

First-tier Tribunal
(Immigration and Asylum
Number HU/54841/2021



Chamber) CCD Appeal

Aria Appeal Number

IA/12062/2021

THE IMMIGRATION ACTS

Heard at Taylor House
on 5 August 2022

Decision and Reasons Promulgated

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Before

FIRST-TIER TRIBUNAL JUDGE BUCKWELL

Between

NGL
(ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellant: Mr T. Beyebenwo
For the Respondent: Mr G. Dingley

DECISION AND REASONS

1. The Appellant is a citizen and resident of Benin who was born on 15 April 2005. On 13 March 2021 the Appellant made an application seeking entry clearance in order that he might settle with his father, NGL Senior, whose recorded date of birth is 1 January 1969. The Appellant's father acted as sponsor for the application and stands again in that capacity for this appeal. The Appellant is represented by Citilaw LLP.
2. On 22 July 2021 the Respondent refused the Appellant's application. He exercised his right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). The Respondent had considered the Appellant's application with reference to the Immigration Rules, HC 395 (as

amended), and additionally with respect to the human rights of the Appellant and his sponsor in relation to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (“the European Convention” or “ECHR”).

3. As the Appellant in this appeal is a minor it is appropriate that an anonymity order is directed. The terms of the order are set out below. It is recorded that an appeal fee in the sum of £140 had been paid on behalf of the Appellant. That provided for this appeal to include an oral hearing.

THE APPELLANT’S IMMIGRATION HISTORY

4. In accordance with standard Tribunal directions the Respondent provided a bundle of documents for this appeal. It is dated 6 September 2021. It is comprised of Annexes A to H. The documents therewithin are the application form, a birth certificate, a letter from the sponsor, evidence of financial transfers, a death certificate, photographs and school letters.

5. In the application form the Appellant confirms that he lives within the Missite *quartier* of Cotonou. He had been residing with an uncle, who is now deceased. The Appellant names his parents as the sponsor and BA, his mother who was born on 20 April 1971.

6. The Appellant states that he wishes to join his sponsor, who now holds British citizenship. The Appellant avers that he has no-one to look after him in Benin since the passing of his uncle. The sponsor is stated to live in London SE18.

7. The application includes a letter of support from the sponsor dated 5 April 2021. Therein the death of the Appellant’s maternal uncle is confirmed. The sponsor also provides copies of statements relating to his Santander bank account and a death certificate issued in relation to the uncle of the Appellant, AGL, who died in Cotonou on 8 January 2021. I note that the certificate was issued in Cotonou on 23 April 2021 by the Ministry of Foreign Affairs and Co-operation. There is also a photograph from the funeral.

8. No interviews were conducted on behalf of the Respondent during the consideration of the application. As stated, it was however refused. In the refusal letter the Respondent refers to the terms of paragraph 297 of the Immigration Rules. Therein are the requirements for an individual who seeks indefinite leave to enter this country as the child of a parent who is present or also being admitted for settlement in this country at the same time. The specific provisions within the paragraph are at *sub*-paragraphs 297(i)(e) and/or (f). The provisions respectively provide for the circumstances where one parent is present and settled in this country and has had sole responsibility for the upbringing of the child. In the alternative, the circumstances are where one parent is present and settled and there are “ ..serious and compelling family or other considerations which make the exclusion of the child undesirable and

suitable arrangements have been made for the child's care". Furthermore, the applicant must be a minor and not leading an independent life. The child must be unmarried and the sponsor must be able to accommodate the child without recourse to public funds in a property exclusively owned or occupied by the sponsor.

9. The Respondent refers to a birth certificate issued some 13 years after the Appellant was born. No additional evidence had been provided to establish whether the claimed biological relationship between the Appellant and the sponsor was genuine. Due to that lack of evidence the Respondent did not accept that the relationship between the Appellant and the sponsor was as claimed. In the view of the Respondent doubts, that established sufficient reasoning to refuse the application.

10. However the Respondent added to the refusal reasons that evidence had not been provided to show that the sponsor had taken day-to-day responsibility for the Appellant. It was accepted that evidence of financial support from the sponsor had been provided, but it was not accepted that that established sole responsibility. Additionally that evidence was from 2020/2021 and earlier evidence would have been expected. It was noted that the payee/beneficiary of the financial transmissions was not named as the late uncle of the Appellant and therefore the Respondent did not accept that there was not at least another person who was available to care for the Appellant.

