Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/08329/2017
HU/14645/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25th September 2018	**On 25th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) [M Q]
(2) [E Q]
~~**(ANONYMITY DIRECTION NOT MADE)**~~

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellants: Miss [G Q] (Sponsor)
For the Respondent: Miss Alice Holmes (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge R. L. Walker, promulgated on 25th May 2018, following a hearing on 18th May 2018 at Hatton Cross. In the determination, the judge dismissed the appeal of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

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The Appellants

2. The Appellants are both citizens of Ghana. They are siblings. They are aged 11 and 16 years respectively. They appealed against the decision of the Respondent dated 3rd July 2017 and 18th October 2017 refusing their applications for entry clearance to the UK as minors under paragraph 297 of HC 395.

The Appellants' Claims

3. The essence of the Appellants' claims are that they wish to join their sponsoring aunt, [GQ], because she has had "sole responsibility" for them since 2014. The Appellants had different mothers but had the same father. They had been abandoned by their parents in 2003. They were looked after by their grandfather [QQ], until he died on 12th October 2014. The Sponsor, [GQ], is the daughter of [QQ], and she is the half-sister of [AQ], who is the father of both of the Appellants. After the death of the grandfather, the Sponsor made arrangements for them to be looked after by a family friend who stayed with them from 2014 to 2016. Unfortunately he could no longer continue to do so. They then moved in to live with their great-uncle, [NQ]. This was a temporary measure because of his age and lack of accommodation. The Sponsor, however, has been remitting funds to the Appellant since 2016 and has been fully responsible for them since that date. She has dealt with their respective schools and has arranged payment of their school fees. It is also said that the Sponsor obtained custody of both Appellants in October 2016 and in 2017 took proceedings in order to formally adopt them as children. She says that she has developed a strong and genuine parental relationship with her nieces and believes their best interests are for them to live in the UK. It is a feature of this case, however, that the Sponsor herself is in receipt of public funds, whereby she receives around £185 per week on state benefits, which she uses both for herself and to provide remittances to the Appellants, her nieces.

The Judge's Findings

4. The judge found that the Sponsor's claim that she has been exercising sole responsibility, was not proven. This is because:

> "She has accepted that she has only been remitting funds to them since the death of her father in 2014. The evidence is limited to remittances only since 2016. There is also the point that the Sponsor must have struggled to remit funds especially as she is in long-term receipt of public funds in the UK. This must limit her ability to remit funds" (see paragraph 19).

The judge went on to say that the Appellant had given evidence before him that until the death of her father, the responsibility financially for the children lay upon him.

5. The judge went on to consider the question as to whether the Sponsor had sole custody for the Appellants given the order for sole custody dated 1st September 2016. He observed that there was an application, an affidavit in support with annexures, and a social enquiry report. However, the judge concluded that:

> "None of these documents have been provided. There has also been produced two affidavits from [NQ] dated 26 October 2017 and 2 November 2017 agreeing to the adoption of the Appellants by the Sponsor. These affidavits are post decision documents" (paragraph 21).

6. The judge went on to say that the various documents were insufficient to show that there have been any formal custody, adoption or transfer of parental responsibilities to the Sponsor. He went on to conclude that, "as the relationship is a de facto one at best then there is no evidence, or indeed claim, that the Appellants have lived with the Sponsor for the required period" (paragraph 22).

7. The judge went on to consider that the Sponsor had provided numerous documents relating to the benefit she was receiving:

> "But there has been nothing to show that the Sponsor's actual income can meet the income support equivalent. If she is intending to support both Appellants then she is going to need more than £199.20p and which is referred in the refusal for [M]. The Sponsor has confirmed she is unable to work so this would force her to rely upon public funds for whatever she and the Appellants would need" (paragraph 23).

8. The judge held that there was no evidence to confirm the suitability of accommodation for both Appellants (paragraph 24). Finally, he held that the Sponsor had only made three visits to Ghana since she came to settle in the UK in 1991. She had seen the Appellants on three occasions. He concluded that "these highlight her limited involvement with the lives of the Appellants" (paragraph 25). Section 55 of the BCIA 2009 did not demonstrate that the Appellants' best interests lay with living with the Sponsor in the UK.

9. The appeals were dismissed.

Grounds of Application

10. The grounds of application state that the judge conducted the appeal in a manner that was procedurally unfair. There was no Presenting Officer. The Sponsor was the only person who attended the hearing on 18th May 2018. The judge had, at the outset of his consideration of the appeal, stated that, "I have carefully considered and taken into account all the documentation filed on behalf of both the Appellants and the Respondent. I have also considered the oral submissions of Mr Coleman" (paragraph 16).

11. The grounds of challenge state that there appears to have been:

> "action by Mr Coleman for submitting an oral statement to the judge in the absence of the Appellants' representative after the court hearing, for which they had failed to turn up and the judge also accepting to consider those incorrect information provided by Mr Coleman against the Appellants …"

12. The grounds also state that Judge Walker applied the incorrect test when rejecting the evidence about the Sponsor's remittances on the basis of the Sponsor's income, and that it appeared that Mr Coleman's "incorrect information" was also relied upon behind the back of the Sponsor who had attended the hearing. The grounds further state that the judge was wrong to have concluded that accommodation was not available for the Appellants because there had been evidence provided just shortly before the hearing that there was a two-bedroom flat which was occupied by the Sponsor alone, which would be available for the two Appellants.

