IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002726
First-tier Tribunal No: HU/59627/2022
(LH/02025/2023)

THE IMMIGRATION ACTS

Decision & Reasons Issued:

25th September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS ISHA BROWNE
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Sponsor attended in person without legal representation
For the Respondent: Mrs Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 19 September 2023

DECISION AND REASONS

Background

1. To avoid confusion, I shall refer in this decision to the parties as they were before the First-tier Tribunal i.e. to the Secretary of State as the 'Respondent' and Miss Isha Browne as the 'Appellant'.

2. This matter concerns an appeal against the Respondent's decision letter of 30 November 2022, refusing the Appellant's human rights claim made on 24 June 2022.

3. The Appellant's claim had been made on the basis that she was the adopted child of the Sponsor, Mrs Mary Browne, a British citizen settled in the UK.

4. The Respondent refused the Appellant's claim on the basis that she did not meet the requirements of the relevant immigration rules concerning adoptions.

5. The Appellant appealed the refusal decision.

6. Her appeal was heard by First-tier Tribunal Judge Hawden-Beal ("the Judge") at Birmingham on 15 June 2023, who later allowed the appeal in its entirety in a decision promulgated on 27 June 2023. At the hearing before the Judge, the Appellant was represented by counsel Mr Sobowale at the hearing and the Respondent was represented by Home Office Presenting Officer Ms Tasnim.

7. The Respondent applied for permission to appeal to this Tribunal on one ground as follows:

> "The Judge of the First-tier Tribunal has made a material error of law in the Determination.
>
> Misdirection in Law
>
> The Tribunal found "I am satisfied that the only link which the appellant has to her birth family is through the sponsor as her maternal aunt. She therefore has no biological parents to care for her (39)".
>
> The respondent cannot understand why that finding has been made there is no evidence to support that assertion. The respondent does not accept that they are related as claimed.
>
> In addition, in the Art 8 assessment, the claim appears to have been based on the critical situation that the appellant is in. That was when the claim was made in June 2022. The appeal hearing was 12 months later. The Tribunal has failed to consider what had changed during the prevailing year. Was the uncle still overwhelmed by grief and incapable of helping her. Was the threat of FGM still the same? It is respectfully submitted that the A8 consideration is focussed on the time of the application, not at the date of the hearing as requested.
>
> In failing to consider that correctly the Tribunal has erred in law".

8. Permission to appeal was granted by First-tier Tribunal Judge Gumsley on 20 July 2023, stating:

> "1. The Application for permission to appeal appears to have been made in time.
>
> 2. As to the substantive Grounds, in my view it is arguable that, although noting that the Respondent had raised the issue, the FtT Judge failed to adequately address the question as to whether the Appellant and her Sponsor were in fact related (material aunt and niece) as was claimed.
>
> 3. Further and whilst mindful that it is for the parties to identify potential errors of law it seems to me proper to observe that the FtT Judge appears not to have adequately considered the issue of whether there are legislative impediments in relation to inter country adoptions and what effect they may have on the case as a whole.
>
> 4. Although I am not persuaded that the FtT Judge did not seek to assess the situation both at the time of the application and at the time of the hearing, it is

arguable that such failures (if established) may have had a material effect on the Article 8 assessment and the decision made as a whole.

5. Permission to appeal is therefore granted on the grounds as pleaded."

9. The Appellant did not file a response to the appeal.

The Hearing

10. The matter came before me for hearing on 19 September 2023. The Sponsor, Mrs Mary Browne, attended on behalf of the Appellant without legal representation. Mrs Arif attended on behalf of the Respondent. As the Sponsor was unrepresented, I took great care to explain, and ensure that the Sponsor understood, what the hearing was for, what would be discussed and why. The hearing subsequently took the form more of a discussion about the grounds of appeal, than the usual standard structure of alternate submissions.

11. It serves no purpose to recite the discussion in full here as it is a matter of record. I shall only set out the main points as follows.

12. Mrs Arif confirmed that the error being alleged was that the Judge found the Sponsor was the Appellant's maternal aunt despite there being no evidence that this was the case; it was not that there was evidence which the Judge failed to cite. She said, as no biological link between Sponsor and Appellant had been asserted in the application, the refusal letter focused on the question of the adoption but it was clear that the relationship was not accepted. I asked whether the Sponsor's witness statement explaining that the Appellant was her niece was not evidence? Mrs Arif said there were no documents supporting this assertion.

