Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/14125/2012

THE IMMIGRATION ACTS

Heard at : Laganside Courts	**Determination Promulgated**
On : 20th August 2013	**On : 10th September 2013**
	……

Before

Upper Tribunal Judge McKee

Between

KORRINA NELL BUENAVENTURA

Appellant

and

Entry Clearance Officer, Manila

Respondent

Representation:

For the Appellant: Mr Neilson Buenaventura, the sponsor
For the Respondent: Mrs Margaret O'Brien of the Specialist Appeals Team

DETERMINATION AND REASONS

1. In May last year an application was made for Miss Buenaventura, who was then 16 years old, to join her father, Neilson Buenaventura ('the sponsor'), for settlement in the United Kingdom. He and his wife, Honorata, had been granted indefinite leave to remain in the United Kingdom in January 2012, after the latter had completed five years of work permit employment. Honorata is not Korrina's mother, but a letter from

© CROWN COPYRIGHT 2013

her birth-mother, Roselle Navarro, dated 8th June 2012, gave full consent and blessing to Korrina joining her father and 'step-mother' in Northern Ireland. That letter was the principal reason why entry clearance was refused on 26th June 2012, under paragraph 297(i)(e) of the Immigration Rules. It was taken to be evidence that Korrina's mother was still involved in making decisions about her daughter's life, such that her father could not be said to have been exercising 'sole responsibility' for her upbringing. That is not, I have to say, the only inference which can be drawn from the fact that Korrina's mother was informed about the plan to bring her daughter to Northern Ireland. It is perfectly possible for a parent to leave the responsibility of bringing up her child to someone else, without severing all contact with the child, and without losing all interest in how the child is faring. That Miss Navarro should have written a letter supporting the plan does not mean that she helped to devise the plan, or that her expression of agreement with it is tantamount to taking the decision.

2. The ECO also complained that there was no evidence of whom Korrina had been living with since her father left the Philippines, so in completing the notice of appeal to the First-tier Tribunal, Neilson Buenaventura explained that while he was working as a seaman Miss Navarro, who was then his wife, got into a relationship with someone else, and started a family with him. She agreed to give full custody of Korrina to Neilson, as attested by a sworn statement, since when Korrina had been looked after by her aunt, Aurora Buenaventura Fuentecilla, Neilson's sister.

3. If one looks carefully though the documents submitted to the British Embassy in Manila, one comes across the following documents. The sworn statement refreed to in the notice of appeal was subscribed by Roselle Navarro at Pasig in 2003, to the effect that "*I am waiving my custody of our daughter to my husband Neilson Y. Buenaventura to take care of her welfare*." In the same year, at Caloocan, Neilson swore a statement to the effect that he, being an Overseas Contract Worker, was entrusting the day-to-day care of his daughter to his father and sister, who lived at the same address. On 17th July 2012 Aurora swore a statement confirming that she had been looking after Korrina on behalf of her brother since he and his wife separated in 2002. On the same day, Roselle made another statement, confirming that she had previously given full custody of her daughter to Neilson, and explaining that she had been contacted in June 2012 by Aurora and asked if she would give her "*a parental consent as one of the requirements needed in the petition of her father*." She was happy to do this, as Korrina had been well looked after in the custody of her father for the previous ten years. It was clearly not anticipated that giving this consent would be the principal reason for refusing the petition.

4. The Entry Clearance Manager completed a review of the decision on 5th October 2012. A huge amount of documentation had been provided with the application and then with the notice of appeal, in no particular order and without a table of contents. Neilson Buenaventura has, I should say, done all the work for the application and the appeal himself. With professional assistance, the documentation would no doubt have been better presented and less voluminous. Among all the papers the ECM may not have spotted the statements referred to above, which may be why she says that "*there is no evidence that the appellant has not lived with her mother in her father's absence nor that her mother has not raised and cared for her*." Had her mother really been unable to bring up the appellant, the ECM goes on to say, it would have been "*not unreasonable to expect the sponsor to have sought to bring the*

appellant to the UK at the earliest opportunity." In fact, the earliest opportunity only came last year, when the sponsor was granted indefinite leave.

5. Without the benefit of professional advice, Neilson made the mistake of opting for a determination of the appeal 'on the papers'. That is never a good idea in an appeal against the refusal of a settlement visa, when credibility is in issue, as it clearly is here. The sponsor denied himself the opportunity of appearing in person before a judge and trying to counter the disbelief expressed by the respondent. As it was, the appeal came before Judge Telford in Birmingham, who adopted the adverse credibility findings of the ECO and the ECM. Like them, he found that there was "*no evidence*" that the appellant had not lived with her mother while her father was abroad. He refers to the letter from Roselle Navarro, giving permission for her daughter to join her father in the UK, as another reason for holding that the sponsor did not have sole responsibility.

6. In seeking leave to appeal further, the sponsor was plainly unfamiliar with the notion of an 'error of law'. Fortunately for him, leave to appeal to the Upper Tribunal was granted in March 2013 by Judge Chambers, who identified for himself a possible error of law in the First-tier determination, namely the Judge Telford might have given insufficient reasons for his findings. The appeal eventually came before me in Belfast, and in the meantime strong support for the Buenaventuras was expressed in letters from Jim Shannon, MP for Strangford at the Imperial Parliament, and Jonathan Bell, Member for Strangford at the Northern Ireland Assembly. That attests to the anxiety of the sponsor to be joined by his daughter and to the good standing that he enjoys in the community, but an error of law must be identified before the matter can go any further.

7. I agree with Judge Chambers that there is indeed a material defect in the First-tier decision, in that relevant evidence appears to have been overlooked. It was wrong to say that there was "*no evidence*" that the appellant had not been living all the time with her mother, since there were sworn statements from her mother, her father and her aunt to the opposite effect. It was necessary to take those statements into account, and say why they were not to be believed, if the appeal was to be dismissed on credibility grounds.

8. The determination of the First-tier Tribunal is therefore set aside, and the decision on the appeal falls to be re-made by the Upper Tribunal. Having had the advantage of seeing and hearing the sponsor for myself, I have no doubt about his sincerity and about the accuracy of the account given, namely that he and his wife separated, that he took custody of their daughter, and that she was thereafter cared for by his sister, with funds provided by him and the major decisions in her life taken by him. Scrutiny of the voluminous documentation adduced by the sponsor has been a somewhat daunting task, but it does confirm that the sponsor, like many Filipinos, was working as a seaman, that he sent remittances to his family, and that he ensured his daughter went to a good Christian school.

9. In the light of the sponsor's oral testimony and the documentary evidence, I find it more likely than not that he has had sole responsibility for the appellant's upbringing, in the sense required by the Immigration Rules, for a considerable time, and that the appeal therefore succeeds.

DECISION

The appeal is allowed, with a direction that entry clearance for settlement be granted to the appellant.

Richard McKee
Judge of the Upper Tribunal

6th September 2013