



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006604
UI-2022-006605
First-tier Tribunal No: EA/53670/2021
EA/53672/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of March 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AN ENTRY CLEARANCE OFFICER

Appellant

and

**PAULA UWESE
KEVIN SHEMA
(NO ANONYMITY ORDER MADE)**

Respondents

Representation:

For the Appellant: Ms Young, a Senior Home Office Presenting Officer.
For the Respondent: Mr Holmes instructed by MYUKVISAS LTD

Heard at Phoenix House (Bradford) on 16 February 2024
Further considered on the papers on 29 February 2024

DECISION AND REASONS

1. The Entry Clearance Officer ('ECO') appeals with permission a decision of First-tier Tribunal Judge Moxon ('the Judge'), promulgated following a hearing at Bradford on 29 June 2022, in which the Judge allowed the appeals of the above respondents against the refusal of their applications for EUSS Family Permits, to enable them to join their adoptive parents in the United Kingdom, made on 7 June 2021. The applications were refused by the ECO on 6 October 2021.
2. There appears to be no issue that the Sponsors are a Ms Jacky Beza, a Dutch citizen and therefore EEA national, and her husband Mr Nicholas Ntore.
3. The Judge notes at [4] there being no Home Office Presenting Officer present at the hearing.
4. The Judge sets out findings from [8] of the decision under challenge.
5. The ECO noted that as evidence of the adoption the above respondents have provided an adoption record issued by the Civil Registrar's Office in Rwanda dated 23 June 2021.

6. It was not disputed that Rwanda is listed within the Adoption (Recognition of Overseas Adoptions) Order 2013, but it was stated it was still necessary for the ECO to be satisfied all necessary procedures had been followed and documentation provided in order to accept the adoption.
7. The ECO was concerned that as the adoptive parents were habitually resident in the UK, and the adoption took place within 12 months of the application, in order to meet the requirements of section 83 of the Adoption and Children Act 2002 they would have expected to have seen a Certificate of Eligibility from the Department for Education or the equivalent from the relevant central authority. As there was no evidence to demonstrate that the Certificate of Eligibility had been issued to the adoptive parents, and that additional enquiries with the Department for Education confirm that no application for a Certificate of Eligibility had been received, or a certificate issued to the adoptive parents, the requirement under section 83 had not been met.
8. The ECO was also not satisfied that as the adoptive parents were habitually resident in England or Wales prior to the adoption taking place on 23 June 2021, in order for the ECO to accept and recognise the adoption, they expected the adoption to be registered with the General Registrar Office. It was also noted that an overseas adoption should be registered in the Adopted Children Register by the Registrar General for England and Wales if the adoptive parents are habitually resident in England or Wales at the time of adoption, but no evidence had been provided to demonstrate that the adoption had been registered in the Adopted Children Register.
9. The ECO also noted that in relation to Paula, it appeared she was over 18 years of age at the date of the alleged adoption which the ECO refers to not being allowed under Rwandan adoption law unless in specific cases such as persons with disabilities. The ECO was therefore concerned that without additional evidence from a competent authority issued prior to the adoption the ECO could not be satisfied that the adoption took place in accordance with the relevant adoption laws.

Discussion and analysis

10. Restrictions in relation to bringing a child into the UK who is the subject of an overseas adoption were imposed to prevent child trafficking or children being brought to the UK illegally by persons other than adults who had genuine parental responsibility for them.
11. Chapter 6 of the Adoption and Children Act 2002 deals with adoptions with a foreign element. Section 83 reads:

83 Restriction on bringing children in

- (1) This section applies where a person who is habitually resident in the British Islands (the “British resident”)—
 - (a) brings, or causes another to bring, a child who is habitually resident outside the British Islands into the United Kingdom for the purpose of adoption by the British resident, or
 - (b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of months ending with that time.

The references to adoption, or to a child adopted, by the British resident include a reference to adoption, or to a child adopted, by the British resident and another person.

