



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-001010
EA/12296/2021

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 5 August 2022**

**Decision & Reasons Promulgated
On 6 December 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**LS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mohammed Sheriff (Sponsor)
For the Respondent: Mr McVeety, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a male citizen of Liberia born on 2 April 2011. He was refused a family permit by a decision of the Secretary of State dated 28 July 2021. He appealed to the First-tier Tribunal which, in a decision promulgated on 1 February 2022, dismissed the appeal. He now appeals, with permission, to the Upper Tribunal.
2. Permission to appeal to the Upper Tribunal was granted by Judge Nightingale as follows:

The grounds are lengthy, repetitive and not easy to follow. However, they appear to argue the Judge's decision was flawed and unreasonable and that the Judge did not follow correct procedure. The Judge should have accepted the adoption order and should have accepted the appellant's bundle into evidence.

The sponsor's grounds raise, at least, one arguable error of law. The Judge admitted the respondent's bundle into evidence despite receiving it the day after the hearing. The Judge refused to admit the appellant's bundle to evidence as it had been received only the day before the hearing (paragraph 32 refers). It is arguable the Judge fell into procedural impropriety by failing to give the impression of even handedness.

The Judge also arguably fell into error in failing to consider the "de facto" adoption notwithstanding the lack of formal legal recognition of adoption orders made in Liberia.

Permission is granted, limited to the grounds set out above.

3. At the Upper Tribunal initial hearing, the appellant's sponsor appeared without legal representation. I sought to assist him by explaining the legal issues in the appeal.
4. As regards the first ground of appeal identified by Judge Nightingale, I note that the judge addressed the matter of the late service of the respondent's bundle at [25]:

At the very least, the Respondent's bundle was not available to me when this appeal was heard. I cannot be sure when it was submitted (or if it ever reached the Appellant.) That said, the bundle consists of (a) the refusal, (b) the appeal form and (c) the grounds of appeal. All are documents either authored by or in the possession of the Appellant. Whilst therefore it is possible the Respondent's bundle was served very late, admission of the documents therein causes no prejudice to the Appellant.

5. Given the nature and authorship of the documents in the respondent's bundle, I find that, even if the judge should not have received the bundle in evidence, any error was not material. The judge has not had regard to significant evidence in reaching his determination of the appeal upon which the appellant has not been given an opportunity to comment. There has, in consequence, been no unfairness towards the appellant.
6. The judge said this about the appellant's bundle:

The next question to be resolved is the admissibility of the Appellant's bundle served only the day before this case was heard. It is well out of time. Although not determinative of the issue, one would normally expect a request for an extension of time (the covering letter to the bundle is headed that way) to have been made well before. I am conscious the Respondent has not been represented at court. This is

not a case where, for example, matters could have been stood down for a presenting officer to consider anything served.

Although not entirely clear, it seems from the bundle that it was served on the Respondent and Tribunal at the same time. Enclosed are cover letters suggesting as such. The request for extension of time is based (per the cover letter) on the S.55 bests interests of the Appellant. Although I understand the thinking behind that (and say this without criticism) it seems to me this question is more about the overall interests of justice.

Bearing in mind the date the bundle was submitted, the Respondent could not be reasonably expected to consider it. Unfairness would therefore result were the Appellant's bundle admitted.

7. I cannot find fault with that analysis. Unlike the respondent's bundle, the appellant's bundle contained material which, had the judge considered it without the respondent's having the opportunity to do so, would have led to a clear procedural unfairness. Had the judge admitted the bundle because the appellant is unrepresented, any unfairness would not have been avoided; an unrepresented appellant is bound to comply with the rules and, whilst he may be assisted by the Tribunal to understand the law, he should not be granted an unfair advantage in the proceedings.
8. As regards the *de facto* adoption of the appellant by the United Kingdom sponsor, the judge considered this at [37-38]:

Liberia is not listed within the 2013 Order. As such, the certificate has not been issued by a court or authority recognised by the UK. Without that, the Appellant cannot be considered an adopted child as defined by the Rules. Even if I had admitted it, the evidence provided otherwise does not come close to demonstrating this. In reaching that conclusion I am aware of the need to consider the best interests of the Appellant. Nevertheless, that cannot in my judgement act as a 'trump' card so as to negate the requirements of the Rules.

For that reason, the sponsor's status (which has not been challenged) or whether he has provided support to the Appellant in Liberia cannot be taken into account. Unless it has been shown to the applicable standard that the Appellant meets the definition of an adopted child, all other issues become irrelevant.

9. Mr McVeety, who appeared for the Secretary of State at the Upper Tribunal initial hearing, helpfully explained to the Tribunal and to the sponsor that a *de facto* adoption concerning a child in Liberia is not recognised in the EU Settlement Scheme. The judge was, therefore, correct to hold that the relevant rules could not be met. Answering Judge Nightingale's point, Mr McVeety submitted that, whilst it fell outside the provisions of the scheme, the adoption did not constitute a very compelling circumstance for the purposes of Article 8 ECHR. I agree. To treat the adoption in that way would, in effect, amount to using Article 8 ECHR to fill a gap in the statutory scheme. That would not be legitimate in the circumstances.

10. This is an unfortunate case. The sponsor told me that the appellant, his blood nephew, is being looked after by friends. The sponsor had promised the appellant's late father (the sponsor's brother) that he would care for the child and is distressed by his inability to bring him to the United Kingdom. I suggested to the sponsor that he seek legal advice as soon as possible.

Notice of Decision

This appeal is dismissed.

Signed

Date 14 October 2022

Upper Tribunal Judge Lane

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.