13. In response, Mrs Browne said the Appellant's birth certificate had been produced but confirmed there were no birth certificates for the Appellant's mother or Mrs Browne herself. She confirmed there were no other documents showing she was the Appellant's maternal aunt and that she had not been asked to confirm the relationship at the hearing but she had adopted her witness statement. She said she had not known this relationship was in issue and thought it was being raised for the first time in the grounds of appeal; the Judge's finding in [39] correct.

14. As to the second part of the ground, Mrs Arif confirmed the point was that the Judge had not assessed whether anything had changed in the 12 months between the application being made and the date of the hearing; this in turn affected the Judge's article 8 assessment. She said had the position being considered, there may have been evidence that, for example, the uncle caring for the Appellant was now better able to care for her, such that the outcome of the assessment may have been different. She said [39] and [40] make clear the Judge only looked at a position as at the date of application.

15. In response, Mrs Browne said she was asked at the hearing what the current situation with the Appellant's care was, which confirms the Judge did look at things as at the date of the hearing. She said she had written a witness statement confirming the position as at February 2023 and adopted this at the hearing; her oral evidence which discuss the up to date position is recorded at [8] of the Judge's decision. She said the Judge's findings were correct.

16. Mrs Arif replied to say this was not evidence of what had occurred in the interim period, but just the Sponsor saying what was going on as at the time of the application. I asked whether, if the witness statement and oral evidence tallied with each other, this could not be taken as evidence that nothing had changed in the interim? Mrs Arif said the date of assessment is not made clear in the decision and the Judge does not make a clear finding about whether anything had changed.

17. At the end of the hearing, I reserved my decision.

Discussion and Findings

18. I deal first with Judge Gumsley's observations made in paragraph 3 of the grant of permission to appeal i.e. that the Judge appears not to have adequately considered the issue of whether there are legislative impediments in relation to inter country adoptions and what effect they may have on the case as a whole.

19. Mrs Arif did not pursue this at the hearing and, in my judgement, rightly so. It was surprisingly not something raised in the grounds of appeal. I use the word 'surprisingly' as the grounds do not take issue with a number of points raised by the Respondent in her review which appear not have not been addressed by the Judge at all. However, it is trite that the doctrine of 'Robinson obvious' issues is not normally to be employed in favour of the state failing to take an issue in an appeal (see Miftari v Secretary of State for the Home Department [2005] EWCA Civ 481). Therefore I will not address the matter further. I simply note it has not been said before me to be a pre-condition of leave being granted that any domestic legislative provisions concerning adoptions first be fulfilled by the Appellant in any case.

20. Turning to the grounds as pleaded.

21. The Respondent says that the Judge erred in her finding at [39] that the Sponsor is the Appellant's maternal aunt and the Appellant has no biological parents, because this finding was not adequately explained and there was no evidence in support of it.

22. The Judge' full findings in this respect are as follows:

> [39] "There is evidence that the couple, with whom the appellant had been living since her own mother's death in 2017, are not related by blood to her as confirmed by the DNA test result in the bundle. There is evidence of her mother's death, a certificate which the entry clearance officer does not challenge and there is also evidence of the death of the wife who was looking after the appellant, all of which is mentioned in the sponsor's statement from February 2023. The evidence of the sponsor is that the appellant's father is unknown, which is confirmed by the appellant's birth certificate which clearly says that it is a delayed certificate, not the late registration of a birth. I am satisfied that the only link which the appellant has to her birth family is through the sponsor as her maternal aunt. She therefore has no biological parents to care for her".

23. I fail to see what is inadequately reasoned about this paragraph. Mrs Arif confirmed the Respondent accepted that the Appellant's biological mother had died and the Judge finds the death certificate is evidence of this. That leaves the Appellant's biological father. In this respect, the Judge clearly accepts the Sponsor's evidence that the father is unknown, finding that this is supported by the Appellant's birth certificate. The Judge accepts the Sponsor's evidence

because she says at [40] that "I am satisfied that the sponsor is a credible witness". The Judge was therefore entitled find that the Appellant has no biological parents to care for her. Whether or not the Sponsor is in fact the Appellant's maternal aunt does not affect this finding.

