



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/13861/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 6 July 2016**

**Decision & Reasons Promulgated
On 12 July 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**EVA KITOKO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICE, NAIROBI

Respondent

Representation:

For the Appellant: Ms Charly Baraka (Sponsor)

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Eva Kitoko, was born on 7 January 1996 and is a female citizen of the Democratic Republic of Congo (DRC). She appealed to the First-tier Tribunal (Judge Kelly) against a decision dated 15 September 2014 of the Entry Clearance Officer, Nairobi, to refuse her application to join for settlement in the United Kingdom her paternal aunt, Ms Charly Baraka (hereafter the sponsor). She now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal. The first ground of appeal concerns alleged procedural unfairness arising from the judge's decision not to adjourn the appeal in the First-tier Tribunal to allow the case of the appellant to be linked with that of her minor sisters. Those sisters (born in 1997 and 1999 respectively) had, it was claimed by the appellant, also appealed against decisions to refuse them leave to enter to settle with the sponsor. The appellant and her two siblings resided together in DRC as a family unit.
3. I am not satisfied the judge erred in law as alleged. At [7], the judge noted, "the appellant's sisters applied for entry clearance to join the sponsor at the same time as the appellant. Their cases have not been linked to the present appeal because there is no trace of their appeals on the Tribunal system." In the light of that information it was difficult to see why the judge should have delayed dealing with the one appeal which was before him. The judge was undoubtedly right when he observed at [19] that it was "far from clear if [the appeals of the other sisters] would ultimately be determined". Indeed, when I made enquiries of Mr McVeety at the Upper Tribunal hearing, he told that he had no record of appeals having been submitted by the other sisters. After the hearing, on 11 July 2016 I received an email from Mr McVeety as follows:

'Dear Sir

Following the hearing for Miss Kitoko, I have searched the database and have been unable to locate any appeals in the system for the two siblings. From the information I have on file it would appear no appeal has been lodged as far as we can see for the two siblings.

Kind Regards

Andy McVeety

SPO Specialist Appeals Team.'

4. In the circumstances, I cannot find that the judge acted unfairly in proceeding with the hearing.
5. The second ground of appeal deals with the judge's finding that there was no family life for the purposes of Article 8 ECHR between the sponsor and the appellant. This ground has no merit. The judge made a number of detailed findings at [22] *et seq* attaching little weight to a single money transfer from the sponsor to the appellant and also observing inconsistencies between the evidence regarding the child's regular attendance at school and the evidence of the sponsor and querying why, if the sponsor supposedly had parental responsibility for the appellant, the child's school reports were not forwarded to her. It is true that at [27], the judge observed that the sponsor and appellant had "lived together in the same household for a period of nine years between 2002 and 2011 and that they have now been separated for a period of over four years. I therefore find the contents of [correspondence evidence] to be heartfelt and sincere." However, that observation is not in any way contradicted by the judge's subsequent finding at [28] that there was no family life

between the sponsor and the appellant. Making that finding, the judge observed that

“... although the appellant had reached the age of majority, I accept she has not established an independent life of her own by the date of the decision. I nevertheless find that her continuing dependency (over and above ordinary emotional ties) is not upon the sponsor but rather was (and remains) upon Mr John Kimbudila whom she describes as her ‘angel and protector’.”

The judge concluded that “I am entirely satisfied that it was [Mr Kimbudila] alone who was discharging parental responsibility for the appellant at the date of the decision”. Quite properly, the judge considered the circumstances appertaining at the date of the decision and, although he observed that the sponsor and appellant had lived together for a number of years, the appellant’s principal family life was now enjoyed in the household of Mr Kimbudila. I am satisfied that the judge has given clear and cogent reasons for the findings he has made as part of his Article 8 analysis. In any event, at [29] the judge went on to observe that, even if family life were found to exist between the appellant and sponsor,

“... the consequences of the decision ... are insufficiently serious to engage the potential operation of Article 8; or alternatively, that any family ties as may exist are so loose that prevention of family union in the United Kingdom is proportionate in furtherance of the economic wellbeing of the country by the consistent application of immigration control.”

In other words, even if the judge was wrong as to the existence of family life, his alternative finding is sound in law and defeats the appeal.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 11 July 2016

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 11 July 2016

Upper Tribunal Judge Clive Lane