- (2) But this section does not apply if the child is intended to be adopted under a Convention adoption order.
- (3) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outside the British Islands, whether or not the adoption is—
 - (a) an adoption within the meaning of Chapter 4, or
 - (b) a full adoption (within the meaning of section 88(3)).
- (4) Regulations may require a person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where this section applies—
 - (a) to apply to an adoption agency (including a Scottish or Northern Irish adoption agency) in the prescribed manner for an assessment of his suitability to adopt the child, and
 - (b) to give the agency any information it may require for the purpose of the assessment.
- (5) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies.
- (6) In relation to a child brought into the United Kingdom for adoption in circumstances where this section applies, regulations may—
 - (a) provide for any provision of Chapter 3 to apply with modifications or not to apply,
 - (b) if notice of intention to adopt has been given, impose functions in respect of the child on the local authority to which the notice was given.
- (7) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where this section applies, he is guilty of an offence if—
 - (a) he has not complied with any requirement imposed by virtue of subsection (4),or
 - (b) any condition required to be met by virtue of subsection (5) is not met, before that time, or before any later time which may be prescribed.
- (8) A person guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.
- (9) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Secretary of State, after consultation with the Assembly. The
12. The Judge deals with this issue at [9] finding this not a blanket requirement but states instead that regulations may require a letter from the Department of Education and that there was nothing in Appendix EU of the Immigration Rules which specified that is a requirement. The Judge also finds that the 2002 Act is only required for Part 8 applications in light of the wording of paragraph 309B of the Immigration Rules [9].
13. The Judge also finds that the 2002 Act relates to adoptions effective within 12 months of the person’s arrival in the United Kingdom as provided by section 83(1)(b) as amended, whereas the adoption in this case is said to have occurred in October 2018, evidenced by certificates issued on 23 June 2021, both dates being over 12 months ago and meaning the 2002 Act would not apply even if it was a requirement of Appendix EU [10].
14. In relation to lack of registration with the General Registrar Office, the Judge finds it is not a requirement within the Rules and that the Home Office could not unilaterally impose additional requirements.
15. The Judge also finds that at the date of the adoption in 2018 both above respondents were under the age of 18, with no evidence as to a maximum age for adoption in Rwanda having been provided. The Judge finds as there was no evidence to support the assertion the age limit was 18 years of age whether the adoption was in 2018 or June 2021 does not affect the decision to allow the appeal [12].
16. At [15] the Judge finds on the balance of probabilities the Sponsors did adopt the above respondents in 2018 and have since had oversight of their care, that they have parental relationships with the above respondents, and satisfy all the criteria within Appendix EU, such that refusal will be a disproportionate interference with their family life.
17. The ECO sought permission to appeal on three grounds.
18. Ground 1 asserts the Judge failed to give reasons or adequate reasons in failing to address what the reasons are given by the sponsor and her husband and why the Judge found they were reasonable for why the adoption certificate was not issued until over two years after the adoption.
19. Ground 2 asserts the Judge failed to resolve conflicts of fact or material matters as to whether the adoption occurred in 2018 or 2021 which is said to be material.
20. Ground 3 asserts the Judge made a misdirection of law in failing to adequately assess the adoption documents, in particular in failing to make findings as to whether the above respondents had shown the 2018 adoption documents included in the evidence could be relied upon.
21. Permission to appeal was granted by another judge of the First-tier Tribunal on 25 August 2022.