13. Permission to appeal was granted on 24th July 2018 on the basis that the judge was wrong in concluding that adequate accommodation was not available for the two Appellants because such evidence had been produced shortly before the hearing. However, what gave particular concern to the Tribunal granting permission was the reference to a "Mr Coleman". Although it could be that this was a typographical error, this could not be assumed. If such a person was in attendance, clarification should have been provided by the judge, and until such time as any concerns could be dispelled, there was an arguable error of law here.

Submissions

14. At the hearing before me on 25th September 2018, Miss [GQ], appearing as the sponsoring aunt of the Appellants, at the outset submitted that there was no-one in attendance at the hearing by the name of "Mr Coleman". The Home Office did not field a Presenting Officer. She herself was in attendance only as a layperson. The judge was correct in stating that "the hearing was dealt with by way of an informal discussion" (paragraph 15). For her part, Miss Holmes, appearing on behalf of the Respondent, at this stage stated that this could only have been a cut and paste job, whereby a reference to a Mr Coleman from a previous determination had found its way into this determination. Certainly, it was not the case that the Tribunal had received evidence behind the back of the Sponsor, after the hearing had come to an end, as this was not the practice of the Respondent authority in this jurisdiction.

15. I have to say that I am satisfied completely that the reference to Mr Coleman is in error. The name has crept into the determination quite by accident. It is, in any event, something that sits unhappily with the judge's observation in the preceding paragraph that, "the hearing was dealt with by way of an informal discussion" given that there was no Presenting Officer and that the judge himself had asked "the Sponsor numerous questions" (paragraph 15). There is, accordingly, nothing in this point.

16. Miss [GQ] went on to rely upon the grounds of application. She submitted that the judge was wrong to have concluded that the order for sole custody could not be taken at face value on the basis that "none of these documents have been provided" (paragraph 21), when reference was made to an application, an affidavit in support with annexures, and a social enquiry report. She stated that all these documents were indeed provided. However, she agreed that the two affidavits from [NQ] of 26th October 2017 and of 2nd November 2017, which read to the adoption of the

Appellants by the Sponsor, were indeed postdecision documents. Miss [GQ] went on to say that she could point to evidence that she had made financial remittances for the Appellants. She also had accommodation available now. The appeal ought to have been allowed.

17. For her part, Miss Holmes submitted that the judge had given detailed reasons from paragraphs 19 to 25, for refusing the appeal. Nothing that the Sponsor today stated could gainsay that. The only issue really was whether there was a Mr Coleman in attendance at the hearing, or had provided information after the hearing, but this was not the case, and once it is accepted that the reference was in error to Mr Coleman, the grounds of application did not merit consideration.

18. In reply, Miss [GQ] stated that as a lone parent she only needs to show £73.10 for the necessary income support equivalent. The Respondent, in making the decision to refuse the Appellants, had used £185 as the required threshold. However, her income was twice what was required for the purposes of this application. Their appeal should be allowed.

No Error of Law

19. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

20. First, it is plain that the reference to Mr Coleman is in error. The judge's statement that, "I have also considered the oral submissions of Mr Coleman" (paragraph 16) was by way of an accident. If the judge had done so, in a manner unbeknown to Miss [GQ], the judge would not have included such a reference at paragraph 16. It was plainly a mistake. As a mistake, it does not amount to a material error by any stretch of the imagination.

21. Second, there is the question of the availability of accommodation. Whilst I accept that this evidence was available prior to the hearing commencing before Judge Walker on 18th May 2018, the reason why the Appellant really fails in succeeding in this appeal is that the Sponsor was unable to demonstrate that she had been exercising sole responsibility for the Appellants (see paragraph 19). The judge found that, not only had the Sponsor been remitting funds only since the death of her father in 2014, but the evidence of remittances only exists from 2016, and the Sponsor "must have struggled to remit funds especially as she is in long-term receipt of public benefits in the UK".

22. Even if it is the case that documents such as an application, an affidavit in support with annexures, and a social enquiry report, were provided at the time of the hearing, and overlooked by the judge, the fact remains that the two affidavits from [NQ] of 2017, which agree to the adoption of the Appellants by the Sponsor, are affidavits which are postdecision documents.

23. Moreover, the judge was entitled, against the background of this case, to conclude that there had been no formal custody, adoption, or transfer of parental responsibilities to the Sponsor. This was a conclusion that was open to him given that he had earlier also found that, "in both of the birth certificates issued in 2015 the Appellants' respective mothers appear as informants" (paragraph 8(2)).

24. Furthermore, the judge correctly found that the Appellants have not lived with the Sponsor for the required period needed for adoption purposes (paragraph 22). More to the point, the Sponsor's actual income did not meet the income support equivalent, according to the judge (paragraph 23).

25. The Sponsor was intending to support both Appellants. The judge found that she was going to need more than £199.20, which is referred to in the refusal for [M]. She was unable to work and she had to rely on public funds in the long term (paragraph 23). The judge was also right to conclude that the Sponsor had only been able to show "limited involvement with the lives of the Appellants" (paragraph 25).

26. In these circumstances, the conclusions reached by the judge were entirely open to him, in a determination which is otherwise clear and well set out with respect to the issues at hand, which have to be determined.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

The appeal is dismissed.

Signed Date

Deputy Upper Tribunal Judge Juss 20th October 2018