



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/14735/2014**

Appeal Numbers:

OA/14737/2014

THE IMMIGRATION ACTS

Heard at Manchester

**Decision & Reasons
Promulgated
On 30th March 2016**

On 10th March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

ENTRY CLEARANCE OFFICER - ACCRA

Appellant

and

**ALPHA SULAYMAN CONTEH (FIRST RESPONDENT)
ABDOULIE CONTEH (SECOND RESPONDENT)
(ANONYMITY ORDER NOT MADE)**

Respondents

Representation:

For the Appellant: Mr G Harrison. Senior Home Office Presenting Officer
For the Respondents Mr V Jagadeshm of Counsel instructed by Sabz Solicitors

DECISION AND REASONS

Introduction and Background

1. The Entry Clearance Officer (the ECO) appeals against a decision of Judge Siddiqi of the First-tier Tribunal (the FtT) promulgated on 6th July 2015.

2. The Respondents before the Upper Tribunal were the Appellants before the FtT and I will refer to them as the claimants.
3. The claimants are Gambian citizens and are brothers born 4th December 1996 and 23rd October 1999 respectively.
4. The claimants applied for entry clearance as the children of a person settled in the United Kingdom, that person being their mother Ida Dem Conteh (the Sponsor).
5. The applications were refused on 15th October 2014. In relation to both claimants the applications were refused with reference to paragraph 297(i) (e) and (f), the ECO not accepting that the Sponsor had had sole responsibility for the claimants' upbringing, and not accepting that there were serious and compelling family or other considerations which made exclusion of the claimants undesirable, and not accepting that suitable arrangements had been made for their care.
6. In relation to the second claimant the application was also refused with reference to paragraph 320(3) and (7A), the ECO not accepting that the second claimant had produced a valid national passport with his application, and contending that false representations had been made in his application.
7. The claimants' appeals were heard together by the FtT on 27th May 2015. Oral evidence was given by the Sponsor and her husband, the stepfather of the claimants. The FtT found both witnesses to be credible, and were satisfied that the Sponsor had had sole responsibility for the upbringing of the claimants, and therefore did not go on to consider paragraph 297(i)(f).
8. In relation to paragraph 320(3) and (7A) the FtT found that the evidence did not indicate that the second claimant had not submitted a valid passport, and did not consider that any dishonesty had been used in the application, and therefore the appeals were allowed under the Immigration Rules.
9. The ECO applied for permission to appeal to the Upper Tribunal. Permission to appeal was initially refused but a renewed application granted by Upper Tribunal Judge Kekic in the following terms;

"The Respondent criticises the fact that the judge relied largely on oral evidence to allow the appeal. It is argued that there was no documentary evidence on core issues such as sole responsibility and the medical conditions of the Appellants' grandparents in Gambia. It is also pointed out that there were unresolved issues of paternity with respect to the second Appellant".
10. Following the grant of permission the claimants lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In very brief summary, it was contended that the grounds disclosed no error of law, but amounted to disagreements with findings that had been properly made by the FtT.

11. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

Oral Submissions

12. Mr Harrison relied upon the grounds contained within the application for permission to appeal and had no oral submissions to make.
13. Mr Jagadeshm relied upon the written response. In very brief summary, Mr Jagadeshm's point was that the grounds disclosed no error of law, and amounted to a disagreement with findings made by the FtT. The grounds related to the evaluation of evidence by the FtT, and the Upper Tribunal should not lightly interfere with that.
14. Mr Jagadeshm submitted that the fourth paragraph of the grounds was completely irrelevant, in which it was contended that there was no documentary evidence to confirm that the Appellants had lawfully taken the surname of their stepfather, but in any event there was evidence at pages 79-80 of the claimants' bundle. I was asked to conclude that paragraph 5 of the grounds made no sense, and to conclude that the decision of the FtT disclosed no material error of law and should stand.
15. Mr Harrison did not wish to respond.

My Conclusions and Reasons

16. I do not find any error of law disclosed by the grounds contained within the application for permission to appeal. The grounds contend that the FtT failed to give reasons or adequate reasons for findings on material matters. The duty to give reasons is summarised in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC), the head note of which I set out below;

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

17. In my view the FtT complied with the duty set out above.
18. It is unusual to find a decision dealing with sole responsibility, with no reference to ID (paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049, but the lack of reference to that case is not an error, as it is not contended that the FtT applied incorrect principles of law.
19. In my view there are some errors in the FtT decision but they are not material and are not relied upon in the grounds. In paragraph 17 the FtT

found that documents could not be considered, because those documents may not have been provided to the ECO and ECM. That would not preclude the FtT considering the documents if they related to circumstances appertaining at the date of refusal of entry clearance. This however is not material, because these documents could have assisted the claimants in their appeal, and their appeal was allowed in any event.

20. The FtT in paragraph 5 stated that the burden of proof lies on the claimants which is correct so far as paragraph 297 is concerned, but not correct so far as paragraph 320 is concerned, when the burden is on the ECO. This however is not material, as the FtT found in favour of the claimants in respect of paragraph 320, even though it is not clear that it was realised that the burden of proof was on the ECO.
21. The FtT set out the claimants' case, and the ECO's case, and I find considered the evidence in the round.
22. The FtT found both witnesses who gave oral evidence to be credible. The FtT gave reasons for reaching that conclusion and accepting the evidence that had been given. It is not the case that an appeal cannot be allowed in the absence of documentary evidence.
23. The FtT applied the correct legal principles to the evidence. The grounds are a series of disagreements with findings made. The FtT, in my view was entitled to find that both claimants satisfied the requirements of paragraph 297(i)(e) and therefore did not go on to consider (f). The FtT was entitled to find that the second claimant's appeal should not fail by reason of paragraph 320(3) or (7A), and sustainable reasons were given for the conclusions that were made.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision must be set aside. I do not set aside the decision, and the appeal of the ECO is dismissed.

Anonymity

No anonymity direction was made by the FtT. There has been no request for anonymity made to the Upper Tribunal, and no anonymity order is made.

Signed

Date

11th March 2016

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

Because the decision of the FtT stands, so does the decision to make a full fee award.

Signed

Date

11th March 2016

Deputy Upper Tribunal Judge M A Hall