IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2024-005351

First-tier Tribunal Nos:
HU/52621/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 February 2025

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MONDAY SAMUEL ODUWALE
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: Ms Mousumi Chowdhury, Counsel instructed by Daniel Aramide Solicitors
For the Respondent: Ms Siobhan Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 22 January 2025

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of First-tier Tribunal Judge Swinnerton promulgated on 17 September 2024 ("the Decision"). By the Decision, Judge Swinnerton dismissed the appellant's appeal against the decision of an Entry Clearance Officer ("ECO") to refuse to grant him entry clearance as the child of a relative present and settled in the United Kingdom.

Relevant Background

2. The appellant is a national of Nigeria whose date of birth is 6 August 2012. Following the death of his mother on 12 March 2023, his maternal grandmother in the UK sponsored an application by him for entry clearance.

3. In his application form, he said that he had been residing at his current address in Lagos for the past nine months. He was living with his school headteacher. This had been arranged by his grandmother.

4. The application was supported by a letter from the school Principal dated 27 October 2023. She said that the appellant had joined her school on 14 March 2023 due to the demise of his mother. The appellant was very fond of his grandmother. He felt calm whenever he spoke to her on the phone, as she promised to take him to stay with her in the UK any time soon.

5. In the reasons for refusal letter ("RFRL") dated 28 February 2024, an ECO gave reasons for refusing the application for entry clearance made on 1 December 2023. The application had been assessed under Rule 297(i)(f). He had provided a letter from his school stating that he was emotionally attached to his sponsor, and that they were regularly in contact. Aside from this letter, there had been no evidence to demonstrate this. He had not provided any evidence to demonstrate why he could not live with his father. Whilst it was acknowledged that he was related to his sponsor as claimed, no serious or compelling reasons had been given which would make his exclusion from the UK undesirable.

6. As to his rights under Article 8 ECHR, it was not accepted that he had family life with the sponsor. As this was the case, Article 8(1) did not apply to him. However, if he did have family life with the sponsor, the decision was proportionate under Article 8(2). The decision was justified by the need to maintain an effective immigration border control.

The Appellant's Case on Appeal

7. The appellant's case on appeal was set out in an appeal skeleton argument (ASA) dated 12 June 2024. It was submitted that the material facts were that the appellant was residing with his deceased mother until March 2023; his mother was a single parent following her divorce from the appellant's father in 2017; the father had not made contact with the appellant since the age of one; following his mother's death the sponsor had made an arrangement with the appellant to be taken care of by Mrs Odukoya Onome Victoria, a friend of the appellant's mother and a teacher; and in the last 12 months, the sponsor had twice travelled to Nigeria to check on the appellant's welfare.

8. It was submitted that this evidence showed that the sponsor had had sole responsibility for the appellant since the death of his mother.

9. It was further submitted that the present arrangement could not continue, as Mrs Odukoya Onome Victoria was no longer able to take care of the appellant; and the sponsor was a British citizen with economic and private life ties to the UK, and so she could not relocate to Nigeria.

10. In the Respondent's Review dated 23 July 2024, the Pre-Appeals Review Unit (PARU) challenged the credibility of the claims made about the appellant's family and domestic circumstances. In particular, whereas the sponsor in her witness statement said that there was no other person in Nigeria to take care of the appellant, it was noted that the appellant had three older siblings comprising: Hannah (aged 21 at the date of application); Olorunwa (aged 18 at the date of application); and Titilope (aged 17 at the date of application). The respondent had not been provided with any details of the whereabouts of these siblings; what their care arrangements were; or why they were unable to provide care for the appellant, considering that two of them were adults at the date of application. The respondent also noted that the appellant's father was directed in the divorce documents to continue to provide financial support to the appellant and his siblings, to give his consent to their choice of school, and to have access to them – albeit that the father had not taken any fatherly role in the children's upbringing up until that point. This evidence demonstrated that the sponsor did not have sole responsibility for the appellant's care and upbringing.