22. In relation to the ages of the above respondents, Kevin was born on 31 October 2004 and is a citizen of Rwanda, Paula was born on 15 August 2002 and is also a citizen of Rwanda.
23. It is said that the above respondents' father passed away in 2010 and their mother in 2014.
24. The above respondents' case was that the above sponsors completed the adoption process in Rwanda in 2018.
25. The connection between the Sponsors and the above respondents is set out in the witness statements. Jackie Beza states she was born in the DRC on 25 November 1987. She has an older brother Felix who was married to Aline with whom she lived until she married her husband Nicholas Ntare in January 2010.
26. Jackie noted her brother passed away on 5 October 2010 and so she and her husband supported his wife and the children.
27. Jackie moved to Holland in August 2011 and migrated there, eventually becoming a Dutch citizen on 12 March 2018.
28. Her brother's wife passed away on 10 July 2014 at which point she travelled to Rwanda. She stated she was the only relative left for the children and as her husband Nicholas was working and living in Rwanda he took responsibility for the children and started proceedings to adopt them in Rwanda.
29. The delay between the adoption process being completed in 2018 and the application for the children to join the sponsors in the UK is stated to be because they needed to work and settle in the UK and as the children were in boarding school they thought it would be best for the children to leave them there at that time.
30. Jackie states the certificate of adoption was just confirmation of the adoption and was issued before they made the application which is the reason they did not ask for it before. She claims Rwandan adoption is different from the UK because the children were part of her family, and it was normal for them to become the adoptive parents.
31. Within the bundle are copies of documents headed "Official Gazette no 44 of 31/10/2016". The section entitled Adoption Record No is left blank on both documents. The document is stated to contain the date of declaration of 30 October 2018 and a stamp certifying it is a true copy of the original dated 4 October 2021.
32. There is also within the appellant's bundle two documents confirming the certificate is valid providing a reference number and the date of issue of 23 June 2021 for both the above respondents.
33. Official Gazette No 37 of 12/09/2016 sets out Law No 32/2016 of 28/08/2016 Governing Persons and Family. Chapter IV, from Article 287, deals with adoption.
34. There are two forms of adoption in Rwanda, one is a simple adoption which consists of maintaining affiliation ties with the adoptee's family of origin. The requirements for simple adoption are set out in article 289 the relevant section of which reads:

"If a child has neither father nor mother or both of them are in a state of incapacity to express their will, or if they have been absent or have disappeared, consent is given by a Family Council or by a person vested with the child's custody."
35. A full adoption is a form of adoption that completely severs ties with the adoptee's family of origin.
36. Section 3 of Chapter IV sets out common provisions for both simple and full adoptions. These requirements reflect in part to the requirements of the Hague Convention applicable to intercountry adoptions of which Rwanda is a signatory. So far as the domestic law is concerned these requirements read:

Article 299: requirements for a permissible adoption

A person intending to adopt a child must meet the following conditions:

1. To be a person of integrity;
2. to have enough resources for him/her to meet the duties that arise from adoption;
3. to be at least twenty one (21) years old;
4. to be at least seven (7) years older than the child to be adopted;
5. to have a fixed address;
6. not to have been sentenced to imprisonment for offences against the family;
7. not to have been sentenced to imprisonment for the crime of genocide;
8. not to have been sentenced to imprisonment for the crime of genocide ideology and related crimes
9. not to have been deprived of parental authority.

However, subject to the provisions of item 4 of Paragraph 1 of this Article, the person intending to adopt a child must be at least three (3) years older than the adoptee if they are related up to the seventh (7th) degree.

37. These requirements appear to have been met.

38. In relation to the maximum age for a child to be adopted, Article 302 provides:

“A person shall not be adopted if he/she is aged more than eighteen (18) years.”

39. In relation to the role of the Relevant Authority Article 304 reads:

Article 304: Relevant authority to grant adoption

An application for adoption is made before the civil registrar of the domicile of the child to be adopted, in the presence of the person or persons applying for adoption, the parents of the child if they are alive or head of the Family Council and at least two (2) witnesses.

If he/she finds that all the requirements to adopt a child fulfilled, the civil registrar draws up and adoption record which is filed in a court to grant the approval.

However, application for full adoption must first be considered by the competent authority.

40. In relation to the issue of registration of an adoption order, Article 306 is relevant which reads as follows:

Article 306: Registration of an adoption order

The adoption judgement is registered in the register of adoption records and mentioned in the margins of the birth record of the adopted child.

