



IAC-AH-CJ-V1

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

Appeal Number: OA/02237/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 April 2016**

**Decision & Reasons Promulgated  
On 11 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

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

Appellant

**and**

**[F A]**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

Respondent

**Representation:**

For the Appellant: Ms Fijiwala (Home Office Presenting Officer)

For the Respondent: Mr Akomolede, Nathan Aaron Solicitors

**DECISION AND REASONS**

1. The Claimant whose date of birth is [ ] 2013 is a citizen of Nigeria. This is an appeal by the Secretary of State (who I shall refer to as “the respondent” and to the appellant as “the Claimant”) against a decision and reasons of the First-tier Tribunal (Judge D Ross) (“FTT”) promulgated on 28 September 2015 in which the FTT allowed the appeal on immigration and human rights grounds. The FTT determined that the Claimant met the provisions under paragraph 297 of the Immigration Rules and under Article 8 ECHR.

## **FTT Decision and Reasons**

2. The FTT considered a DNA report that concluded that “the most likely relationship” between the sponsor and Claimant was that they were related either as aunt or grandmother. The FTT found that the DNA evidence showed that they were “probably” related in that capacity although the evidence was not decisive [16]. The decision and reasons contained an error in that it recorded the conclusion as being the most “unlikely” relationship [12]. It noted that the DNA evidence was weak. There was in addition evidence of financial support sent by the sponsor to a neighbour taking care of the claimant and oral evidence from the Claimant’s aunt [11]. The Claimant’s birth certificate showed her mother as [BA] and the birth certificate of [BA] showed the sponsor was her mother. It was accepted that the Claimant’s mother had died (evidence by a death certificate) and that her father was playing no role in the child’s upbringing [17]. The FTT concluded that the sponsor was related to the Claimant’s grandmother [16]. There was additional evidence of visit stamps to Nigeria in the sponsor’s passport [17] on which the FTT placed weight.

## **Application for Permission to Appeal**

3. The Respondent contended that the FTT misapplied the standard of proof required, the balance of probabilities, in its assessment of the DNA report and in finding that the sponsor was “probably” the grandmother. It was contended that the DNA evidence was contradictory and provided only weak evidence of the claimed relationship.
4. The FTT failed to make any findings as to the relationship between the Claimant and sponsor notwithstanding there was evidence from the sponsor and a witness.
5. The FTT failed to resolve a conflict in the evidence as to the date the sponsor first came to the UK. She stated she had entered in 1974 but yet the birth certificate showed that her daughter (the Claimant’s mother) had been born in January 1978 in Nigeria.
6. The FTT failed to make any finding regarding the lack of photographs despite the numerous visits to Nigeria made by the sponsor.

## **Permission to Appeal**

7. Permission to appeal was granted by First-tier Tribunal Judge J M Holmes on 18 March 2016. Permission was granted on the basis that;  

“The true nature of the relationship between the appellant and sponsor was in dispute and their bold assertions to the effect that they were related could carry little weight. It is arguable that the judge failed to accurately record the content of the DNA test and, failed to give consideration to the evidence that the sponsor could not have been the mother of the appellant’s mother because she was in

the UK at the date that this lady had been born in Nigeria. Arguably the judge left out of account material evidence and misread or misunderstood the true nature of the DNA test result. Arguably these matters went to the heart of the decision upon the key disputed issue of fact in the appeal.”

### **The Hearing**

8. I heard submissions from both representatives.
9. Ms Fijiwala relied on the grounds in support of the application. At the outset she acknowledged that the decision and reasons had misquoted the DNA report stating that the most “unlikely relationship” whereas the report in fact states the most “likely” relationship. It was submitted that overall the FTT failed to take into account the weak evidence as to the relationship, had not made findings of fact on the evidence given by witnesses and failed to resolve the conflict as to the date of entry of the sponsor to the UK which was relevant to whether or not the sponsor was the claimant’s grandmother.
10. Mr Akomolede produced the DNA report and confirmed that it stated the most likely relationship was grandmother, aunt or other distant relative. He submitted that the sponsor came to the UK in 1979 and returned to Nigeria in 1984. He submitted that there was an error in the dates which arose as a result of a mistake. There was adequate evidence to show the relationship established between the Claimant and her grandmother.

### **Discussion and Decision**

11. I am satisfied that the FTT applied the correct burden and standard of proof in assessing all of the evidence of the relationship between the Claimant and the sponsor [14]. The DNA report confirmed that the relationship was 2.0 times more likely that they were related as grandchild/grandmother than not. It stated that the DNA evidence was weak, but it noted that grandparent analysis was not as conclusive as testing both parents. The FTT found that the relationship was probably grandchild and grandmother and further found that they were related. In addition to the DNA report was a document signed by the father of the Claimant appointing the sponsor to be her legal guardian, and certificates in the form of birth certificates and death certificates, the authenticity of which has not been challenged. The FTT accepted the oral evidence of the sponsor that she had travelled to Nigeria for her daughter’s funeral and she had sent money to pay for the Claimant’s care since she was born. The FTT accepted the sponsor’s evidence which was supported by documentary evidence including passport stamps showing visits to Nigeria in 2013 for one month, ten weeks in 2014, a further three months from March to June 2014, one month between November 2014 and December 2014 and one month between August and September 2015. There was also evidence of money transfers to the neighbour looking after the child in the period from August 2014. The evidence before the FTT went beyond

mere bald assertions of a familial relationship, and it is clear that the FTT considered all of the evidence in the round to the correct standard of proof.

12. Whilst accepting that the FTT did not specifically resolve the conflict in evidence as to the dates of entry to the UK by the sponsor, I am satisfied that the sponsor provided an explanation that she was uncertain about the precise dates. The FTT relied on her evidence as broadly credible save for inconsistencies as to the whereabouts of the father [17]. In any event this failure does not in my view render the decision unsound. It is not material to the decision and reasons given the weight of the evidence found by the First-tier Tribunal to be credible and found to establish that the requirements of the Rules were met. Further there is no suggestion that the failure to make findings on the evidence of [MA] is in any way material to the outcome. That evidence is recorded in the decision and reasons and it confirms the Sponsor's account. The ground that the FTT erred by failing to place weight on the absence of photographs was not pursued and in any event this does not amount to an error of law.

### **Notice of Decision**

13. I find no material error of law in the First-tier Tribunal decision. The decision shall stand.

14. The appeal is dismissed.

No anonymity direction is made.

Signed

Date 5<sup>th</sup> May 2016

GA Black  
Deputy Upper Tribunal Judge G A Black

### **TO THE RESPONDENT** **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award as a hearing was needed in order to resolve issues.

Signed

Date 5<sup>th</sup> May 2016

GA Black  
Deputy Upper Tribunal Judge G A Black