The Hearing Before, and the Decision of, the First-Tier Tribunal

11. The appellant's appeal came before Judge Swinnerton on 16 September 2024. Both parties were legally represented, the Judge received oral evidence from the sponsor who was cross-examined by the Presenting Officer, and asked questions by the Judge.

12. In closing submissions on behalf of the respondent, the Presenting Officer submitted that was no corroborative evidence to show that the three siblings of the appellant were all in South Africa (as had been stated by the sponsor in her oral evidence).

13. In reply, Counsel for the appellant submitted that the appellant's father had not taken a role in his life since 2013 and it was the sponsor who provided financial support to the appellant.

14. In the Decision, the Judge said at para [16] that in respect of any health challenges of the appellant, he was not provided with any documentary evidence or otherwise that the appellant was suffering from any significant health issues. He found that the appellant was not suffering from any significant health issues or health challenges.

15. On the topic of financial support provided by the sponsor to the appellant, the Judge held at para [17] that the sponsor had provided monies relating to the school expenses of the appellant in December 2023 and in several months during 2024. But he was not provided, however, with documentary evidence that the sponsor had been providing regular monies for the benefit of the appellant. He had not been provided with

documentary evidence of monies having been sent to Mrs Odukoya Onome Victoria for the benefit of the appellant, with whom it was claimed he had been living for about 18 months.

16. At para [18], the Judge observed that the appellant had three elder siblings of whom at least two were now adults. No mention was made of these siblings in the witness statement of the sponsor. Neither was there any mention in the witness statement of the sponsor that the three siblings of the appellant were all residing at a boarding school in South Africa, and that the sponsor was paying the school fees of all three of these siblings. No documentary evidence had been provided to show that the three siblings of the appellant were residing at a boarding school in South Africa, or that the sponsor was funding their education there. He found it difficult to accept that the sponsor was able to fund the education of the appellant in Nigeria, and his three siblings in South Africa, and he did not find it at all credible. Nor was any explanation provided as to why the appellant - the youngest child - would have been separated from his siblings. The Judge continued:

> "I do not believe that the three siblings of the appellant are all attending boarding school in South Africa."

17. At para [19], the Judge found that it was more likely than not that the appellant's father was involved to some extent in the life of the appellant, albeit that this might only consist of making financial provision for him.

18. In relation to the living arrangements of the appellant, the Judge at para [20] held that he could see no reason why the current arrangements could not continue. The appellant had always lived in Nigeria. He was not prepared to accept that there were serious or compelling family or other considerations which made the exclusion of the appellant undesirable, and he found that suitable arrangements had been made for the appellant's care in Nigeria. At para [21] the Judge concluded:

> "I do not find that there are any exceptional circumstances. The sponsor has visited Nigeria from 1.4.2023 to 9.5.2023 and from 15.3.2024 to 5.4.2024. I accept and find that the sponsor has spent time with the appellant during these visits. That said, I do not accept that there is family life between the sponsor and the appellant. I find the decision of the respondent is proportionate."

The Grounds of Appeal to the Upper Tribunal

19. Ground 1 was that the Judge had erred in failing to engage with the sponsor's evidence that the current care arrangements of the appellant could not continue, when finding that suitable arrangements had been made for his care.

20. Ground 2 was that the Judge had erred in failing to consider the appeal under Article 8 ECHR even though Article 8(1) was engaged. There was an absence of consideration of the fact that the carer arrangement was only

temporary and the fact that the child constantly required medical attention.

The Reasons for the Grant of Permission to Appeal

21. On 21 November 2024, Judge Le Grys gave reasons for granting permission to appeal. Ground 2 was arguable. The Judge did not conduct a proportionality assessment, having concluded at [21] that family life was not engaged:

> "It is arguable that the basis of this conclusion is inadequately reasoned, the Judge giving no further explanation of the finding and having previously engaged with the claimed family life in the context of the Immigration Rules."

