



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

Appeal Number: HU/06067/2015

THE IMMIGRATION ACTS

Heard at : Field House

**Decision and
Promulgated**

Reasons

On : 19 March 2018

On: 27 March 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TAMASANG JONES ZAMA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Ms A Childs, instructed by Rotherham & Co Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Zama's appeal against the respondent's decision to refuse his application for entry clearance to settle in the UK with his father.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Zama as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Cameroon born on 7 July 1997. He applied in 2013, at the age of sixteen years, for entry clearance to settle with his father, Hippolytus Zama, a British citizen living in the UK. His application was considered under paragraph 297 of the immigration rules and was refused in a decision dated 7 August 2015.

4. The respondent, in refusing the appellant's application, noted that he had produced only a photocopy of his birth certificate and that it was registered five years after his birth. The respondent could not be satisfied from the document that the appellant was related as claimed to the sponsor. For that reason, and in the absence of evidence to demonstrate how the appellant kept in touch with his sponsor, the respondent was also not satisfied that the sponsor had had sole responsibility for his upbringing. The respondent noted that it was claimed that the appellant was residing in Cameroon with his grandmother. No details had been given as to the whereabouts of his mother and there was no evidence that she consented to the appellant going to the UK. The respondent was not satisfied that there were any serious compelling family or other considerations which made the appellant's exclusion from the UK undesirable and that suitable arrangements had been made for his care. The respondent accordingly refused the appellant's application under paragraph 297(i)(e) and (f) of the immigration rules and considered there to be no exceptional circumstances outside the immigration rules for the purposes of Article 8.

5. The appellant appealed against that decision. In an Entry Clearance Manager appeal review dated 26 January 2016 the decision was maintained.

6. The appellant's appeal was heard by First-tier Tribunal Judge Moan on 13 October 2016. The sponsor attended the hearing and gave oral evidence. The judge accepted, from the documentary evidence produced, that the sponsor was the appellant's father. The judge referred to a letter produced for the appeal from the appellant's mother supporting the application and confirming that the appellant had lived with the sponsor's mother since he was five years of age. The judge also referred to evidence of money transfers from the sponsor to his mother or to the appellant for the appellant's upkeep. The sponsor was now married with a young child and was living in the UK and wanted his son with him. The sponsor gave evidence that his mother, the main carer for the appellant, had recently died on 16 September 2016. The judge accepted that there was family life between the appellant and sponsor. The judge considered that it was not reasonable to expect the sponsor and his wife and daughter to move to Cameroon. She accepted that the requirements of the immigration rules were substantially met and that the respondent's decision was not proportionate and she allowed the appeal on Article 8 human rights grounds.

7. Permission to appeal to the Upper Tribunal was sought by the respondent on the grounds that the judge had failed to make a finding that the appellant's mother had abdicated responsibility for his upbringing in line with the guidance in TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049; and that the judge's proportionality assessment was flawed with respect to her findings on the ability of the sponsor to move to Cameroon.

8. Permission to appeal was granted on 29 March 2017, with particular reference to the first ground of challenge.

Appeal Hearing

9. At the hearing both parties made submissions.

10. Mr Jarvis submitted that the judge had made no clear finding on whether the requirements of the immigration rules were met. In that respect he referred to the judge's finding at [21] and [23] that the immigration rules have "substantially" been met. The judge made no express finding on paragraph 297(i)(e) or (f) and the ECO was unable to see from the judge's decision on what basis the appeal was allowed.

11. Ms Childs submitted that it was clear from the decision that the judge considered the requirements to have been met with regard to sole responsibility. The letter and affidavit from the appellant's mother made it clear that she had abdicated responsibility for the appellant and that the sponsor had sole responsibility for him. The judge did not challenge the letter and affidavit and that was therefore sufficient in terms of findings on sole responsibility. The judge, further, found there to be serious and compelling circumstances for the purposes of paragraph 297(i)(f) of the rules, following the death of the appellant's grandmother. With regard to the proportionality assessment, it was open to the judge to find that it was not reasonable for the sponsor's British family to move to Cameroon. There was no material error of law.

12. In response Mr Jarvis submitted that there was a failure properly to consider the evidence from the appellant's mother. In the absence of engagement with that evidence, no proper findings could be considered to have been made in regard to sole responsibility.

Consideration and Findings

13. I find myself in agreement with Mr Jarvis' submissions. There is no clear finding by the judge in regard to the letter and affidavit from the appellant's mother, in terms of its reliability or the extent of the appellant's mother's relationship with her son. Even if the judge is taken, by her reference to the letter at [9], to have accepted it as genuine, and whilst she referred to the issue of sole responsibility at [12], it is not clear at all from her findings that she applied the guidance in TD (Yemen) and considered whether the appellant's mother had actually abdicated responsibility for her son, as

opposed to a preference that he move to the UK to join his father. The judge's findings focussed on the appellant's relationship with his father without any clear indication of his mother's role in his life. That, in turn, plainly impacted upon the judge's findings on compelling circumstances under paragraph 297(i) (f) and Article 8 outside the rules. I agree with Mr Jarvis that it is not clear what the judge meant by the immigration rules being "substantially" met at [21] and [23] and it is relevant to note that the judge's decision on a fee award suggests that she did not find the rules to be met at the date of decision. Plainly without any clear finding on the appellant's ability to meet the immigration rules at the relevant time, there can be no proper Article 8 proportionality assessment and the judge's decision on Article 8 is accordingly flawed.

14. For all of these reasons the judge's decision cannot be sustained and must be set aside and re-made. It seems to me that, given the need for a full assessment of the evidence and the appellant's mother's role in his life and for appropriate findings of fact to be made, the most appropriate course would be for the case to be remitted to the First-tier Tribunal for a fresh hearing.

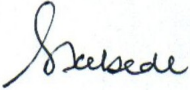
DECISION

15. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed and the decision is set aside.

16. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Moan.

Anonymity

Although the judge referred in the heading of her decision to an anonymity direction having been made, the decision contains no such direction and the judge, at the end of the decision, said that no such direction was made. Given that the appellant is now an adult I see no reason for there to be an anonymity order in any event.

Signed: 
Upper Tribunal Judge Kebede

Dated: 20 March 2018