Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number:
HU/12185/2015

HU/12189/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 January 2018	**On 30 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MS NB & MASTER WB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A. Malik, instructed by Whitehorse solicitors
For the Respondent: Ms. Z. Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are nationals of Uganda, born on 1.3.00 and 2.9.01 respectively. They appealed against a decision by the

Respondent dated 1.10.15 refusing to grant them entry clearance as the children of a person present and settled in the United Kingdom.

2. Their appeals came before First tier Tribunal Judge Howard for hearing on 7 February 2017. In a decision and reasons promulgated on 15 February 2017, the judge dismissed the appeal. The judge heard evidence from the Appellants' father and a further witness and concluded that:

> (i) he was less than satisfied on the balance of probabilities that the Appellants' mother is deceased due to anomalies *viz* the death certificate was issued more than 1 year after her death and states that she had a natural death without stating which illness caused death: [11]-[12] refer;
>
> (ii) he was not satisfied that the Appellants' father has sole responsibility for them in that he was unable to name their teachers and it became apparent that his brother in Uganda has been an influential figure in their education [13];
>
> (iii) there was no evidence that the Appellants' grandfather is suffering from dementia beyond the Sponsor's oral evidence and their grandmother's illness are not said to be at all debilitating [14];
>
> (iv) he was satisfied that the reason underlying the applications was that the first Appellant had behavioural problems as a girl in her mid-teens [14]-[15];
>
> (v) there is no evidence of serious and compelling family or other considerations which make exclusion of the Appellants undesirable [16];
>
> (vi) the decision of the Entry Clearance Officer was proportionate, given that family life was enjoyed at arms' length between 2001 and 2015 and the Sponsor's role in his children's life during this time was limited [22(2)].

3. An application for permission to appeal was made in time on the basis that the judge erred materially in law in that: (i) he failed to take account of material evidence relating to the Appellants' grandparents health and their mother's death certificate; (ii) there was procedural unfairness in that the judge failed to put his concerns regarding the death certificate to the Sponsor in order to give him the opportunity to comment; (iii) in making material errors of fact in that he failed to correctly record the Sponsor's evidence that, whilst he had forgotten the name of the first Appellant's current teacher as she had just started a new school, he knew the

previous teachers and headmasters of both children and could name them; (iv) the finding relating to the first Appellant did not correlate with the evidence before the judge and (v) the judge failed to properly apply section 55 of the BCIA 2009 in light of the decisions in JO [2014] UKUT 517 (IAC) and MK. Permission to appeal was granted in general terms.

4. The Respondent filed a rule 24 response on 2 November 2017 in which she opposed the appeal and asserted that the judge of the First tier Tribunal directed himself appropriately.

Hearing

5. I heard submissions from Mr Malik on behalf of the Appellants and Ms Ahmad on behalf of the Respondent. Mr Malik drew my attention to the Sponsor's statement at pages 7-9 of the Appellants' bundle where he addressed the issue of the Appellants' mother's death certificate at [28] that clinic where she died did not include the cause of death as there had been no diagnosis when she had been admitted and at [29] and [30] the Sponsor dealt with the common practice in Uganda i.e. that one cannot travel with a corpse without the name and address of the corpse or the police will step in and take the corpse thus it is necessary to identify whether the person died naturally or was killed. He submitted that the judge has failed to engage with this evidence. A copy of the death certificate is at pages 41-42 of the Appellants' bundle.

6. Mr Malik submitted that the judge failed to engage with paragraph 297(i)(f) of the Rules and his only finding is at [16] where he found "no evidence" of "serious and compelling family or other considerations which make exclusion undesirable. " Mr Malik drew my attention to the evidence regarding the grandparents' health at page 112 of the Appellants' bundle (letter from grandfather) and page 113, a letter from Dr Okullo. He submitted that the judge dealt with the issue of sole responsibility very briefly and failed to take into account the evidence in the round and there was enough evidence before him to show the Sponsor playing a central role in children's upbringing, pursuant to 297(i)(d). Mr Malik further submitted that the judge's finding at [14] is factually incorrect and there was no evidence before him to support it.