22. Judge Le Grys was less persuaded by Ground 1, which arguably lifted a single paragraph of the Decision out of the wider context of the remaining findings. As it was closely linked to Ground 2 however, and the findings in respect of the arrangements would have have fed into the Judge's conclusions in respect of family life, permission was not restricted to the single ground.

The Rule 24 Response

23. In the Rule 24 response dated 26 November 2024, Mr Alain Tan of the Specialist Appeals Team made detailed submissions opposing the appeal. In summary, he submitted that the Judge of the First-tier Tribunal had directed himself appropriately. As to Ground 1, many of the findings made by the Judge were unchallenged. The grounds sought to selectively highlight some aspects of the evidence while ignoring the findings which were unchallenged. It was clear when reading the findings as a whole that the Judge was not satisfied that the evidence as to the domestic set-up and living circumstances of the appellant was credible.

24. As to Ground 2, it was open to the Judge to find that Article 8 was not engaged in the circumstances as found. The Judge noted the sending of monies for schooling only, at [17], and trips to Nigeria by the sponsor. However, that was the extent of it. And given the numerous doubts over the other remaining family members, their location and circumstances, it was open to the Judge to rely upon his previous considerations in concluding that the evidence was not sufficient to establish that Article 8 was engaged.

The Hearing in the Upper Tribunal

25. At the hearing before me to determine whether an error of law was made out, Ms Chowdhury developed the two grounds of appeal.

26. On behalf of the respondent, Ms Lecointe relied upon the Rule 24 response and on the guidance given by the Court of Appeal in *Volpi & Volpi*. The appellant needed to show that the Judge was clearly wrong in the findings that he made, and the appellant had not done this. After hearing from Ms Chowdhury briefly in reply, I reserved my decision.

Discussion and Conclusions

29. I consider that it is helpful to bear in mind the observations of Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33; 2004 1 WLR 1953. The guidance is cited with approval by the Presidential Panel in *TC (PS compliance - "Issues-based reasoning") Zimbabwe* [2023] UKUT 00164 (IAC). Lord Brown's observations were as follows:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration…Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

30. I also take into account the guidance given by the Court of Appeal in *Volpi and another v Volpi* [2022] EWCA Civ 464 at para {2}:

> "i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
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> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for the judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

Ground 1

31. Under Ground 1, Ms Chowdhury submits that various findings of fact made by the Judge which underpin his conclusion on Rule 297(i)(f) were irrational or inadequately reasoned.

32. Firstly, she submits that the Judge's findings at para [16] on the state of the appellant's health cannot be reconciled with the medical reports dated 3 November 2023 and 19 March 2024.

33. As is highlighted in the Respondent's Review, the two medical reports are from Ajayi Clinic & Medical Centre. They state that the appellant is a known bronchial asthmatic who has been managed for the same condition in their facility for about five years.

34. As the medical reports showed that the appellant was receiving the required treatment and medication for his asthmatic condition, and as there was no evidence that the appellant's condition was deteriorating, it was clearly open to the Judge to find that there were no significant medical issues which fortified the case that the appellant's exclusion from the UK was undesirable and/or that the appellant had unmet medical needs in Nigeria that would be better met in the UK.

35. Secondly, Ms Chowdhury takes issue with the Judge's findings at para [17] relating to financial support provided by the sponsor to the appellant. As I explored with her in oral argument, the Judge was drawing a distinction between the provision of documentary evidence showing that the sponsor has been providing money for the appellant's school fees, and the lack of documentary evidence to show that the sponsor has been making remittances to the appellant's guardian/carer, Mrs Odukoya Onome Victoria, for the cost of his board and lodging. Ms Chowdhury pointed out that at page 34 of the composite bundle there was a money receipt dated 18 April 2024 for the payment by the sponsor of 500,000 naira to cover the third term school fees and *"upkeep"*. However, the appellant was not attending a boarding school, and it was not part of the sponsor's evidence that she sent the money required for the appellant's domestic upkeep via the school.

