



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

Appeal Number: HU/03848/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 2 November 2017**

**Decision & Reasons
Promulgated
On 14 November 2017**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

**MS TAWA TIAMIYU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Yong, Counsel, instructed by Greenland Lawyers LLP
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant entered the United Kingdom illegally on 2 June 2007 and has remained in the United Kingdom unlawfully.
2. On 11 September 2015 she applied for leave to remain in the United Kingdom on the basis of private and family life. She said that she was in a

relationship with a British partner who also had a child in the United Kingdom.

3. Although it was accepted that there was a genuine relationship the evidence, as presented to the Secretary of State, showed only that they had been living as a couple from October 2013 which was not two years from the date of the application. Little detail had been provided as to the status of [M], the child, or the relationship with him. The Secretary of State was not satisfied that the partner had a genuine and subsisting parental relationship with the child or indeed was related to him nor that there were any insurmountable obstacles or very significant obstacles to reintegration in Nigeria.
4. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Baldwin on 7 February 2017. The Judge noted in particular the vagueness of the evidence as to contact with [M]. The Judge was not satisfied as to the status either of [M] or of the appellant's partner. The Judge noted inconsistencies in the evidence as presented by the appellant and by her partner. He found no reason why family life could not be established in Nigeria, particularly as the partner was also of Nigerian origin if not of Nigerian nationality.
5. Challenge was made to the decision on a number of grounds, particularly on the basis that neither the appellant nor the sponsor had fully understood what was said to them in the course of the hearing and that in those circumstances it was unfair to criticise their evidence in the way that the Judge did.
6. Permission was granted to the Upper Tribunal on the basis that the appellant and her sponsor may not have been fully understood in the answers which they gave.
7. Ms Yong, who represents the appellant, submitted that given the difficulties which were acknowledged by the Judge, in appellants being able to express themselves it was wrong for the Judge to have proceeded with the hearing but in any event some of the conclusions of the Judge arose from misunderstanding of what was said. She invites me to find that the proceedings were unfair such as to set aside the decision.
8. As to the understanding of the sponsor and appellant that is set out by the Judge in paragraph 5 of the determination:

"The Appellant did not request an interpreter either before or at the hearing and appeared to understand the questions put to her, though many of her answers had to be repeated several times before both representatives and I could be satisfied we had correctly understood her answer. Some difficulty was also experienced understanding the Sponsor but it was clear that the representatives were happy to have the answer given again, where necessary, and I was satisfied that we did all eventually understand what was being said and that both had understood the questions put. During the Sponsor's evidence the Appellant appeared more than once orally to prompt/correct the Sponsor's evidence. It was agreed with Mr Waheed after

the second such occasion that if the Sponsor's oral evidence were to have value it would be better for the Appellant to wait outside until the Sponsor had completed his evidence – and that course was taken.”

9. It is of significance therefore that at the hearing the appellant had been represented by Mr Wahid. It is clear that the Judge had careful consideration to the way in which questions were answered and consulted the representatives on this issue. Ms Yong sought to produce supplementary statements from the appellant and sponsor to the effect that they had experienced some difficulties at the hearing as a result of which answers were not coherent or they could not express themselves properly. It is said that such affected the response to the questions asked.
10. In the light of that contention I invited Ms Yong to highlight what it was in the evidence that was recorded in the determination, which was either misunderstood or not fully expressed. She contended that the matter that was of real concern was that in the course of his evidence the sponsor had been asked about [M] and said that social services had become involved with him and the matter was going to court at Camberwell. That had led the Judge at paragraph 21 to say as follows:

“The status of [M] remains unclear and the inability of the Sponsor to say what the Court case concerning him was about tends to suggest he plays little or no role in his life. The differing accounts of the Appellant and the Sponsor as to when and how often he sees [M] would be consistent with that conclusion, as is the failure of the Appellant to provide documentary evidence of any of the kinds set out in paragraph 8 of the Home Office letter of 7 January 2016 confirming contact between the Sponsor and [M]. If his claim to accompany him to violin school or parents' evenings is correct, this should have been very easy for him to obtain. Furthermore, if [M] regularly stays with him, it is reasonable to assume that [MO], his Carer, would be happy to confirm this and attend court to answer questions about the role of the Sponsor in [M]' life but there is no evidence from her and she did not attend. The Appellant has not proved, I find, that his Sponsor has any meaningful involvement in the life of [M], whose status in the United Kingdom also remains unclear. Whilst it is generally in the interests of a child to live with or have regular contact with both parents, I am not satisfied that the child's rights in either respect are being exercised for his benefit by the Sponsor and the fact that there would appear to be a court case relating to [M] in which Social Services are involved means that it is not at all clear that regular contact with the Sponsor is in the best interests of [M] in any event.”

