



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005051

First-tier Tribunal No: HU/01225/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VK
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Unrepresented

For the Respondent: Ms McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 12 February 2024

DECISION AND REASONS

Anonymity Order:

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the Appellant is a child and I see no public interest in identifying her, as opposed to her circumstances.

Introduction

1. I refer to the parties as they were in the First-tier Tribunal, with the Secretary of State as the Respondent and VK as the Appellant.
2. This is an appeal by the Respondent against a decision of First-tier Tribunal Judge Abebrese ("the Judge"), promulgated on 18 August 2023. By that decision, the Judge allowed the Appellant's appeal against the decision of the Secretary of State, dated 18 July 2022, to refuse her human rights claim.

Proceedings in the First-tier Tribunal

3. The Appellant is a national of Uganda, born in 2011. Her application for entry clearance was made under paragraph 297 of the Immigration Rules, on the ground that her mother has sole responsibility for her and/or there are serious compelling family or other considerations which make exclusion from the United Kingdom ("UK") undesirable.
4. Insofar as is relevant to the issues at the error of law hearing, the matters in dispute at the First-tier Tribunal hearing were whether (i) the sponsor is in fact the mother of the Appellant and, if so, (ii) whether the evidence was sufficient to demonstrate sole responsibility. In particular, the Respondent relied upon the fact that, whilst the DNA evidence submitted by the Appellant showed that she is related to the person whose DNA was tested, there was no evidence that the person who submitted their DNA was in fact sponsor.
5. The Judge allowed the appeal because he found, inter alia, the evidence of the sponsor, that she is the mother of the Appellant, to be credible [17].

The grounds of appeal and grant of permission

6. The grounds of appeal plead that:

"The Respondent asserts that the failure (sic) to provide the correct documents to show who participated in the DNA (sic) is a material matter. In failing to resolve that point the Tribunal has erred in law. The (sic) Respondent (sic) position is clear without the correct documentation the lacks proof (sic) to confirm the relationship as claimed. This leads to concerns regarding safeguarding of the Appellant."

7. Permission was granted by Upper Tribunal Judge Kebede.

Upper Tribunal proceedings

8. Ms McKenzie helpfully clarified the ground of appeal. She submitted that, while the Judge did note the fact that the DNA evidence was incomplete, the Judge had failed to give adequate reasons for nonetheless concluding that the sponsor is the mother of the Appellant.
9. Whilst the Appellant was not legally represented, the sponsor attended and I gave her the opportunity to make submissions. She stated that she had told the Judge that she had lost, during the course of a house move, the document that proved she was the person who had submitted DNA for testing.

Conclusion

10. I conclude, for the reasons set out below, that the Judge has made a material error of law.
11. The Judge found:

“I have considered all of the evidence in this appeal and I make the following findings. I found the sponsor to be credible and consistent in her evidence. I found her to be credible with regard to her relationship with the sponsor ... [15]

The sponsor has not according to the Respondent provided the documents to show that she is the person who participated in the DNA test. I consider that looking at the evidence in the round the sponsor is the mother of the Appellant ...” [17]
12. The assessment of the credibility of the sponsor was a matter for the Judge but the Judge was obliged to give reasons for his finding and any such reasoning is notably lacking. In his decision, the Judge rehearsed the evidence and stated he found the evidence of the sponsor to be credible but does not explain why he found her evidence credible. The need for clear reasoning is particularly important in this appeal because of the issue relating to the DNA evidence. The DNA evidence adduced by the appellant was of no evidential value in proving the familial relationship because that part of the evidence that showed that one of the tested samples derived from the sponsor was missing. Whilst there is no evidential requirement to adduce DNA evidence, the presence or absence of such evidence is plainly an important consideration: if present, it is determinative of the question of the existence of the familial relationship; if absent, then a Judge can expect a good reason why such readily available evidence had not been adduced. If, as the sponsor told me, the Judge was told about why the DNA evidence was not adduced, the Judge did not assess the credibility of such an explanation.
13. I therefore conclude that error of law as pleaded in the grounds of appeal is made out. Whilst no complaint is made in the grounds of appeal in relation to the Judge’s reasoning when concluding that the Appellant had demonstrated sole responsibility, the Judge’s finding in this regard cannot stand, given that any assessment of the familial relationship will necessarily inform any conclusion about sole responsibility.

Notice of Decision

14. The decision of the First-tier Tribunal involved the making of a material error on a point of law and so I set aside the decision.
15. I remit this appeal to the First-tier Tribunal (not to be listed before Tribunal Judge Abebrese), to be heard de novo with no findings of fact preserved. In reaching this decision, I apply paragraph 7.2 of the Senior President’s Practice Statement and the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).

C E Welsh

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 March 2024