11. There was a stated lack of evidence that the sponsor had positively been involved in the upbringing of the Appellant. The Respondent exemplified a lack of information as to whether the sponsor had travelled to Benin to visit the Appellant. Additionally there was no evidence relating to the birth mother of the Appellant and why she might not be able to take care of the Appellant. The Respondent acknowledged that there is correspondence from the schools attended by the Appellant in Benin to the effect that the sponsor had paid school fees for the period from 2011 to 2021, although the Respondent then states that "... there is no evidence which confirms this". Little weight was given to thereto by the Respondent.

12. It was noted that there was no evidence that the Appellant had made any application to visit the sponsor in this country or to settle with him at an earlier age. Any delay in that respect was not understood by the Respondent.

13. Noting that there was no information about the circumstances of his birth mother, or any involvement by her in his life, the Respondent did not find that the Appellant's application could succeed with respect to *sub*-paragraphs 297(1) (a) to (e) of HC 395.

14. With respect to the terms of *sub*-paragraph 297(1)(f) of the Immigration Rules, it was noted that the Appellant continued to live in the same property. Although the evidence of the death of the uncle of the Appellant was accepted, the Respondent again remarked that the Appellant had received financial

support from the sponsor through a third party. The Respondent continued to doubt that there was not any other individual who could assist and care for the Appellant in Benin. Accordingly it was not found that there were any serious or compelling circumstances which applied to the Appellant. With reference to that particular provision within paragraph 297 of HC 395, the application was also refused.

15. The Respondent, in the alternative, considered the human rights of the Appellant, with reference to Article 8 of the European Convention. However, it was not accepted that there was family life established between the Appellant and the sponsor for the purposes of Article 8(1) ECHR. The Respondent states that if that view was incorrect it would still be proportionate for the Respondent to rely upon Article 8(2) ECHR. The refusal would not have unjustifiably harsh consequences for the Appellant or his sponsor.

THE APPEAL

16. Further to the refusal decision the Appellant submitted a Notice of Appeal. The grounds assert that the decision was in breach of the human rights of the Appellant and in breach of other applicable legislation. The breach of human rights was contrary to section 6 of the Human Rights Act 1998 (“the 1998 Act”).

DOCUMENTATION

17. The documents for this appeal are those which have been ‘uploaded’ to the Core Case Database. Those include the Home Office appeal bundle to which I have referred and additionally a Respondent’s Review document, produced in response to the appeal grounds and Appellant’s documents. It is dated 21 March 2022 and maintains the original decision.

18. The Appellant’s documents include an appeal bundle (pages 1 to 119), which provides witness statements by the sponsor and the Appellant, both dated 21 December 2021, and a skeleton argument.

THE HEARINGS

19. This appeal first came before me at Taylor House on 30 June 2022. The Appellant was represented by Mr T. Beyebenwo, Solicitor, of Citilaw LLP. The Respondent was represented by Mr G. Dingley, Counsel instructed by the Home Office Presenting Officers’ Unit. There was no interpreter present although the first language of the sponsor is French.

20. As the Appellant remained a minor, I directed an anonymity order. Mr Dingley remarked that there was no outcome from the DNA testing as yet. Additionally, having spoken with the sponsor, I found that it would be more appropriate for a future hearing to be assisted by a French interpreter. On that basis the hearing was adjourned and this appeal came before me again and in

person at Taylor House on 5 August 2022. The sponsor was present and the representatives for the respective parties were those who had appeared before me at the 30 June hearing. Additionally joining by video link was Ms V. Doerrzapf, a French interpreter.

21. The Appellant did not seek to join the appeal hearing as an observer nor, as he is resident overseas, he could he have given evidence by video link. However, I had taken careful account of his witness statement, dated 21 December 2021. I now summarise the contents.

22. The Appellant relies upon the witness statement submitted by his father. That I detail further below. The Appellant states that the Respondent failed to take account of documents provided.

23. The Appellant refers to his mother leaving him with his (late) uncle (in February 2010). The Appellant has only known his father as his one constant parent, assisted by his late uncle. The Appellant states that the relationship between himself, his sponsor and others was that it was the sponsor who took all significant decisions concerning himself. He had also provided all funding necessary over the years. The Appellant states that it is only the sponsor to whom he has looked for every manner of his care over the years and subsequent to his mother leaving him with his late uncle. The Appellant had been staying at a boarding school. His nearest relative, a 20-year old cousin, is living with her family and attending university. They are financially struggling.

24. Between school terms the Appellant currently has to rely on friends for a residence. Later the Appellant spent time with the wife of his late uncle.

25. The Appellant, from paragraph 17 of his witness statement, refers to visits which the sponsor has made to him in Benin. They commenced from September 2015, when the Appellant attained 10 years. The sponsor arranged for a special birthday celebration for the Appellant's whole class at his school. The Appellant referred to a visit in 2019 and to a further visit following the death of his uncle.