36. Thirdly, Ms Chowdhury challenges the Judge's finding that it was not shown that the appellant's father had abdicated parental responsibility. She highlights the fact that in the divorce judgment the judge found that the father had not played a fatherly role in the children's lives hitherto. Nonetheless, it was clearly open to the Judge to attach weight to the fact that the judge directed that the father should be responsible for half of the school fees for the children up to a first degree in tertiary education. In short, the father was made legally responsible for paying half of the fees of each child up until each of them had completed a first degree at a university or other tertiary educational institution.

37. It was open to the Judge to reject the evidence of the sponsor that she was solely responsible for paying the school/college fees of all four children of her deceased daughter, and to find that it was more likely than not that

the appellant's father was involved to some extent in the life of the appellant, albeit that this might only comprise the provision of financial support.

38. The fourth and main complaint raised under Ground 1 is in relation to the Judge's finding at para [20], where he said that he could see no reason why the current arrangements could not continue.

39. Ms Chowdhury submits that there was insufficient discussion by the Judge of the evidence in the hearing bundle which undermines this finding, including the following passage in the sponsor's witness statement: "*My grandson is unwanted in the household in Nigeria. He feels abandoned by his grandmother. I have decided to bring him to the UK as the carer has told me severally that she can no longer continue day-to-day care. I have no other person in Nigeria to take care of him in Nigeria."*

40. The grounds of appeal also highlight the fact that the position taken by the sponsor was supported by Mrs Odukoya Onome Victoria.

41. The crucial consideration is that the Judge by this stage of his analysis had already given adequate reasons for finding that the sponsor had not given a truthful account of the appellant's domestic and familial circumstances, and he had specifically rejected her claim that there was no else apart from her who could look after the appellant in Nigeria. At para [12] the Judge said he had considered all the documentation available, including a letter from Mrs Odukoya Onome Victoria dated 15.05.24 and a letter about the care arrangement dated 7.6.23. At para [15] the Judge quoted an extract from the letter of Mrs Odukoya Onome Victoria dated 15.05.24 in which she asked the sponsor to hasten Samuel's relocation *"so that my sons can have their privacy"* and so he could be well attended by her *"especially [for] his health challenges"*. The Judge can be assumed to have taken account of this evidence and the evidence that is cited in the grounds of appeal, and to have rejected it in line with his overall adverse credibility assessment. The Judge was not required to discuss all the material evidence in his reasoning.

42. Viewed holistically, the Judge gave adequate and sustainable evidence-based reasons for finding that the appellant had not shown on the balance of probabilities that he qualified for entry clearance under Rule 297(i)(f), and no error of law is made out.

Ground 2

43. Under Ground 2, the appellant seeks to re-argue some of the findings of fact which contributed to the Judge's adverse conclusion under Rule 297(i)(f).

44. It is implicit in the sustainable findings made at para [16] that the Judge rejected the claim that the appellant constantly required medical attention; and, consistent with my analysis at [41] above, the Judge also implicitly and sustainably rejected the evidence of the sponsor and the

carer that the current arrangements for the appellant's care were supposed to be temporary and/or that they were unsatisfactory.

45. In addition, the error of law challenge is made on the tendentious basis that Article 8(1) was engaged, when the Judge found that it was not engaged. As he found that Article 8(1) was not engaged, the Judge was not required to deal with proportionality under Article 8(2).

46. It follows that an error of law challenge to the finding on Article 8 can only succeed if the Judge erred in finding that the appellant did not enjoy family life with the sponsor. But this is not what is argued in Ground 2.

47. Nonetheless, for the avoidance of doubt, I do not consider that this finding is inadequately reasoned. The fact that the sponsor had assumed some responsibility for the appellant's care and upbringing in the respects acknowledged by the Judge did not mean that family life had been established, and it was clearly open to the Judge to find that it was not established, given his overall adverse credibility assessment.

48. For the above reasons, the Judge's disposal of the claim under Article 8 ECHR does not disclose an error of law.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an anonymity direction, and I do not consider that an anonymity direction is warranted for these proceedings in the Upper Tribunal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
6 February 2025