Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/18199/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1st December 2017	**On 10th January 2018**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR YEBOAH OPOKU MANU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr S Mustafa (instructed by Jade Law Solicitors)
For the Respondent: Ms S Ahmad (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Entry Clearance Officer, with permission, in relation to a Decision and Reasons of Judge Dhanji following a hearing at Harmondsworth on 2nd August 2017. The determination was promulgated on 11th August 2017 and it referred to an application by a minor to join his father in the United Kingdom, he having made an application under paragraph 297 of the Immigration Rules. The Entry Clearance Officer refused it finding the entirety of the application lacking credibility in terms of the Appellant's relationship with his Sponsor, the claimed family life between them and the claim that his mother had abdicated responsibility.

2. By the time it came before Judge Dhanji the single issue, in terms of the Immigration Rules at least, was whether or not the father had been exercising sole responsibility for his son. Unfortunately the Entry Clearance Officer was not represented before the judge and it is always difficult for a judge when faced with that sort of situation. Before me Ms Ahmad referred to various authorities Pavandeel Virk & Others v Secretary of State for the Home Department [2013] EWCA Civ 652, MK (duty to give reasons) Pakistan [2013] UKUT 641 and Budhathoki (reasons for decisions) [2014] UKUT 00341. It is Ms Ahmad's argument that the Decision contains an inadequacy of reasoning and she referred me particularly to a clear discrepancy which the judge did not deal with.

3. At paragraph 5.4 of the Decision and Reasons the judge writes that the Sponsor says that he visited the Appellant in Ghana in 2010, 2012 and 2015. He stayed with his mother but the Appellant and his mother stayed in the same town and he says the purpose of these visits was to see the Appellant. The problem then arises because in the next paragraph 5.5 the judge says:

> "In 2009 the Appellant's mother got married. A copy of her marriage certificate has been submitted. Her husband was from another town, some 400 miles away. She moved to join him in 2013. He says that since the Appellant's mother moved away she has not seen the Appellant."

4. The problem is that is clearly in conflict with the previous paragraph where the Appellant apparently was staying with his mother in the same town as his grandmother with whom the Sponsor was staying in 2015. The judge does refer earlier in the Decision to having taken into account all of the documents and oral evidence before him. However, in finding the Sponsor to be credible and the Sponsor to have sole parental responsibility he is relying on the fact that his mother moved away in 2013 and has not seen the Appellant since. He also to be fair relies on some evidence going back quite some time of financial remittances. However, he does not resolve that important discrepancy as to how the Appellant can be staying with his mother whilst also saying he had not seen her for the previous two years. That failure to critically analyse that discrepancy and indeed critically analyse generally the evidence is an error of law. She was not helped by the absence of a Presenting Officer. That does not mean that the evidence has to be accepted without criticism.

5. The judge has further erred in allowing the appeal under the Immigration Rules. The judge goes as far as saying at 7.5 that having found the Appellant met the requirements of paragraph 297 it was not necessary for her to consider Article 8. That was plainly wrong because there is no right of appeal against the refusal under paragraph 297. There is only a right of appeal against the refusal of a human rights Decision. This plainly was and therefore the judge should have started and finished with consideration of Article 8 looking at it through the lens of the Rules. It is appropriate to make a finding on whether or not the Appellant meets the

requirements of the Rules but then it should not have been allowed under the Rules, it should have been allowed, if it was to be allowed, on Article 8 grounds. However, because of the flawed findings and failure to critically analyse the evidence I find the determination is to be set aside in its entirety and remitted to the First-tier Tribunal for a full rehearing. It was originally heard at Harmondsworth. The Sponsor resides at Enfield in Middlesex so I will leave it to Hatton Cross to determine where it should be reheard.

Notice of Decision

The appeal is allowed to the extent that the First-tier Tribunal Decision and Reasons is set aside and remitted to the First-tier Tribunal for a full rehearing on all issues.

No anonymity direction is made.

Signed Date 8th January 2018

Upper Tribunal Judge Martin