



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000207

First-tier Tribunal No: HU/55990/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

28th

September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SILLS

Between

MR RICHARD AKINSOLA OWOJORI

First Appellant

MASTER ABOLADE AKINLOLUWA OWOJORI

Second Appellant

**(NO ANONYMITY ORDER MADE)
and**

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Ogunnubi

For the Respondent: Ms Young

Heard at Phoenix House (Bradford) on 2 August 2023

DECISION AND REASONS

1. The Respondent appeals against the decision (the Decision) of Judge Cox (the Judge) dated 23 December 2022 allowing the Appellants' appeal.

Factual Background

2. The FTT Judge summarised the factual background as follows:

1. The Appellants are Nigerian nationals born on 10 April 2004 and 24 October 2006 respectively. They are now aged 18 and 16.

2. On 11 February 2022 the Appellants applied for a visa to enable them to join Oluremi Lydia Olawale, their mother (the Sponsor) in the UK

3. The applications were refused by an Entry Clearance Officer (ECO) in Sheffield on 7 August 2022. The ECO considered and applied the provisions of paragraph EC-C.1.1. of Appendix FM for entry clearance under the 5-year or 10-year child route (the Immigration Rules). The applications were refused because the ECO was not satisfied that the Appellants were related as claimed to the Sponsor. In addition, the ECO was not satisfied:

- the Sponsor has sole responsibility for the Appellants or
- there are serious and compelling family or other considerations which make exclusion of the children undesirable and suitable arrangements have been made for the children's care (E-ECC.1.2 to 1.6)...

9. The Sponsor was born in Nigeria and is the Appellants mother. She was in a relationship with the Appellants' father until 2006, when he left the family home and never returned. Since then she has been the only person responsible for the Appellants. She understands that he is in the UK, but they have never met and have not been in communication with each other.

10. The Sponsor came to the UK in 2012 as a visitor and was subsequently granted leave to remain. When she left Nigeria she left the Appellants in the care of Joseph Olujobi, a family friend.

11. The Sponsor regularly sends her friend money for the Appellants upkeep and she speaks to the Appellants nearly every day.

12. In 2018 the Sponsor returned to Nigeria twice. On each occasion she was there for three weeks and stayed with the Appellants.

13. In 2021 the First Appellant (the Appellant) opened a bank account in Nigeria and the Sponsor is now transferring money directly into the account.

14. In January 2022, the family friend advised the Sponsor that he would no longer be able to care for the Appellants.

3. The Judge allowed the appeal for the following reasons. In view of the DNA evidence submitted, the family relationship was no longer in dispute. In relation to sole responsibility the Judge referred to TD (paragraph 297(i)(e): "sole responsibility") Nigeria [2006] UKAIT 00049. The Judge noted gaps in the documentary evidence including in relation to financial support. There was limited evidence of contact. The Judge referred to the Sponsor's evidence being confusing and lacking clarity at times, but also to other aspects of the evidence being striking. The Judge found that the Sponsor's concern about the current circumstances of the Appellants to have 'the ring of truth'. This was significant as it suggested that the Appellants' father played no role in their upbringing. The Judge found aspects of the Sponsor's evidence compelling, and that the Sponsor had appeared anxious, and that this may explain why at times her evidence was confusing or lacked clarity. The Judge accepted that the Appellants' father has had no involvement in their lives and that the Sponsor had been solely responsible for the Appellants. The Judge accepted that when the Appellant left Nigeria she arranged for the Appellants to remain with a friend and remained in close contact with them. The Judge was satisfied that the Sponsor was the only person providing the Appellants with financial and emotional support. The Judge found that the Sponsor was solely responsible for the Appellants and satisfied the requirements of the Rules. The Judge then found that the decision was incompatible with the Appellant's human rights and allowed the appeal.

4. The Respondent applied for permission to appeal raising the following grounds. The grounds argued that the Judge had made contradictory and irrational conclusions. Given the criticisms the Judge made of the evidence, it was irrational to conclude that the Appellants had established sole responsibility. It was irrational to allow the appeal solely on the basis of the sponsor's oral evidence, which had been found to lack credibility. The lack of corroborative documentary evidence should have undermined the Sponsor's credibility. The conclusion on sole responsibility was irrational.
5. The UT granted permission finding it was 'just arguable' that the Judge erred in making findings based only on certain parts of the Sponsor's oral evidence, when other parts were found to be confusing and there was a lack of documentary evidence of financial support and contact prior to October 2021.

The Hearing

6. I heard submissions from the representatives on whether the Decision contained an error of law. I reserved my decision.

Findings

Error of Law

7. The Court of Appeal gave guidance on appeals on points of fact in Volpi & Anor v Volpi [2022] EWCA Civ 464. At [2], Lewison LJ drew together the principles applicable:
 - "2. The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
 - i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
 - ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
 - iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
 - iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
 - v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
 - vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

8. I am satisfied that the decision does not contain any error of law. The Judge analysed the evidence before him as he was required to do. The Judge noted the weaknesses in the evidence relied upon by the Appellants. The Judge noted the absence of documentary evidence of financial support prior to October 2021. The Judge noted the lack of documentary evidence of contact. The Judge also referred to the length of time that the Sponsor and the Appellants had lived apart. The Judge recorded that at times the Sponsor's evidence lacked clarity.
9. The Judge also highlighted aspects of the evidence that he found striking. The Judge had recorded the evidence about the difficult circumstances faced by the Appellants, including suffering physical abuse from the family friend with whom they lived, and recorded the Sponsor's evidence that she felt she had no other choice and considered that this had the ring of truth. The Judge considered that this indicated that the father had no role or involvement in the Appellants upbringing. The Judge then stated that he had decided to attach significant weight to aspects of the Sponsor's oral evidence.
10. The Judge, in short, accepted the Sponsor's account. He did so having analysed the evidence and highlighted factors that supported and did not support the account. The Judge was entitled to accept the Sponsor's account and gave adequate reasons for doing so. Having accepted the Sponsor's account, the Judge was entitled to find that the Appellants' father had had no role in the Appellants lives as claimed by the Sponsor, that the Sponsor had had continuing control and direction of the Appellants upbringing, and that the Sponsor was solely responsible for the Appellants. The Judge was entitled to find that the Appellants satisfied the requirements of the Rules, that the decision breached the Appellants' ECHR Article 8 rights, and hence to allow the appeal. The decision does not contain any error of law. I dismiss the appeal.

Notice of Decision

The Decision of the FTT does not contain any error of law and so the Respondent's appeal is dismissed.

Judge Sills

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 September 2023