Upper Tribunal
(Immigration and Asylum Chamber)

Appeal numbers: HU/09093/2016
HU/09091/2016

THE IMMIGRATION ACTS

Heard at:	Field House	Decision & Reasons promulgated
On	19 March 2018	On 6 April 2018

Before

Upper Tribunal Judge Gill

Between

[K S]
[I W] Appellants

~~**(ANONYMITY ORDER NOT MADE)**~~

And

Entry Clearance Officer (ECO), Pretoria Respondent

Representation:
For the appellants: Ms T Mershed, of Counsel, instructed by Caveat Solicitors.
For the respondent: Mr P Duffy, Senior Presenting Officer.

Decision and Directions

1. The appellants are twin brothers, born on [ ] 2002. They are nationals of Uganda. They have been granted permission to appeal the decision of Judge of the First-tier Tribunal M A Khan who, in a decision promulgated on 13 July 2017 following a hearing on 22 June 2017, dismissed their appeals against decisions of the respondent of 26 February 2016 to refuse their applications for entry clearance in order to join their father, a Mr [BS] (hereafter the "sponsor"), a Ugandan national, in the United Kingdom as his dependent children.

2. The respondent was not satisfied that the sponsor had had sole responsibility for the upbringing of the appellants or that there were serious and compelling family or other considerations which made their exclusion undesirable. The respondent therefore refused the appellants' applications under para 297(i) (e) and (f) of the Statement of Changes in the Immigration Rules HC 395 (as amended) (hereafter referred to individually as a "Rule" and collectively the "Rules"). In addition, the respondent was not satisfied that the decision in each case was in breach of Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR").

3. The grounds may be summarised as follows:

   (i) Ground 1 is that the judge misapprehended the evidence of the sponsor in two material respects. Ground 1 contends as follows:

      (a) The sponsor had not said in oral evidence, as the judge had stated, that the appellants' mother visits them once every three months at their boarding school. It is said that the sponsor had in fact given evidence that the mother "*has gone to the school and visited them, once in three months there are visitation rights*"; and that, when he was in Uganda in 2016, the appellants told him that they last saw their mother in 2015. Accordingly, the grounds contend that the sponsor's evidence before the judge was that the school had visitation days once every 3 months and not that the appellants' mother visited them once every 3 months.

      (b) The sponsor had not said at the hearing, as the judge had stated, that the appellants' mother left the appellants with his (the sponsor's mother) and "*went off for work reasons*". His evidence was that "*she got married and moved away and later she started work*".

   The grounds contend that, given the judge's reasoning in relation to both (a) and (b), the judge's misapprehension of the evidence was material to his finding that the sponsor did not have sole responsibility.

   (ii) Ground 2 is that the judge's decision is riddled with spelling and grammatical errors, the number and nature of which are such that:

      (a) they cumulatively diminish the faith that the appellants have that their appeals have been considered with appropriate scrutiny and care; and/or

      (b) the judge's decision falls so far short of the standard that an appellant is entitled to expect in a judicial decision that it cannot be allowed to stand without significantly undermining the reputation of the Tribunal itself. In this respect, the grounds rely upon the judgment of the Court of Appeal in ML (Nigeria) v SSHD [2013] EWCA Civ 844.

   (iii) Ground 3 is that the judge misdirected himself in reaching his finding on the sole responsibility issue. In this respect, the ground refers to paras 21 and 22 of the judge's decision where he relied upon the sponsor's evidence that he maintained contact with the appellants' mother once or twice a year. On the basis of this evidence, the judge found that the only reason the sponsor maintained contact with his ex-partner was because she had some responsibility for the appellants and he therefore found that the sponsor had not demonstrated that the sponsor had had sole responsibility for the appellants.

Ground 3 contends that, even leaving aside the appellants' contention that the judge had misapprehended the sponsor's evidence as contended in ground 1, the judge erred in reaching his finding on the sole responsibility issue as follows:

(a) he appeared to think (incorrectly) that the test was whether the appellants' mother had abandoned the appellants i.e. ceased to have any contact with them at all; and

(b) in any event, the fact that the sponsor had contact with the appellants' mother once or twice a year was not evidence that she had responsibility for the appellants.

4. In support of ground 1, Mr G Lee, of Counsel, who appeared for the appellants before the judge, submitted a witness statement with the grounds. The sponsor also submitted a witness statement.

5. I am grateful to Mr Lee who attended the hearing before me in order to give evidence if required. In the event, it was not necessary for me to hear oral evidence from Mr Lee, for the reasons given at paras 6-8 and, in the alternative, paras 11-14 below.

6. At the hearing before me, Mr Duffy accepted that the judge had materially erred in law as contended in ground 3 and that, on that basis alone, his finding on the sole responsibility issue should be set aside.

