



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/00917/2015

THE IMMIGRATION ACTS

Heard at Glasgow  
on 3 August 2017

Decision & Reasons Promulgated  
On 15 August 2017

Before

Mr C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE MACLEMAN

Between

W B DJOUMBISSI

Appellant

and

ENTRY CLEARANCE OFFICER, Cameroon

Respondent

Representation:

For the Appellant: Mr C McGinley, of Gray & Co, Solicitors

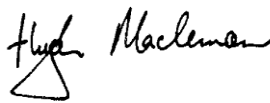
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Cameroon, born on 6 June 2011. He applied for clearance to enter the UK to join his father and his father's wife, his stepmother, under the refugee family reunion provisions of the immigration rules. His mother is said to be deceased.
2. The ECO refused that application by a decision dated 29 May 2015, based mainly on the paucity of evidence provided, and declining to accept that the appellant's paternity was as claimed.
3. In course of the appeal to the FtT, the sponsor obtained a DNA report, which disclosed that he is not the appellant's biological father.

4. The case advanced to the FtT was that family life existed among the appellant, the sponsor, and the sponsor's wife, and that although the terms of the rules could not be met, refusal to admit the appellant was unlawful under section 6 of the Human Rights Act 1998, being in breach of the UK's obligations under article 8 of the ECHR.
5. FtT Judge Clapham dismissed the appellant's appeal by a decision promulgated on 9 September 2016, concluding at ¶36 that the circumstances were not compelling in the absence of any formal legal relationship.
6. The appellant applied to the FtT for permission to appeal on the grounds that the Judge failed to assess the article 8 appeal "on the appropriate standard, or provide adequate reasons"; took too restrictive an approach, as biological paternity was "not determinative of the family relationship"; there was evidence by which it should have been found that the appellant was a member of the family of the sponsor and his wife; and the appeal should have been allowed.
7. Permission was refused, on the view that the grounds were only disagreement with the findings reached.
8. The appellant applied to the UT, on the same grounds, and adding a quotation from *RK [2016] UKUT 31*, "It is not necessary ... to have parental responsibility in law for there to exist a parental relationship. Whether a person who is not a biological parent is in a parental relationship with a child for purposes of s.117B(6) of the 2002 Act depends on the individual circumstances ... and whether ... he or she has stepped into the shoes of a parent". He contended that the Judge closed his mind to the possibility that a case might be made out even where there is no biological connection.
9. Permission was granted.
10. Mr McGinley submitted thus. This is not a case concerning s.117B(6), but the same principle applies. The sponsor and his wife gave evidence that they regarded the appellant as a family member even after the emergence of the DNA evidence. The Judge was entitled to observe that there was a possibility of the natural father of the appellant taking an interest at some point, but that was a matter about which nothing was known or could be found out. The background was that the child's mother died a week after the birth; the child was looked after for about a year by his maternal grandmother; she also died, and he was taken into the household of the sponsor and his wife; he lived with the sponsor for about a year until he left Cameroon, and with his wife for about another year after that; since she left Cameroon, he has been cared for by friends of the sponsor and his wife. He accepted that no-one, as far as is known, has any formal parental rights or responsibilities towards the appellant either in Cameroon or in the UK; that the attitude of the authorities in Cameroon to the departure from the country of an infant citizen under such circumstances is unknown, but the reverse situation would not be permitted by the UK; and that the authorities in the UK responsible for child care might have serious concerns over the reception of a child coming to join parties to whom he had no biological or legal relationship.

11. We note that the proposition that the sponsor's wife continued to accept the appellant was not entirely justified by reference to the evidence, as it emerged that the sponsor's wife did not mention the matter in her statement, and in oral examination did not understand what the DNA report meant.
12. We reserved our decision.
13. It would be an error to approach a case on the view that there can never be family life for article 8 purposes without biological relationship or formal legal ties such as adoption or fostering.
14. Whether family life within the scope of article 8 protection exists is a question of mixed fact and law, but primarily of fact.
15. This decision does not fall into the error alleged. It does not exclude the possibility of a finding of family life. It does treat the absence of adoption or any formal fostering arrangement or legal ties as material, but rightly so. The decision correctly observes at ¶31 that the information available to the tribunal is "not the full picture" - it was very far from it - and at ¶33 that "arrangements for the care and upbringing of the appellant must be for the authorities of the country of which he is a citizen."
16. It would take a very strong case, based on clear evidence, to require the UK, as recognition of a human right, to grant entry to a small child with no known relatives here and with no legal ties of responsibility to the unrelated parties who seek his entry. The Judge did not find this to be such a case. We see no error of law in that conclusion, based on the evidence before him. The grounds in substance are only disagreement with an assessment firmly rooted in the facts.
17. The decision of the First-tier Tribunal shall stand.
18. No anonymity direction has been requested or made.



3 August 2017  
Upper Tribunal Judge Macleman