decision given at the hearing on 15 January 2015.

Signed

Date: 28 January 2015

Deputy Upper Tribunal Judge I A Lewis