7. I am satisfied that the judge erred in law in reaching his finding that the sponsor had not shown that he had had sole responsibility for the appellants' upbringing. The judge referred to TD (paragraph 297(i)(e): sole responsibility) Yemen [2006] UKAIT 00049 (IAC) which said, inter alia, that where both parents are involved in a child's upbringing, it will be exceptional that one of them will have sole responsibility. However, it is clear that the judge assumed, from the mere fact that the sponsor was in contact with the appellants' mother once or twice a year, that such contact meant that she was involved with their upbringing. He did not explain why such contact between the sponsor and the appellants' mother indicated that she had any involvement with their upbringing especially given the sponsor's evidence (which the judge did not say that he disbelieved) that the appellants were at boarding school and that he had chosen their boarding school. The fact that the appellants were in a boarding school means that any finding that the mother had responsibility for their day-to-day care would need to be clearly explained, which was absent from the judge's reasoning.

8. I am therefore satisfied that ground 3 is established. On this basis alone, I set aside the decision of Judge Khan in its entirety. None of his findings shall stand.

9. In relation to the re-making of the decision on the appellants' appeals, I also agree with Ms Mershed and Mr Duffy that the appropriate course of action is to remit the appeals to the First-tier Tribunal. In my judgment, para 7.2(b) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal applies.

10. I informed the parties that, notwithstanding the decision on ground 3, I would make a decision on ground 2 given its importance. I therefore turn to ground 2.

11. Para 12 of the grounds sets out the list of spelling and grammatical errors in the judge's decision. I identified some additional errors. The errors are follows (the underlining is supplied):

Para1: "There were no serious of compelling circumstances…"

Para 3: "… that there are serious and compelling circumstances for their exclusion undesirable"

Para 8: "establsihed" and "family lif"

Para10: "sponsor adopted her written witness statement…"

Para 11: "his sons were on eyear old…"'

"the appellants' mother visit them on vistations…"

"… he was in Ugnada in 2016"

"He said siad…"

Para 12: "The sponsor said that they boys were enrolled..."

"…decisions in thei lives... "'

"He said that he contact with the mother of his sons…"

Para 13: "…the sponsor said his sons are a a Boarding school.."

"He said that he has never made and application…"

"…cheaper for him to go to Uganda then for them to come to the UK"

Para 14: "'…he knows some othe teachers there."

Para 15: "…ms Chopra."

"The sponosr does not have the sole responsibility for his son…"

Para 16: "He has choosen schools for his sons…"

The appellantds"

Para 18: "The appellants made applications for entry clearance from the United Kingdom as depends…"

"...the appellant do not meet…"

Para 19: "…vague and evasive to say the lease."

Para 20: "The apellants' mother…"

"I therefore attach little wait to this letter."

Para 21: "…the appellants' mother has had no rolw…"

"…once or twice a years…"

Para 24: "I find that he was deliberatly seeking..."

Para 25: "…th esponsor…"

"In order for consideration under Article 8 of the ECHR, in particular, the compelling compassionate aspects and ciricumstance, have to be demonstrated."

"…for example where the applicant in living…"

"will involve inequiry as to wether…"'

"…sufficiently serious and comelling…"

Para 26: "… Justice Blacke…"

"…more tha the parties... "

"…pwesuasive and powerful…"

"…the anaysis…"

"Such an inerpretation…"

Para 27: "Paragraph 35 of the Mundeba…"

"The terms od s55 (1) and rhe decision…"

"…we have qouted above…"

"…set out in the inetrcution…"

"…states thw legal positions…"

"…spirit if the duty make enquiries"

Para 28: "…I find that there are no considrable…"

"…right to implemint the immigration control…"

"…they have been studying in in Boarding school…"

12. Of course, I bear in mind the pressures on judges not only to hear appeals and write their decisions on a timely basis but also to ensure that evidence is considered with appropriate care and that sufficient reasons are given for their findings of fact. Nevertheless, in my judgement, the sheer catalogue of spelling and grammatical errors in the judge's decision, as set out above, is indeed such that I am duty bound to conclude that, irrespective of ground 3, this decision simply cannot be allowed to stand without risking the reputation of the First-tier Tribunal itself. In view of ground 2 which is established, I can have no confidence in the judge's record or summary of the evidence. For this reason, I did not call on Mr Lee to give evidence in relation to this ground.

13. Since ground 1 does not raise the same serious issue concerning the reputation of the Tribunal, I did not consider it necessary to consider ground 1 and therefore I did not consider it necessary to hear oral evidence from Mr Lee.

14. In any event, in view of ground 2 which is established, I can have no confidence in the judge's record or summary of the evidence.

15. I therefore set aside the decision of Judge Khan in its entirety. None of his findings shall stand, nor shall his record or summary of the evidence stand.

Notice of Decision

The decision of Judge of the First-tier Tribunal M A Khan involved the making of errors on points of law such that the decision is set aside in its entirety. This case is remitted to the First-tier Tribunal for re-hearing on all issues by a judge other than Judge of the First-tier Tribunal Khan. I consider the quality of the decision is such that I should specifically draw it to the attention of the Resident Judge at the First-tier Tribunal's Hatton Cross hearing centre.

Signed Date: 31 March 2018
Upper Tribunal Judge Gill