24. As regards the relationship between the Sponsor and Appellant, I do not accept that this was put into issue from the outset because the Refusal Letter is silent in this regard. I accept, though, that it was later put into issue by paragraph 8 of the Respondent's review such that the Judge had to deal with it.

25. Whilst it may be correct that there was no documentary evidence supporting there being a biological relationship between the Sponsor and Appellant's mother (and therefore indirectly the Sponsor and the Appellant), there was evidence in the form of the Sponsor's witness statement and oral evidence. I cannot see that the Sponsor's oral evidence was attacked in the Respondent's submissions made before the Judge, as set out in [13]-[15] of the decision. As above, the Judge accepted this evidence, finding the Sponsor credible. It is well established that oral evidence can be accepted if not found wanting. The Judge was therefore entitled to find the relationship existed on the basis of this evidence.

26. It follows that the first part of the grounds is not made out. The second aspect of the grounds concerns the Judge's article 8 assessment.

27. Whilst I find the Judge's assessment and balancing exercise undertaken with regards to article 8 ECHR to be rather muddled, that is not the issue being taken and I note the Judge's finding that family life exists between Appellant and Sponsor has not been challenged.

28. The Respondent alleges that the Judge only assessed matters as at the date of application and not at the correct date, which was the date of the hearing. Mrs Arif said this was clear from [39] and [40]. I do not find this to be made out.

29. [39] is set out above. [40] states as follows:

> "That leaves the question of her current arrangements and whether they can continue. I am satisfied that the sponsor is a credible witness. I accept that it could be said that she is doing all she can to bring her daughter to the UK but that is the natural reaction of a parent and she has tried to do it properly by formally adopting her niece in the home country. It is her misfortune that such a process in Sierra Leone is not recognised here in the UK. She has supplied the death certificate of the appellant's mother and that of the lady who had been caring for her as part of her family since 2017. The sponsor has explained why it is that the current situation cannot continue after the death of the wife. The appellant , who is 15 years old, is now living alone with a man whom, the sponsor has been told, is no longer capable of caring for his own children because of his grief after his wife's death. The sponsor was in Sierra Leone 3-4 days after this lady's death and would have seen for herself the situation in which the appellant found herself. She is not just relying upon that which she has been told, she was there at the time and saw it."

30. There is no indication from these paragraphs that the Judge is considering matters as at the date of application. In fact, the contrary is clear by the Judge referring in [39] to the Sponsor's witness statement dated February 2023 (which of course is after the application date of 24 June 2022) and in [40] to the 'current' arrangements and the Appellant 'now living alone….'. It is unclear how the Judge can be said to be assessing the position only as at the date of application whilst

considering evidence created after that date. I note the time between the Sponsor's witness statement and the hearing was only four months. Given she attended the hearing to give oral evidence, it would perhaps have been unusual for her to have provided a further statement in the interim period.

31. I also note a description of the Sponsor's oral evidence is at [8] and includes the Sponsor saying "the husband could not cope because he was depressed and drinking after the death of his wife and the appellant has stayed there because there is nowhere else for her to go and no one else who can care for her". This is a significant addition to/expansion of the detail provided in the Sponsor's witness statement which simply says that the husband cannot take care of the Appellant anymore because the Sponsor had to beg him and he "could simply leave it any time". This in itself could therefore be taken to address the circumstances arising since the date of the application.

32. My attention was not taken to any evidence before the Judge which otherwise showed a change in circumstances and so it is unclear why the Judge would have needed to make an explicit finding in this respect. I consider it is sufficiently clear from the decision that the Judge undertook an appropriate assessment of the situation as at the date of hearing.

33. Accordingly, I find the grounds are not made out.

34. To conclude, I find the decision is not infected by any material errors of law. The decision therefore stands.

Notice of Decision

1. The appeal to the Upper Tribunal is dismissed. The decision of First-tier Tribunal Judge Hawden-Beal promulgated on 27 June 2023 is maintained.

2. No anonymity direction is made.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 September 2023