Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/18541/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 9th October 2013	**On 22nd October 2013**

Before
MISS E E ARFON-JONES DL, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MARTIN

Between

MISS ANUSHKA ANNICA MCDONALD

Appellant

and

ENTRY CLEARANCE OFFICER - KINGSTON

Respondent

Representation:

For the Appellant: Mr A Chelliah (Forward & Yussuf, Solicitors)
For the Respondent: Mr G Saunders (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant against a determination of the First-tier Tribunal (Judge M A Khan) promulgated on 10th July 2013 in which he dismissed the Appellant's appeal against the Entry Clearance Officer's refusal to grant her leave to enter as the child of her UK Sponsor.

2. The Entry Clearance Officer had refused the application on the basis that the Appellant did not meet the requirements of paragraph 301(i)(b), 301(i)(c), 301(iii), 301(iv) and 301(iva) of the Immigration Rules. The major issues were that the Entry Clearance Officer was not satisfied that the Appellant and Sponsor were related as claimed, that the Sponsor had had sole responsibility for the Appellant or that the Appellant could be maintained and accommodated in the UK.

3. The Judge accepted, on the basis of DNA evidence before him, that the Appellant and Sponsor were related as claimed. However, he was not satisfied that the Sponsor had had sole responsibility for the Appellant nor was he satisfied as to accommodation and maintenance due to a lack of evidence before him.

4. The grounds upon which permission to appeal was granted assert that the Judge erred in refusing to adjourn the hearing on the Appellant's representative's application to firstly await crucial documents in the form of a court order from Jamaica which it was claimed was evidence of sole responsibility and secondly for the attendance of the Sponsor. Rather puzzlingly the grounds also assert the Judge erred with regard to his consideration of the DNA evidence, puzzling because the Judge accepted that the DNA evidence showed the Appellant and Sponsor were related as claimed.

5. The Judge who granted permission found it arguable that the First-tier Tribunal had erred because when dealing with the adjournment request because he had referred himself to Rule 19 but not Rule 21 of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

6. We note that at the First-tier Tribunal hearing there was no bundle of evidence provided by the Appellant, the Sponsor or the representative as directed. The only evidence before the Tribunal was the Respondent's bundle and the DNA Report produced at the hearing..

7. It is clear that on the day of the hearing the Sponsor was absent. There was no explanation for her absence and the representative was unable to provide any. The representative requested an adjournment on the basis that crucial evidence in the form of a court order was awaited from Jamaica and that would establish sole responsibility.

8. The Judge in the determination noted that there was no explanation for the Sponsor's absence when she was clearly aware of the hearing. With regard to the anticipated evidence, the Judge noted that the representatives had been involved in the case since June 2012 (the hearing before him was in June 2013 and there had been ample time to collate and submit evidence. It is true that the Judge referred only to Rule 19 of the Procedure Rules. Rule 19 provides when it is appropriate to hear an appeal in the absence of a party. The Judge did not refer himself to Rule 21 which refers to the adjournment of appeals. Rule 21 provides that where a party applies for an adjournment of the hearing of an appeal he

must show good reason why an adjournment is necessary and produce evidence of any factual matter relied upon in support of the application. Secondly, Rule 21 provides that the Tribunal must not adjourn the hearing of an appeal on the application of a party, unless satisfied that the appeal cannot otherwise be justly determined.

9. In this case the Judge was faced with an absent Sponsor with no explanation whatsoever despite legal representation. He was told that crucial evidence was awaited but no evidence that it had been requested, who it was coming from and when it was expected. There was no explanation for the absence of an Appellant's bundle. Furthermore an adjournment application had been previously made and refused for the same reason.

10. Under the circumstances, failing to specifically refer to Rule 21 made no difference to the outcome. The Judge was perfectly entitled to and indeed was required to proceed with the appeal in the circumstances of this case.

11. We are fortified in that view because despite permission to appeal to the Upper Tribunal having been granted, we still have no statement from the Sponsor explaining why it was that she was absent from the hearing and we have still been provided with no application to submit the court order which was apparently so crucial to the Appellant's case. That is a strong indication that no such document exists. Had we been presented with a statement from an apologetic Sponsor giving good reason for her absence with the crucial evidence attached our decision might have been different.

12. We would add that without any application to adduce further evidence Mr Chelliah sought to rely on a sizeable bundle of evidence that was not before the First-tier Tribunal. We indicated that we would entertain an application to submit additional evidence only if we decided the First-tier Tribunal's determination contained an error of law such that it should be set aside. We did not so find.

13. The First-tier Tribunal's determination does not contain an error of law and it is upheld. The appeal to the Upper Tribunal is dismissed.

Signed Date 18th October 2013

Upper Tribunal Judge Martin