7. In her submissions, Ms Ahmad submitted in respect of the death certificate that the judge has provided reasons and it was open to him to make the findings he did. She submitted that the letter from the council was vague and did not provide reasons for her death or the illness that caused the death. The death certificate was issued over a year later so the concerns the judge refers to at [11] are justified. Judges are encouraged to be brief in their reasoning and

cannot reasonably be expected to refer to all the evidence. Whilst the finding the judge makes at [14] that he cannot be satisfied the mother is deceased could be better expressed, a simple lack of reference to the evidence is not sufficient to show a material error of law and the grounds do not identify evidence that could have lead to a different conclusion that the judge failed to consider. In respect of the proportionality assessment, she submitted that the judge made an assessment at [22] which was reasonably open to him.

8. There was no reply on the part of Mr Malik.

9. I reserved my decision, which I now give with my reasons.

Decision

10. I have concluded that the judge gave adequate reasons for rejecting the evidence relating to the death of the Appellants' mother. Even taking account of the evidence of the Sponsor as set out in his witness statement, it is apparent on the face of the death certificate that it was issued more than 12 months after death and it does not record the cause of death, other than natural causes. The letter of support from the local council does not shed any further light on the reasons for the death of the Appellant's mother. I accept Ms Ahmad's submissions on this issue.

11. However, I have concluded that the judge erred in his assessment and reasons as to whether the Sponsor has sole responsibility for the Appellants and whether there were serious and compelling family or other considerations which make exclusion of the Appellants undesirable. The judge's reasons are set out at [13]-[15] of his decision and comprise the following: the Sponsor was unable to name the Appellants' teachers and it became apparent that his brother in Uganda has been an influential figure in their education [13]; there was no evidence that the Appellants' grandfather is suffering from dementia beyond the Sponsor's oral evidence and their grandmother's illness are not said to be at all debilitating [14] and he was satisfied that the reason underlying the applications was that the first Appellant had behavioural problems as a girl in her mid-teens [14]-[15].

12. I find that the judge did fail to take material evidence and considerations into account when reaching the findings set out above. It is apparent from the Sponsor's statement and oral evidence and the medical and other evidence contained in the Appellants' bundle that, contrary to the judge's findings, the Sponsor was able to give details of both children's former teachers and headteachers just not the first Appellant's current teacher

because at that time she had just changed schools. I further find that there was material evidence in the Appellants' bundle concerning the health of the Appellants' grandparents, which impacted on their ability to continue to care for the Appellants and which was clearly relevant to the judge's assessment of paragraphs 297(i)(e) and (f) of the Rules.

13. I further find that there was an insufficient evidential basis to justify the finding that the reason underlying the making of the entry clearance applications in 2015 was due to behavioural problems on the part of the first Appellant.

14. Generally, whilst it is unnecessary for judges to give lengthy recitations of reasons for reaching findings of fact, I find in this particular case that the reasons provided by the judge were not sufficiently detailed to justify the conclusions reached in respect of paragraphs 297(i)(e) and (f) of the Rules. In light of my findings, it follows that the judge's findings in respect of Article 8 are also potentially infected by error of law.

Decision

15. I find material errors of law in the decision of the First tier Tribunal as to the assessment of paragraphs 297(i)(e) and (f) of the Rules and the assessment of Article 8. However, the judge's finding as to paragraph 297(i)(d) and the death of the Appellants' mother was sustainable on the basis of the evidence before him. That is not to say that there is any positive finding of fact that the Appellants' mother is still alive, but simply that on the balance of probabilities it has not been proved that she is dead. However, in light of section 85(4) of the NIAA 2002 as amended by the Immigration Act 2014, which has removed section 85A of the aforementioned Act, it is a matter for the Appellants as to whether they wish to adduce further or better evidence on this issue in accordance with any directions issued by the First tier Tribunal.

16. I remit the appeal for a hearing *de novo* before the First tier Tribunal, to be heard by any judge other than First tier Tribunal Judge Ian Howard.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman 29 January 2018