11. It is suggested on behalf of the appellant and the sponsor that although social services are indeed involved with [M] there is no court case and that that was a matter of confusion. Social Services seemingly are involved with [M] as to how he came into the country. It is submitted therefore that because mention was made of a court case erroneously, such led the Judge to take an adverse view of the sponsor and his contact in the context of the remarks that have been made.
12. Were that to be the only significant matter then clearly that would be an important matter to look at in terms of the overall fairness of the hearing.

The reality is, as was made clear by the Judge in the passage to which reference has been made, there was much more to the issue of [M] than simply a court case. There was a lack of any clarification as to his status and the Judge, having heard the differing accounts as to contact, did not accept that the evidence as provided by the sponsor and appellant was reliable on that aspect. As the Judge made clear, there were other means available to clarify the issue of contact. It is not suggested that any of the inconsistencies that the Judge found arose from misunderstanding or from lack of proper interpretation. The status of [M] still remains unclear and has not been clarified nor indeed has any statement been obtained either from social services or indeed from his carer.

13. It is important to understand that this is an application that was considered by the Judge in the wider context of someone who was unlawfully present in the United Kingdom. Finding that the evidence of the appellant and the sponsor were full of inconsistencies, credibility was doubted on a number of issues. In particular it was claimed by both the appellant and the sponsor, that the sponsor had medical conditions that required treatment. Neither seemed to be able to give any detail as to the medications which were required.
14. It was not found by the Judge that the appellant and the sponsor were credible as to the account that they gave and particularly her account as to whether or not she worked in the United Kingdom and what links she had.
15. Clearly it is an important matter to determine the parental relationship which the sponsor has with [M]. That had not been done at the hearing and there is no suggestion that any lack of understanding served to distort the evidence that actually was presented or contributed to the lack of it.
16. It is to be noted at paragraph 22 of the determination in particular that the appellant's representative confirmed in their letter of 22 January 2016 that there was no further documentary evidence of cohabitation of her and the sponsor other than that provided with the application. Little weight was attached to certain letters presented for the reasons as set out and the Judge upheld the concerns of the respondent expressed in the decision. The Judge noted that there was an assertion that the appellant was "very hardworking" whereas in fact she had not worked at all. No evidence was provided by the sponsor as to his claimed status nor was any evidence provided as to the status of [M].
17. Apart from the issue as to social services and court, Ms Yong was unable to point me to any other aspect of the evidence as recorded by the Judge, which could properly and fairly be attributable to a lack of understanding or difficulty of expression. There was no suggestion made that what is recorded as not having been said was in fact said or vice versa.
18. Recognising, as I do, that it is central to the hearing that it be fair and that all parties understand the questions put and are able to express themselves properly in the answers, it would seem to be apparent to the

Judge and, indeed significantly to their legal representative, Mr Waheed, that generally speaking they were able to give the evidence which they wanted to and to respond to the questions appropriately. Nothing has been presented before me today to indicate there was any significant omission or misunderstanding, which contributed to the view of the Judge otherwise than of the misuse it is said of the word 'court'. Even on the basis of social services involved with [M] that has not been clarified as to the nature of that interest or indeed of the part played by the sponsor in that process.

19. Overall the findings of the Judge were properly open to be made and I do not find that they were significantly tainted with any misunderstanding or lack of ability to express. I find therefore that there was a fair hearing. In those circumstances I decline to set matters aside.
20. In the circumstances the appeal before the Upper Tribunal is dismissed. The findings of the First-tier Tribunal Judge shall stand, namely that the appeal of the appellant stands dismissed on human rights grounds.

Notice of Decision

The appeal is dismissed under the Immigration Rules and in respect of Human rights.

No anonymity direction is made.



Signed
13 November 2017

Upper Tribunal Judge King