Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA 16023 2012
OA 16029 2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 17 January 2014	**On 25 March 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

D--- D--- N---
E--- S---
(ANONYMITY ORDER MADE)

Appellants

and

ENTRY CLEARANCE OFFICER NAIROBI

Respondent

Representation:
For the Appellant: Mr G Hodgetts, counsel instructed by Paragon Law solicitors
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are both citizens of Uganda and were both minors at the date of decision. Although I appreciate the practice of the family courts is being reviewed I find it undesirable for this decision to be published in a way that identifies the children and I make the usual order in this case restraining any publication that identifies them. They were born in 1995 and 1999 respectively and made an application to join their mother who is a person present and settled in the United Kingdom.

2. The applications were refused on 30 May 2012. In each case the respondent was satisfied that false documents had been used to support the application and that the appellants had failed to show that the parent in the United Kingdom was exercising sole responsibility or that there were serious and compelling family or other reasons requiring their admission.

3. Permission to appeal was granted by Judge Freeman who gave directions intended to focus everyone's attention on the quality of evidence supporting the contention that false documents had been provided.

4. I am entirely satisfied that the evidence before the Tribunal did not support the conclusion that false documents had been provided and the First-tier Tribunal judge should not have concluded on the evidence before him that false documents had been used. There was only evidence relating to the false birth certificate in the case of one of the children. The First-tier Tribunal judge said at paragraph 26 that "there is no credible suggestion that one certificate is genuine and the other is not. Clearly if one is not genuine then the other is not". I have reflected very carefully on that and can see no justification for it whatsoever. It does not follow from the fact that a false document was produced in one case that the document in the other case was false. This is perverse.

5. However, even in the case where the allegedly false document was produced the evidence is completely unsatisfactory. It gets off to a bad start because it has been compiled on a form that is provided for the use in the case of disputed bank statements. This does not really matter in the sense that the meaning is plain enough but it does give an impression of a casualness which ought not to be present when allegations of this kind are made.

6. The big problem however is the reason advanced for finding the document to be forged. It is that enquiries have been made of an allegedly appropriate registrar in Uganda who can find no record of the disputed certificate. I note that this is hearsay evidence. It is not inadmissible in this jurisdiction but its uncertain provenance devalues the reliance that can be placed on it. Much more importantly than that, as Mr Hodgetts has pointed out, we do not know what questions were asked so we do not really know what the registrar was saying. We do not know for example if an enquiry made about registration in a very similar name or on similar dates in an effort to see if an honest mistake had been made would have produced a different result. We do not know why it was assumed that the registrar who was questioned was in a position to answer the question asked. We do not know for example that there was any system of requiring registrars to forward the information to a central registry or that any such obligation is carried out diligently. Clearly there was proper reason to be doubtful about the birth certificate but the evidence produced shows no more than there is something about which concern should be expressed.

7. What should have happened is that the Entry Clearance Officer should have asked for the certificate to be examined by a registrar and the registrar's comments recorded. There is no such evidence before me. This is not a case, for example, where there is something wrong with the paper on which the document is published or there is something wrong with the serial numbers or dates that would produce an incongruous result. Nothing like that is alleged. We are just told that because it is not traceable by somebody who was asked it must be forged. This is the kind of evidence which would not begin to establish a prima face case in the criminal courts and I am quite satisfied does not support the conclusion reached by the First-tier Tribunal judge.

8. It does concern me that the Entry Clearance Officer is prepared to make such a serious allegation with such serious consequences on such flimsy evidence. If the document is forged that should be proved properly because there is a clear obligation in the Rules to treat in a certain way a case that is supported by unreliable or dishonest documents and no judge will want to be associated with encouraging people to cheat the system. However if proper evidence is not produced it should not be inferred or assumed because the respondent finds it convenient.

9. It follows that I am satisfied that the First-tier Tribunal's finding that a forged document was produced in either case is wholly unfounded and this needs to be removed from the determination. It follows therefore I have no hesitation in setting aside the decision of the First-tier Tribunal.

10. I must now decide what to do. Mr Hodgetts invites me to allow the appeal. Ms Everett sounds a note of caution. She says, with some justification, that the findings that have been made are not clear and need to be made properly.

11. However, having looked carefully at the determination I am not persuaded by the note of caution that Ms Everett has sounded. Paragraph 35 of the determination begins with the assertion that the First-tier Tribunal judge is going to establish the facts. There is then in paragraph 36 a correct direction about the nature of sole responsibility and at paragraph 37 a clear and unequivocal finding that the father has not been involved in the care of the children so he falls out of the picture completely. There is then a finding of sorts about the grandmother, who has been the day-to-day carer on anybody's version of events, being involved in a car accident in 2004. It was the grandmother's case that the mother had had responsibility for financing her and the children and making all the important decisions.

12. It does not stop there. There is clear evidence before the Tribunal that the sponsor paid the children's fees and paid them on time and paid fees relating to the extra curricular activities of the son. There is a letter from the school supporting the claim that the sponsor has been directly involved in decisions about the school and a generally supporting letter from the secondary school where the older appellant attended, although it is noted correctly that that does not say exactly what sort of involvement there has been.

13. There is also a finding at paragraph 38 of the determination that the evidence was not reliable but the reason for this as advanced is a false reason, namely that a false document was produced, and so that criticism falls away.

14. The findings are not crystal clear and they are shot through with a reservation about the quality of the sponsor's evidence because she herself was involved in entering the United Kingdom irregularly in 2001. That is a long time ago.

15. I find, looking at the determination as a whole, although the point could have been better expressed, it was accepted by the First-tier Tribunal judge that the mother has been doing the paying and has been involved in the lives of the children in making important decisions.

16. Clearly she has been advised by experienced solicitors so the sponsor could be expected to produce the most relevant and helpful evidence but it does not follow from that that it is unreliable or tainted in any way.

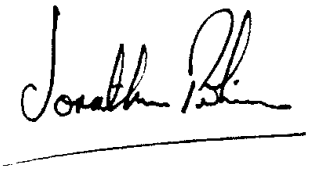
17. I find it probable that in reality this is a case where the grandmother had day-to-day care of the children but the mother in the United Kingdom was taking a close supervisory role and was paying the important bills. I find that is enough to support the conclusion that the mother had sole responsibility for the children at least at the time when the application was made. It is clear that the grandmother's role has diminished as her health declined as a result of the car accident and she became a little older and consequently less able to cope.

18. It is not often in cases such as this that the decision can be reached with complete confidence but I am persuaded on the evidence before me that the proper decision is not only to set aside the decision of the First-tier Tribunal, which I do, but to go on to make a finding that the appellants have shown that the sponsor had sole responsibility and to allow the appeals outright in each case.

19. Although I make it plain that I allow the appeals on the basis of sole responsibility, I also find merit in the argument that there are now compelling circumstances requiring the family to come to the United Kingdom because I am satisfied the evidence shows that the grandma has reached the point where she is not really able to cope anymore. This is not to say the children are living in dire circumstances but the grandmother has reached an age when because of her damaged body in the car accident she is not able to give the appellants appropriate care. It is time that the family members were united properly where they would be with their other sister, that is the sponsor's other child who lives in the United Kingdom. This is very much a secondary finding. My main point is that sole responsibility has been established.

20. Therefore I allow both appeals.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 21 March 2014