



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

Appeal Number: OA/04135/2015

THE IMMIGRATION ACTS

Heard at Field House

On 13th July 2016

**Decision & Reasons
Promulgated
On 28th July 2016**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between:

THE ENTRY CLEARANCE OFFICER

and

[S S]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

Respondent

Representation:

For the Appellant: Miss Z Ahmad, Home Office Presenting Officer

For the Respondent: Mr O Ly, Harding Mitchell Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State on behalf of the Entry Clearance Officer, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Ghana born on [] 2008. His appeal, against the refusal of entry clearance for settlement as a family member of his mother [the Sponsor], was allowed by First-tier Tribunal Judge Fox in a decision promulgated on 22nd January 2016.
2. The Respondent appealed on the grounds that the judge's decision under the Immigration Rules was not entirely clear. The judge agreed with the

Entry Clearance Officer that the Sponsor did not have sole responsibility for the Appellant and further concluded that the Appellant lived in satisfactory accommodation where he was supervised at all times. Further, the Appellant's father, with whom he lived, was a responsible guardian. Accordingly, it was unclear how, in light of those findings of fact, the judge could have concluded that it was in the child's best interests, which were limited given that he was outside the jurisdiction, to be uprooted from his daily life in Ghana to arrive in an unfamiliar country and be detached from his familiar surroundings. There was no proper or adequate analysis of Article 8.

3. Permission to appeal was granted by First-tier Tribunal Judge Page on the basis that it was not clear from the decision how the judge arrived at the conclusion that the appeal should be allowed on all grounds or why the judge considered that the Respondent was in error in refusing entry clearance.

Submissions

4. Ms Ahmad referred to the judge's conclusion, at paragraph 24: "There is no suggestion that the Appellant lives in anything other than adequate accommodation and that he is effectively supervised at all times. The available evidence also demonstrates that the father makes adequate provision for care arrangements when he travels away from home and that on one occasion the Appellant accompanied the father when the Appellant refused to cooperate with the care provision made for him. This leads to the reasonable conclusion that the father is a responsible guardian and does not leave the Appellant unattended."
5. Ms Ahmad submitted that given this finding, the judge's decision, with reference to Rule 297(i)(f) and the case of Mundeba (s. 55 para 297(i)(f)) [2013] UKUT 00088 (IAC), was not sustainable. She relied, in particular, on paragraph 37 of Mundeba which states:

"Family considerations require an evaluation of the child's welfare including emotional needs. 'Other considerations' come into play where there are other aspects of the child's life that are serious and compelling - for example where an applicant is living in an unacceptable social and economic environment the focus needs to be on the circumstances of the child in light of his or her age social background and developmental history and will involve inquiry as to whether:-

- (i) there is evidence of neglect or abuse;
- (ii) there are unmet needs that should be catered for;
- (iii) there are stable arrangements for the child's physical care.

The assessment involves consideration as to whether the combination of circumstances is sufficiently serious and compelling to require admission."

6. Ms Ahmad submitted that given the judge's findings at paragraph 24 it could not be said that the test set out at paragraph 37 of Mundeba was met or that there were compelling circumstances which meant that the Appellant's exclusion was undesirable under the Immigration Rules. The judge's decision was unclear. He had taken into account irrelevant considerations such as the Sponsor's reasons for not registering the Appellant as a British citizen by descent and for choosing to give birth to him in Ghana. Ms Ahmad submitted that the judge's conclusions were unclear and could not amount to compelling compassionate circumstances rendering the Appellant's exclusion undesirable. The Appellant's father was a responsible guardian who did not leave him unattended. There was adequate accommodation and the Appellant was effectively supervised at all times.
7. Mr Ly relied on his skeleton argument and submitted that the judge's decision was not inconsistent or unclear. The judge concluded that the Sponsor did not have sole responsibility for the Appellant and therefore could not succeed under paragraph 297(e). He then went on to consider whether there were compelling circumstances and considered the best interests of the child. There was ample evidence from the Sponsor and from the Appellant's father to show that the Appellant's father was no longer able to look after the Appellant because of work commitments, and that the Appellant was spending a lot of time with other relatives. This was disrupting his education.
8. The judge placed particular weight, at paragraph 30, on a letter from the Appellant's school, dated 19th January 2016, which stated that, in the latter part of the summer term 2014/2015, the Appellant's performance started declining due to attitudinal change. A close check on him revealed that he almost always looked tired and sleepy and he sometimes became uninterested in the class. The teacher was asked to do a further check on him and report any necessary action. The investigation conducted by the class teacher revealed that the Appellant's father was hardly ever around and the Appellant was now having to move from one place to another. The Appellant was lacking in parental care and proper supervision since his mother lived in the UK. The Sponsor had been notified of the current developments and it was suggested to her that the Appellant should be enrolled in the after school intervention so that he could do an extra hour of tuition after close of school. This could help to some extent, but then if he went back home with homework there would be no one to supervise his work and he would bring the work back to the school without it being done. The Appellant was losing self confidence and his academic work was deteriorating too. The school was of the opinion that the Appellant needed one biological parent close to support him to help him regain his self confidence.
9. Mr Ly submitted that it was clear from the judge's decision that he found the Sponsor to be a credible witness who had not exaggerated the

