



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

Appeal Number: HU/13003/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 February 2018**

**Decision & Reasons Promulgated  
On 27 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**MRS C M O  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms P Yong, Counsel instructed by Davies, Blunden & Evans  
For the Respondent: Ms Z Ahmad, HOPO

**DECISION AND REASONS**

**Background**

1. The appellant is a citizen of Kenya, born on [ ] 1976 who appealed to the First-tier Tribunal against the decision of the respondent dated 9 December 2015 to refuse the appellant leave to remain in the UK on human rights grounds and to remove her. The First-tier Tribunal, in a decision promulgated on 21 April 2017 dismissed the appellant's appeal on human rights grounds.
2. The appellant appeals with permission on the following grounds:

- (1) Arguable material misdirection in law on a material matter in relation to whether or not the appellant had the benefit of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002, by showing a genuine and subsisting parental relationship with a British child.
- (2) Placing weight on immaterial matters in relation to the child's current contact with her mother, the lack of supporting evidence of abusive phone calls from the child's mother, and the lack of evidence from the child.

### **Error of Law discussion**

3. Ms Yong relied on the grounds of appeal and on page 36 of the appellant's bundle before the First-tier Tribunal which provided a copy of **R (on the application of RK) v Secretary of State for the Home Department (Section 117B(6); "parental relationship") 1JR [2016] UKUT 00031 (IAC)**.
4. **RK** provides, including as follows:
  - '44. If a non-biological parent ("third party") caring for a child claims such a relationship, its existence will depend upon all the circumstances including whether or not there are others (usually the biological parents) who have such a relationship with the child also. It is unlikely, in my judgment, that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the child's life as the child's life as the child's parents as in a case such as the present where the children and parents continue to live and function together as a family. It will be difficult, if not impossible, to say that a third party has 'stepped into the shoes' of a parent.
  45. It is not necessary to consider more fully the position of a step-parent or partner of the primary carer of a child when a family has split after separation or divorce of the parents. That is not this case. That situation may, depending upon the circumstances, present a persuasive factual matrix for there to be a 'third parent'. The respondent's guidance differentiates between situations where the non-residential biological parent plays no (or no meaningful) continuing role in the child's life and where he or she does. In the latter situation, it is said that the step-parent or new partner would be unlikely to have a 'parental relationship'. Whilst each case will be fact sensitive, I do not inevitably see the virtue of the argument (other than as a numerical imitation of parents to no more than two) which excludes a step-parent in this latter situation from being in a 'parental relationship' if that is the substance of the relationship even where the non-residential biological parent continues to play some role. The issue will be fact sensitive and is best worked out in a case where it properly arises for decision.'
5. Although Ms Yong relied on **RK** as supporting her position, **RK** expressly declined to consider fully the position of a step-parent. What is clear is that the issue is a fact-sensitive one.

- 6.** Ms Yong accepted that the judge had made findings in relation to the role of the appellant in the child's life including at paragraphs [26] and [28]. Ms Yong took issue with the conclusions that were reached. However, she accepted that the appellant's grounds did not amount to a rationality challenge.
- 7.** The First-tier Tribunal has given more than adequate reasons, at for not accepting that the appellant had "stepped into" the shoes of the appellant's mother. The Tribunal considered all of the evidence including that although a letter from the mosque stated that the appellant has taken a keen interest in her stepdaughter's education and had been consistent in picking the child up, the letter failed to explain what they know about the appellant's role with the child. Although the sponsor has stated that the appellant bathes the child which he cannot perform because she is 8 years old and cannot do that in his culture, the judge noted that there was no evidence to support that claim. In addition the First-tier Tribunal went on to note that evidence was not adduced from the child about her relationship with the appellant, the sponsor (her father) or her mother. The judge considered all the evidence including, at [26], that the letter from the school gave very little information about the appellant and the extent and length of any role she had had in the child's education such as attending parent evenings or events held at the school. I note that it was accepted before me that at the date of the hearing on 23 March 2017 the appellant had been living with the family for a year, since March 2016, although the appellant and the sponsor indicated that they had been together since 2015.
- 8.** I do not accept Ms Yong's submissions that the Tribunal gave undue weight to the fact that the child had visited her mother in 2015 in Tanzania. This evidence was particularly significant as the sponsor had stated that the child's mother was not involved in the child's life although he admitted in oral evidence that she had had contact with her mother two years previously because he had sent her to Tanzania. The finding that the judge made on the basis of this evidence, that the sponsor's evidence that the mother and child had no relationship did not sit well with the 2015 visit to Tanzania, was one that was open to her. The Tribunal went on to find that there was no objective evidence that the sponsor had divorced his first wife nor any objective evidence that the child had no contact with her mother.
- 9.** Although Ms Yong attempted to give evidence at the Upper Tribunal hearing as to the divorce process, regardless of whether it was a verbal process or otherwise, there was no error in the judge's findings that no objective evidence had been provided of such a process, where such ought to have been available (and I note there was no evidence before the First-tier Tribunal to suggest that there was any difficulty in obtaining such information). In addition, there was no adequate explanation as to why there was no evidence that the child had no contact with her mother (where such could have been provided including for example in a witness statement and/or oral evidence from the child or a third party with

