



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/26002/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 15th March 2018

**Decision & Reasons
Promulgated
On 9th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

ENTRY CLEARANCE OFFICER - AMMAN

Appellant

and

**MISS C.P.A.
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Miss Fijiwala, Senior Home Office Presenting Officer
For the Respondent: Ms C Litchfield of Counsel

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
I make an anonymity direction because the Appellant is a minor.

DECISION AND REASONS

1. The Entry Clearance Officer Amman appeals with permission against the decision of a First-tier Tribunal (Judge Callow) allowing the Respondent's appeal in respect of a decision made by the Entry Clearance Officer refusing to grant the Respondent leave to enter.

2. For the sake of clarity throughout this decision, I shall refer to the Entry Clearance Officer as “the Respondent” and to Miss C.P.A. as “the Appellant” reflecting their respective positions before the First-tier Tribunal.
3. The Appellant is a national of Nigeria (born 31st July 2002). She is a minor.
4. On 7th November 2017, the FtT allowed her appeal, on human rights grounds, against the decision of the Entry Clearance Officer (“the ECO”) to refuse her entry clearance as the adopted child of her aunt Ms O.C.A. (“the Sponsor”). The Sponsor is a British citizen presently settled in the UK.
5. The ECO was given permission to appeal against the FtT’s decision on the grounds that it had:
 - (i) failed to appreciate the issue surrounding the legality of the adoption, which it is said, took place in Nigeria in 2003;
 - (ii) failed to take into account material matters; and
 - (iii) failed to give adequate reasons on the key issue of whether there are serious and compelling factors, such as to render the decision to refuse entry disproportionate under Article 8 ECHR.
6. The Appellant had applied for entry clearance as the dependent adopted child of her Sponsor. The Entry Clearance Officer refused the application on the basis that the Appellant had not shown that her Sponsor had sole responsibility for her care, nor that there were serious or compelling family circumstances making exclusion undesirable.
7. The ECO also considered whether the adoption could amount to a de facto adoption but noted that the requirement of the Immigration Rules relating to de facto adoption had not been met.
8. Finally, the ECO considered Article 8 ECHR, but noted that there were no exceptional circumstances presented sufficient to warrant a grant of leave under that provision.

The First-tier Tribunal Hearing

9. At the hearing before the FtT, it was conceded by the Appellant that she could not meet the Immigration Rules and that therefore the only issue before the judge was an Article 8 ECHR one. In a decision, which spends over three pages simply repeating the Respondent’s case verbatim [5] the judge then arrives at a heading entitled “Findings of Fact” [9]. However rather than setting out any facts he repeats the Respondent’s policy of 2011 concerning S.55 of the Borders, Citizenship and Immigration Act 2009. Thereafter he arrives at a heading entitled “The Law” under which at [14], he draws the following conclusions:

“In addressing the issue of proportionately, I am minded that the best interests of the appellant, a child, is a primary consideration involving

an assessment of what her welfare and best interests require. Taking the circumstances at their highest, the appellant is notionally being looked after by the sponsor's aunt in circumstances where, occasioned by carer's ill health, she is a victim of neglect and at risk, as a vulnerable child, of abuse. Outside term time when she is a boarder at school no stable arrangements exist for her care..."

Thereafter he allowed the appeal under Article 8 ECHR outside the Rules.

10. The Entry Clearance Officer appealed against this decision to the Upper Tribunal. Permission having been granted by the First-tier Tribunal, the matter comes before me to determine whether the decision of the FtT discloses such error of law that it must be set aside and be remade.

Error of Law Hearing

11. Before me Miss Fijiwala appeared for the ECO and Ms Litchfield for the Appellant. Miss Fijiwala's submissions, kept to the lines of the grounds seeking permission. She emphasised that the FtT had failed to make findings, firstly on the legality or otherwise of the adoption and secondly had made wholly inadequate findings on the Article 8 proportionality issue. She added that the relationship between the Appellant and Sponsor had not been properly assessed and this in turn meant the FtT had simply failed to carry out an appropriate balancing exercise under Article 8.
12. She said that the judge's findings appeared to start at [14]. They amounted to two sentences which were conclusions rather than reasoned findings. Referring to [14] Miss Fijiwala said there is simply no evidence or findings of fact to support such conclusions. Equally, where the judge says "outside term time when she is a boarder at school no stable arrangements exist for her care", it is clear that the FtT failed to grapple with one of the key questions raised by the ECO. This question concerns what arrangements are presently in place for the care of the Appellant and why is it said that those arrangements cannot continue? The decision is wholly inadequate in its reasoning it should be set aside for legal error and remitted to the First-tier Tribunal for a full rehearing and for proper findings of fact to be made.
13. Miss Litchfield defended the decision. She referred to [3] and [4] wherein the FtT sets out the Appellant's case under a heading "Background". She submitted that [3] to [4] should be read in conjunction with [8] which appears under a heading "Hearing of the Appeal". She said that [8] showed that at the hearing the Sponsor gave evidence. The Sponsor was cross-examined and the judge records that the Respondent's representative did not challenge the credibility of the Sponsor's evidence. She reminded me that reasons only need to be adequate; a judge does not need to set out every piece of evidence. She submitted therefore that this was sufficient to show that the Sponsor's evidence as set out in [3] and [4] was accepted by the FtT. The judge had provided adequate reasons for his decision allowing the appeal.