The adoptive parent having been granted the adoption by the court must register that order in the civil register within two (2) months from the date on which the judgement became final.

Adoption takes effect from the date on which the judgement on adoption became final.

The Chief Registrar of the Court which decided on adoption in the last instance informs the civil register on adoption.

- 41.If the adoption is an intercountry adoption then there are additional requirements in subsection 5 from Article 316 that must be met. Rwanda is a signatory to the Hague Convention meaning the parties to an overseas adoption have to demonstrate they can meet the requirements of the Convention too, if not reflected in domestic legislation.
- 42.The document certifying a certificate is valid, reference B210622195424NSS and B210623105817NSPB, is not the full adoption record which can be applied for on iremboGov. There is no evidence to which certificate it is referring to or that it relates to the adoption reports or confirms the adoption had any legal effect prior to 23 June 2021.
- 43.The Judge claimed there was no evidence in relation to the point made in the refusal that Paula was over the age of 18 when the adoption certificate was issued in Rwanda on 23rd June 2021, but there is clearly evidence to show that the general position is that a child over 18 cannot be lawfully adopted. There is nothing before the Judge to show any exception to this general rule applied.
- 44.The requirement by the ECO for provisions of a Certificate of Eligibility or other documents sought to establish that the children had been lawfully adopted is understandable. If the children had not been validly adopted they could not be classified as family members as this term is defined in Appendix EU.
- 45.On 15 February 2024, the day before the hearing, additional evidence was provided by the above respondent's representatives from Rwanda relating to the digitalisation and validity of old paper adoption certificates, and providing a letter from the adoption authorities in Rwanda confirming the adoption date of 30 October 2018 is valid.
- 46.The difficulty faced was that Ms Young had not seen the new evidence. Albeit that it was late, the material goes to the core of the ECO's challenge and was admitted. This meant the hearing was adjourned to allow Ms Young to consider the evidence with a direction she confirmed the ECO's position in writing and a provisional date for a further hearing being canvassed.
- 47.An indication was given by me that as the new evidence shows that the adoption certificate was valid any error made as set out in the grounds seeking permission to appeal would not be material.
- 48.On 29 February 2024 the Upper Tribunal received an email from Ms Young in the following terms:

As per the agreed directions drafted on 16th February 2024, I have reviewed the new bundle alongside the grounds and agree with your preliminary view set out at the adjourned hearing on 16th February that the error is not material.

The Secretary of State did have concerns over what the FTTJ has said about s.83 and the application of the 2002 Act to Appendix EU. The Secretary of State's view, is that the FTTJ has erred in their approach but has reached the conclusion that even if a successful application was made to amend the grounds to include this point, any error would not be material as the adoption is over 12 months at date of application. I note Mr Holmes raised that the RFRL did not raise an issue regarding the contradictory dates of the adoption but the Secretary of State respectfully submits that is because the Adoption document before the ECO only had one date included, which is the date of June 2021. The issue of the dates arises in the documentation before the FTT and was not before the ECO. That said, it is arguably irrelevant as the new documentation from the Rwandan documentation clearly addresses the point and in light of the rule 15 (2A) application, the document can be considered at the EOL stage and therefore the Secretary of State agrees with the preliminary view on the issue of materiality.

The Secretary of State invites you to deal with the matter on the papers, inviting you to find there is an error but it is not material. This position has been discussed with my learned friend Mr C Holmes before sending this email and the approach is one which is agreed between the parties.

49. In accordance with the agreed position I find for the reasons set out in the application for permission to appeal and grant of permission to appeal that the First-tier Tribunal has erred in law but also find in light of the new information received from Rwanda that any error is not material to the decision to allow the appeal.

Notice of Decision

52. The First-tier Tribunal has not been found to have materially erred in law. The determination shall stand.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber
29 February 2024