



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/07107/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 4 February 2019

**Decision & Reasons
Promulgated**

On 15 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**IAN DUNCAN OMONDI ODHIAMBO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - Pretoria

Respondent

Representation:

For the Appellant: Mr T Plowright (counsel) instructed by Edmans & Co
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Chamberlain promulgated on 28/06/2018, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 31/10/1998 and is a national of Kenya. On 15/05/2017 the Secretary of State refused the Appellant's application for entry clearance as the dependent child of the sponsor.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Chamberlain ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 03/01/2019 Upper Tribunal Judge Kebede granted permission to appeal stating inter alia

"The grounds are unhelpfully and unnecessarily lengthy and long winded. I am concerned, however, by the Judge's findings at [18] in regard to a lack of evidence of contact between the appellant's father and his school and the lack of any mention of the sponsor and the Pastoral Support Plan from Uhuru secondary school, when the document on page 70 of the appeal bundle arguably provides such evidence. Arguably the Judge's oversight in regard to that piece of evidence was material to overall findings about the role played by the sponsor and the arguable lack of involvement of the appellant's mother. I grant permission on that basis. I find little arguable merit, otherwise, in the other grounds but do not exclude them. All grounds may be argued."

The Hearing

5. Before Mr Plowright could move the grounds of appeal, Mr Duffy, for the respondent, told me that a rule 24 response has been served in which it is conceded that the decision contains a material error of law. He told me that a key plank of the Judge's reasoning is defective because, at document 70 of the appellant's bundle of evidence, there is the school report which shows that the appellant's school identifies the sponsor as the person with parental responsibility for the appellant. He asked me to set the decision aside and remit this case to the First-tier Tribunal for fresh fact finding.

6. Mr Plowright moved the grounds of appeal and asked me to set the decision aside for the reasons given by Mr Duffy. He told me that because the error is in the Judge's fact-finding, an entirely new fact-finding exercise is necessary. He asked me to remit this case the First-tier Tribunal to be determined of new.

Analysis

7. Just days before his 18th birthday, the appellant applied for entry clearance under rule 297 of the immigration rules to join his father in the UK. The respondent's decision was made on 15 May 2017 and focuses on paragraph 297(i)(e) of the rules. The area of dispute is whether or not the sponsor has sole responsibility for the appellant.

8. In TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 the Tribunal said that "Sole responsibility" is a factual matter to be decided upon all the evidence. The test is whether the parent has continuing control and direction over the child's upbringing, including making all the important decisions in the child's life.

9. The Judge's findings in relation to the immigration rules can be found between [13] and [29] of the decision. There, the Judge repeatedly rejects the evidence bemoaning a lack of corroboration. Corroboration is not required. The Judge's apparent search for corroboration is a material error of law.

10. The first sentence of [18] of the decision is an error of fact. The Judge says that there is no documentary evidence to show that the sponsor was involved with the appellant's education. The Judge considers the evidence of the appellant's education between [18] and [22] of the decision. The first sentence of [21] is wrong.

11. Document 70 of the appellant's bundle is a school report from February 2014. The summary at the start of the report says

"... Ian lives with his paternal grandmother. He has not seen his mother since the age of about two. His father, who is responsible for taking care of him and paying his school fees lives in England ..."

12. The Judge's decision contains errors of fact and material errors of law. I set it aside. I am asked, of consent, to remit this case to the First-tier Tribunal for a de novo hearing. The material error in the decision relates to an inadequacy of fact finding. I cannot substitute my own decision. Further fact-finding exercise is necessary.

Remittal to First-Tier Tribunal

13. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

14. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

15. I remit the matter to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Chamberlain.

Decision

16. The decision of the First-tier Tribunal is tainted by material errors c

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**ulgated on 28 June 2018.
ribunal to be determined**

Signed
February 2019

Date 13

Deputy Upper Tribunal Judge Doyle