



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/00383/2019**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester CJC

Decision & Reasons

On 12th November 2019

Promulgated

On 26th November 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR OWEN JUNIOR SEALANYANE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shea, Counsel

For the Respondent: Mr Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of South Africa born on 31st October 2000. The Appellant had made application for entry clearance to join his father a person present and settled in the UK. The Appellant's application was made pursuant to paragraph 297 of the Immigration Rules. His application was dismissed on 2nd December 2018.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal A J Parker sitting at Manchester on 28th June 2019. In a decision and reasons promulgated on 22nd July 2019 the Appellant's appeal was allowed.

3. On 22nd July 2019 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds note that the appeal concerned two issues under paragraph 297 of the Immigration Rules namely (i) whether the Appellant's mother had died; and or (ii) whether the Appellant's father had sole responsibility for his care and whether serious and compelling circumstances existed.
4. The grounds contended
 - (i) That the judge in considering the first of the above issues had made a material misdirection by making inconsistent findings as to whether or not the Appellant's mother was deceased.
 - (ii) That the judge had made a mistake of fact by stating in the decision that it was accepted that the Appellant's grandmother was deceased where it was clear from the Notice of Refusal that this point was not accepted.
 - (iii) That the decision was tainted by a failure of the judge to give inadequate reasons and/or that the judge had failed to make any consideration as to how the Appellant could succeed under paragraph 297(i)(f).
 - (iv) In the light of the above it was submitted that the Tribunal's conclusions under Article 8 were also affected.
5. On 16th September 2019 Judge of the First-tier Tribunal Easterman refused permission to appeal. Judge Easterman found that the judge had not set out the decision in the clearest way but that on a careful reading it was clear that paragraph 56 was part of the quotation from the Entry Clearance Manager's review. Thus Judge Easterman concluded this is not the judge's conclusion and whilst it does conflict with the judge's decision there is no error of law in that conflict. He concludes that the judge was entitled to accept that the death of the Appellant's mother, as indeed the Entry Clearance Officer appears to do when he says he has seen her death certificate and makes no further comment, and that while it is true that a letter of refusal disputes (because of lack of evidence) the death of the grandmother the judge had found that the appellant had met the requirements of paragraph 297(d), which was open to him on the evidence. He consequently concluded that there was no arguable error of law.
6. On 30th September 2019 renewed Grounds of Appeal were lodged to the Upper Tribunal. Those grounds are verbatim, identical to the grounds lodged initially.
7. On 2nd October 2019 Upper Tribunal Judge Perkins granted permission to appeal.
8. It is on that basis the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State and for the

purpose of continuity throughout the appeal process Mr Sealanyane is referred to here as the appellant and the Secretary of State as the Respondent. The Appellant appeared by his instructed Counsel Mr Shea. Mr Shea is familiar with this matter he appeared before the First-tier Tribunal. The Secretary of State appeared by her Home Office Presenting Officer Mr Tan.

Submissions

9. Mr Tan relies on the Grounds of Appeal. He submits that the judge has failed to accurately recite evidence as to whether or not the Appellant's mother has died. I am told that she died in 2006 and that the Appellant has not been able personally to obtain a copy of her death certificate.
10. He submits that at paragraph 57 there is probably a typographical error in the decision and at Section 58 that the judge has made a finding that the Appellant's mother has died and that he has heard credible evidence. He submits the judge has failed to set out why he found the evidence to be persuasive and that the judge has made findings both against and in favour of the Appellant in those paragraphs. The Secretary of State contends that such inconsistencies have left the issue unresolved and inadequately reasoned.
11. He further goes on to refer to the position regarding the purported death of the Appellant's grandmother. I am advised that the Appellant's grandmother thereafter brought the Appellant up after the death of his mother. He submits that there are contradictory findings and that the judge has failed to give clear and credible reasons relating to the fact that his grandmother was deceased. He submits that this failing to give adequate reasons constitutes a material error of law and he asks me to set aside the decision and to remit the matter back to the First-tier Tribunal for rehearing.
12. Mr Shea comments that if there are any errors firstly they are not material and secondly that they are merely discrepancies on fact and not law. He submits that the judge came to findings that he was entitled to make firstly that the Appellant's mother was deceased and secondly that the Appellant's grandmother was deceased leaving the child in South Africa alone. He is very critical of the basis upon which Judge Perkins grants permission to appeal particularly the contention that it is arguable that the First-tier Tribunal Judge was confused about the Respondent's case in answer to the Appellant's claim that his grandmother died and that the Appellant had explained adequately the findings that the Appellant's father had sole responsibility. He asked me to find there is no error of law and to dismiss the appeal.

Findings on Error of Law

13. The submissions made by the Secretary of State are based on two factual requirements that are necessary in order for the Appellant to succeed

under paragraph 297. Firstly whether the Appellant's mother and grandmother had died and secondly whether the Appellant has sole responsibility for his care and whether serious and compelling circumstances exist. The main thrust however is on the first ground. The judge heard the evidence and he has made findings of fact. He has made such findings at paragraphs 58, 63 and 64. Those findings are based on his analysis of the factual evidence. That factual evidence included an admission by the Entry Clearance Officer that he had had sight or at least proof of the death of the Appellant's mother some thirteen years' previously. Secondly that there was oral testimony that the Appellant's grandmother had died and thirdly, and importantly, the Appellant's father and Sponsor Mr Moyo had attended and given oral testimony which the judge found to be credible.

14. I agree entirely with the analysis placed upon this matter by Judge Easterman in that the judge may not have helped matters by not setting out the decision in the clearest way but that the judge has in fact not erred in law and that he has made findings of fact that he was entitled to and that he was entitled to accept the evidence of the witness before him and as a result I find that the Appellant was not leading an independent life in South Africa. The judge fully analysed the factual evidence and came to a conclusion that the Appellant met the requirements of paragraph 297(d). On that basis I am satisfied that the submissions made by the Secretary of State amount to nothing more than a disagreement with the findings of the judge and that the decision discloses no material error of law and consequently the Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge contains no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

No application is made for a fee award and none is made.

Signed

Date: 25 November 2019

Deputy Upper Tribunal Judge D N Harris