



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01653/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On the 13th September 2021**

**Decision & Reasons
Promulgated
On the 20th October 2021**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TB
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Ms S Sivakumaran, Counsel instructed by Duncan Lewis Solicitors

DECISION AND REASONS

This is an appeal by the Secretary of State against a decision of Judge of the First-tier Tribunal Brewer (“the judge”) promulgated on 25 February 2021.

For convenience, I will refer to the parties as they were designated in the First-tier Tribunal.

The appellant is a citizen of Nigeria born in April 2002 who claims to be at risk on return to Nigeria as a lone teenage female.

Her case, in summary, is that in 2015 she was brought to the UK by her mother, who shortly thereafter abandoned her at a church. She claims that she was initially assisted by the church's pastor and then taken in and raised by an acquaintance, referred to as Mope, with whom she lived until Mope died in 2020. The appellant claims to have had no contact with or knowledge of the whereabouts of her mother after she was abandoned in 2015.

The judge found the appellant's account credible and accepted that she did not have any family members or support network in Nigeria. The judge concluded that as a lone female teenager the appellant would face a risk of persecution in Nigeria such that she was entitled to protection as a refugee. The judge also allowed the appeal for the same reasons on human rights grounds, under Articles 3 and 8 of the ECHR.

Grounds of Appeal

The grounds of appeal only take issue with the judge's findings of fact. There is no challenge to the finding that as a lone teenage female the appellant would face a risk of persecution in Nigeria.

There are two grounds of appeal. The first ground concerns the appellant's relationship with Mope. The appellant has made two (in 2014 and 2015), and her mother three (in 2014, 2015 and 2017) visa applications to the UK. They all list Mope as the sponsor, and describe her as a relative (either aunt or sister) of the appellant. The judge found, however, that the appellant and Mope, as claimed by the appellant, were not related. The judge stated in paragraph 58 that there was no challenge to the appellant's claim not to be related to Mope. In the first ground of appeal it is argued that the judge erred by finding that there was not a challenge to the appellant's claim that Mope was not her aunt.

The second ground of appeal concerns the visa applications made by the appellant and her mother (in 2014, 2015 and 2017). The grounds argue that the judge fell into error by not attaching weight to the information contained in the visa applications which, it is claimed, undermine the account given by the appellant.

Submissions

Ms Cunha, on behalf of the respondent, argued, in respect of the first ground of appeal, that although there did not appear to have been a specific challenge at the hearing to the appellant's claim that Mope was not her aunt, the respondent's non-acceptance of the relationship between the appellant and her aunt underpinned the case as a whole. She submitted that the mere fact that the respondent's representative in the First-tier Tribunal did not cross-examine on this particular point did not mean it was not in contention or that the appellant was not aware that it was in contention. She submitted that the question of whether the appellant and Mope were related was at issue because

the respondent did not accept that the appellant was being truthful in her account that concerned both Mope and her mother.

With respect to the second ground of appeal, Ms Cunha submitted that it was irrational for the judge to not attach weight to the entry clearance documents that were before her. She maintained that these unambiguously show that the appellant and Mope were related, because Mope is described as the appellant's aunt. She submitted that there was no basis for the judge to not attach any weight to these documents.

Ms Sivakumaran argued that the respondent had at no point challenged the appellant's claim that Mope was not her aunt (or otherwise related to her). She submitted that this was clear from the respondent's refusal decision of 5 February 2020 which referred to Mope as the appellant's guardian or as a friend of the appellant's mother, and which in paragraph 37 stated:

"It is noted that in the visas mentioned in your immigration history, you have listed Mope as your aunt and also your sister but you later confirmed she is just a friend of your mother's. This was not put to you at interview and therefore will not damage your credibility when making a decision on your asylum claim."

Ms Sivakumaran also argued that at no point between the refusal decision and the hearing, or at the hearing itself, did the respondent take issue with the appellant's claim to not be related to Mope.

With respect to second ground, Ms Sivakumaran argued that the judge was entitled, for the reasons given, to find that the appellant's mother, who was the person who prepared the visa applications, had not been truthful in the applications and therefore their content should not be given weight.

Analysis

Ground 1: Relationship between the Appellant and Mope

In the appellant's and her mother's visa applications made in 2014 and 2015 Mope is identified as the sponsor and is described as the appellant's aunt (and in one place as her sister). However, the appellant has consistently stated that this is incorrect, and that she is not related to Mope. Mope, likewise, denied being related to the appellant.

Despite this inconsistency, the appellant's claim to not be related to Mope was not contested in the respondent's refusal decision. This is made clear at paragraph 37 of the refusal decision where it is expressly stated that although there was conflicting evidence about the relationship between the appellant and Mope this was not put to her and would not damage her credibility when making the decision on her asylum claim.

At the hearing (or at any time prior to it) it was open to the respondent to argue that the appellant and Mope were related. However, it is evident that no

such argument was made. There are no written submissions to that effect and it does not appear from the content of the decision that the argument was made by the respondent at the hearing.

If an argument is not advanced by a party, either before or during a hearing, a judge cannot be faulted for not considering it. It was not part of the respondent's case before the First-tier Tribunal that the appellant and Mope were related (or that the appellant was being untruthful when she denied being related to the Mope). Therefore, the judge did not err by failing to consider the issue and the first ground of appeal cannot succeed.

Ground 2: Weight attached to Visa Applications

The appellant's mother made three visa applications: in 2014, 2015 and 2017. The content of these applications is inconsistent with the appellant's account because (a) the visa applications state that the appellant and Mope were related whereas the appellant's case is that they were not; and (b) Mope being named as the sponsor in the appellant's mother's application made in 2017 indicates that the appellant's mother and Mope were in contact at that time, which contradicts the appellant's account that she and Mope have had no contact with her mother since 2015.

In paragraph 58 the judge gives several reasons to explain why she did not attach weight to the visa applications. They are that:

the appellant's mother left the appellant in the UK in breach of her visa requirements,

the 2017 application did not mention that the appellant was living in the UK, and

the appellant's mother gave false information about Mope being the appellant's aunt.

The issue for the judge to decide was whether she preferred the evidence of the appellant and Mope about not having contact with the appellant's mother, or the content of the visa application which indicates that there was contact, at least between the appellant's mother and Mope.

In my view, the judge was entitled to prefer the appellant's evidence. Firstly, the judge had the benefit of hearing her give oral evidence. Secondly, there was good reason to be extremely cautious about whether the information contained within the visa application was truthful given that the application was prepared by (or on behalf of) a person who had abandoned her daughter in the UK and had failed to disclose in the application that her daughter was residing in the UK. I therefore find against the respondent on the second ground of appeal.

Notice of Decision

The appeal is dismissed.

The decision of the First-tier Tribunal did not involve the making of an error of law and the decision stands.

No anonymity direction is made.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 24 September 2021