situation and that on the evidence which was before him the Appellant's father was in a situation where he was unable to carry out his role effectively. He had to go away on business on numerous occasions and the Appellant had to go with him on one occasion.

10. There was evidence before the judge to sustain the conclusion that there were compelling circumstances which would render the Appellant's exclusion from the UK undesirable and that the principles enunciated in Mundeba were in fact satisfied. The Appellant was also separated from his brother who was a British citizen living in the UK. The judge took into account the emotional effect that would have on the Appellant, given the father's inability to provide sufficient care for him in Ghana.

Discussion and Conclusions

11. The judge allowed the appeal on all grounds. I accept that the judge may well have expressed himself slightly better. However, he has made a clear finding that the Sponsor did not have sole responsibility and then went on to consider the best interests of the child with reference to Mundeba and Rule 297(i)(f). The judge does not specifically set out the Immigration Rule, but he does consider whether there were serious and compelling family or other considerations which make the Appellant's exclusion undesirable. There was no issue that suitable arrangements had been made for his care.
12. The judge found that, notwithstanding the fact that the Appellant's father is a responsible guardian and does not leave the Appellant unattended, the actual facts of the case are that the Appellant is forced to live in various different places with various different relatives while the Appellant's father is away on business. On one occasion the Appellant refused to comply with the arrangements that had been made and he travelled with his father away from home. This could not be said to be a proper environment in which to bring up the Appellant and that, whilst his father did not wilfully neglect the Appellant, there was in fact some unwitting neglect caused by the demands on his father being called away to work.
13. Looking at the evidence which was before the judge, that evidence was sufficient to support a finding that there were serious and compelling family or considerations making the Appellant's exclusion from the UK undesirable. The judge could have expressed his findings more clearly. He found the Sponsor to be a credible witness and took into account the evidence submitted. He attached appropriate weight to the letter from the Appellant's school, which stated that the situation was quite clearly not one which showed that the Appellant's needs were being catered for or that there were stable arrangements for his physical care.

14. The judge had Mundebe in mind when looking at this evidence and I am not persuaded by Ms Ahmad's submission that the judge failed to apply what is set out at paragraph 37. Whilst there is no evidence of abuse or severe neglect, on the evidence before the judge, the Appellant's emotional needs were not being met and there were no stable arrangements for his physical care because he was being looked after by several other relatives and this was having an adverse effect on his school work.
15. Accordingly the judge's findings set out at paragraphs 25 to 39, which deal with paragraph 297(i)(f) and Article 8 at the same time, address all the relevant issues to be considered. On the evidence before the judge, his findings were open to him and his reasons have been adequately expressed in those paragraphs, although I accept that the judge could have made more reference to the Immigration Rules and set out what the serious and compelling family or other considerations actually were.
16. However, I am of the view, on reading the statements and the letter from the school, in particular, that serious and compelling family or other considerations did in fact exist and the judge rightly took into account all the evidence in concluding that the Immigration Rules were satisfied.
17. Accordingly, I find that there was no material error of law in the judge's conclusion to allow the appeal under the Immigration Rules with reference to Rule 297(i)(f) and under Article 8 taking into account Section 55 and the case of Mundebe. I dismiss the Respondent's appeal.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

J Frances

Signed

Date: 26th July 2016

Upper Tribunal Judge Frances