14. Further in support of this, she said that the ECO was wrong in questioning the legality of the adoption. The adoption was not an inter-country adoption. The Sponsor was a Nigerian citizen at the time of the adoption and the only reason why the concession had been made concerning the Appellant's inability to meet the Immigration Rules, was because there was no Rule covering the particular circumstances of the Appellant's case. This factor had been pointed out to the judge at the hearing. Two documents were also handed in at the FtT hearing both of them from the Abia State Hospital and dated 16th December 2015 and 21st April 2016 respectively. Miss Litchfield did acknowledge that this evidence was not referred to by the FtTJ in his decision.
15. At the end of submissions I reserved my decision which I now give with reasons.

Consideration

16. I am satisfied that the decision of the FtT discloses error of law and I find, despite Ms Litchfield's assertions to the contrary, the decision is a poorly constructed one.
17. I find that the judge has simply set out the Appellant's case at [3] and [4] under the heading "Background". The majority of this background evidence relies on the statement of the Sponsor. The judge then says at [8] under "Hearing of the Appeal" that the Sponsor gave evidence and was cross-examined and confirmed the facts summarised at [3] and [4]. I do not accept Miss Litchfield's submission that reading [3] and [4] in conjunction with [8] shows that the judge has turned his mind adequately to the key issues before him.
18. I say this because on a reading of the decision at [8] it is unhelpfully recorded by the FtTJ at [8] "In his closing submissions, while not challenging the credibility of the Sponsor's evidence, Mr Talacchi (the HOPO) was critical of the lack of recent documentary evidence addressing the current position."
19. I find that it is not clear at all which parts of the Sponsor's evidence the judge accepts as credible and which parts, if any, he rejects. Nowhere do I see that the FtTJ has addressed the current position with reference to the evidence.
20. As Miss Fijiwala pointed out this appeal hinges on the care arrangements in place for the Appellant, at the date of decision. There is nothing to show that the judge has addressed this point.
21. Indeed there is a conspicuous lack of evidence concerning the key issue which was highlighted by the ECO as to who provides the day-to-day care for the Appellant, and more particularly why the current arrangements are no longer suitable bearing in mind that there is no evidence that the Appellant has come to any harm. The evidence certainly points to the Appellant attending school and so her needs appear to be catered for then, but there is no proper analysis setting out what happens to the

Appellant during the school holidays. Neither is there any evidence of why suitable arrangements cannot be made for her holiday periods. It would seem that presently she remains with the Sponsor's aunt and that a neighbour helps by looking in. There is nothing in the decision to demonstrate that the judge's conclusion at [14] that the Appellant is a "victim of neglect and at risk, as a vulnerable child, of abuse" is founded on evidence. Again, as Miss Fijiwala pointed out there is no evidence that the Appellant is neglected - the evidence is that whilst the present arrangement may not be deemed ideal, nevertheless the Appellant has come to no harm with it.

22. I find force in Miss Fijiwala's submission that no proper Article 8 assessment has taken place. This has resulted in neither party being afforded a full and fair hearing. Equally I see no reference made by the judge to the point raised by Miss Litchfield, concerning the circumstances surrounding the adoption which it is said took place in 2003. The FtTJ was addressed on this point but has made no findings on it.
23. In these circumstances, there is no alternative but to set aside the decision of the First-tier Tribunal in its entirety. The decision will need to be remade at a fresh hearing. There is nothing that can be preserved from the original hearing. It is right therefore that this matter is remitted to the First-tier Tribunal for a full rehearing, with fresh findings of fact being made and the decision being remade by that Tribunal. The hearing should be before a judge other than Judge Callow.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 13th November 2017 is hereby set aside. The matter is remitted to the First-tier Tribunal for that Tribunal to remake the decision (not Judge Callow).

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 her or any member of her 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

C E Roberts

Date

06 April 2018

Deputy Upper Tribunal Judge Roberts