knowledge of these matters). The judge was entitled to reach the findings that she did, at [24] that there was no evidence to support the sponsor's claim that his ex-wife had been abusive on the phone or had blocked his calls and this was considered in the context that two years previously he had sent the child to see her mother which did not sit well with his evidence that she had no relationship with her.

- 10.** The judge was entitled, particularly given that there was a Section 55 duty on the Tribunal to consider the best interests of the child as a primary consideration, to consider that it had not been established that there was no relationship between the child and her mother. The fact, as argued by Ms Yong, that there was no evidence of any further relationship between the child since the visit in 2015, was of limited weight, particularly in the context of the findings that the evidence of the sponsor was not accepted and in light of the Tribunal's concerns about the claims of no contact, yet the child visited her mother in 2015.
- 11.** Ms Yong submitted that it was relevant that this visit had taken place prior to the appellant moving in with the family and there was no evidence of contact subsequent to 2015. However, it was open to the Tribunal for the adequate reasons given to find that the evidence suggested that the child still enjoys a relationship with her mother "at some level" and that this impacts on the claimed relationship with the appellant. The Tribunal did not overstate the relationship between the child and the mother and there was no error in taking into consideration that the evidence suggested that there was some relationship.
- 12.** In any event, that was not the sole basis for the Tribunal finding, at [28], that the appellant did not have a parental relationship, in the terms of Section 116B(6). I am of the view that the Tribunal's findings would stand even if the Tribunal were wrong in respect of the relationship between the child and the biological mother (which has not been established). The Tribunal's findings at [26], together with the finding at [28], that there was a paucity of evidence to demonstrate the genuine and subsisting relationship between the appellant and the child, amount to sustainable findings that in this case, on these particular facts, there was no parental relationship between the appellant and the child in question.
- 13.** Although Ms Yong also sought to challenge the findings at [29] that there were no insurmountable obstacles to return and that the appellant could return and apply for entry clearance (although this would of course not have been an issue if the appellant had succeeded in establishing that she has a parental relationship with a child which she did not) she conceded that this had not been argued in the appellant's grounds of appeal and was not before the Upper Tribunal.
- 14.** In terms of the Tribunal taking into consideration that there was no evidence to support the claim that the child's mother had been abusive on the phone and the sponsor had blocked the calls, there was no error in that approach. Although it was submitted that it was difficult to consider

what evidence could be provided, this might for example have consisted of evidence of a list of blocked calls from his phone provider or evidence from a third party aware of these circumstances. The Tribunal was entitled to take this into consideration in the round including in the context of a number of unsupported claims, including that he had divorced his wife (where such evidence ought to reasonably have been available).

- 15.** In relation to the Tribunal taking into consideration the lack of evidence from the child, as the grounds of appeal pointed out, the wishes of any children should be ascertained where possible and again, in the context of considering the child's best interests and in the light of what the Tribunal found to be a paucity of evidence generally about the relationship with the appellant, there was no error in considering in the round in assessing what evidence was before the Tribunal, that was no evidence from the child. The Tribunal reached the sustainable conclusions it did on the basis of the evidence before it.

### **Notice of Decision**

- 16.** The decision of the First-tier Tribunal does not contain an error of law and shall stand.

Anonymity direction made as the appellant's sponsor has a minor child whose circumstances are related in this appeal.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 23 February 2018

Deputy Upper Tribunal Judge Hutchinson

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

The appeal is dismissed and no fee award is made.

Signed

Date: 23 February 2018

Deputy Upper Tribunal Judge Hutchinson