26. The sponsor gave evidence. He confirmed and adopted the terms of his witness statement, also dated 21 December 2021. I had read that in advance of the hearing and now summarise the contents.

27. The sponsor states that he entered this country in 2009 and holds UK immigration status. He confirms that he is the father of the Appellant. He was never married to the mother of the Appellant. The sponsor confirms that the application now on appeal had been refused.

28. The sponsor states that interviews had never been requested on behalf of the Respondent. He says that the Appellant has no information on the

whereabouts of his birth mother, who had gone out of his life in 2010, when she had placed the Appellant with his late paternal uncle.

29. The sponsor states that at first he had had a good relationship with the Appellant's mother, but later that deteriorated. On 1 February 2010 the sponsor was informed that the Appellant had been left with the sponsor's brother, GLL, in Cotonou.

30. The sponsor states that he provided funding to his late brother to cover all necessary costs and fees in relation to the Appellant. Subsequently the sponsor heard that the birth mother of the Appellant had moved to Cameroon, together with a new partner. That was stated to have been approximately at least 10 years ago.

31. The sponsor maintains that since February 2010 he has been caring for the Appellant and fully responsible for him. That responsibility has been sole.

32. The sponsor refers to certain intimate issues which had been raised with him by the Appellant, the detail of which is unnecessary to include in this decision. The sponsor exemplified such as to the strength of the relationship between himself and the Appellant.

33. From paragraph 17 of the sponsor's detailed witness statement the sponsor sets out the particulars with respect to his stated sole responsibility for the Appellant and he details further the home and other circumstances relating to the Appellant and his sponsor.

34. The sponsor refers to having married a lady in this country but later finding out that she was *bi*-sexual. The sponsor's wife insisted that the third party had become a part of the marriage, which the sponsor found very hard to accept. The relationship with his wife deteriorated over a period of time. For such reasons living in that form of relationship the sponsor felt it inappropriate to invite his son to visit with those circumstances applying. The sponsor's wife would ignore communications from the Appellant. The Appellant had been informed by the sponsor that he would bring him to this country if permission were to be granted. However, due to the circumstances the sponsor found that that was not possible. In June 2015 (the year date may correctly be 2016), the sponsor and his wife were divorced. The Appellant was advised to wait for British citizenship being granted before inviting the Appellant to join him. The sponsor travelled to Benin in 2015, 2018 and 2021.

35. The sponsor states that he had been unaware that he could have potentially applied under the former Immigration (European Economic Area) Regulations if his son had made an application thereunder.

36. Beyond adopting the contents of the witness statement, no supplementary questions were posed to the sponsor by Mr Beyebenwo.

37. In response to questions from Mr Dingley, by way of cross-examination, the sponsor was asked why, upon the disappearance of the Appellant's mother, the police had not been contacted. The sponsor said that she had no longer been in Benin. That information had been provided by her family. Asked why he had not requested that her family had reported that she had gone missing, the sponsor said that there is a different system of policing in Africa, as compared to Europe. The police will only intervene and assist if there is a major issue. The sponsor clarified that the parents of the birth mother of the Appellant had provided that information.

38. The sponsor confirmed that he has held permanent residence in this country since 2017. He was asked to explain why he had not applied for the Appellant to join him since then. The sponsor acknowledged that and believed that it would be better for the Appellant to come to live within a stable environment. Asked whether he had not made an application for the Appellant because he had not held sole responsibility for him, the sponsor said that he had been fully responsible for the Appellant but that at the time he had been studying. He had not wanted to disturb the studies of the Appellant.

39. The sponsor was asked whether it was correct that his late brother had had responsibility for the Appellant up until the application had been made. The sponsor so confirmed and said that the brother had been his elder brother. Asked whether the Appellant had made the application because of the death of his brother, the sponsor confirmed that there had been no other solution. The Appellant is now staying with his sister-in-law, the wife of his late brother. The sponsor clarified that she has responsibility for day-to-day decisions in relation to practical aspects of the life of the Appellant. However, he retains overall responsibility. Asked whether responsibility is shared, the sponsor acknowledged that to the extent that he resides in this country and the Appellant is now with her in Benin.

40. I asked the sponsor some questions of clarification. I enquired who makes the major decisions in the Appellant's life and for him. The sponsor said that it had always been himself. I asked of any recent example. The sponsor referred to funds for the Appellant being controlled other than by the Appellant because he is a minor. I pressed the Appellant to give any examples of significant decisions which he had taken in respect of the Appellant. He gave examples of liaison with the school director and all decisions in relation to the education of the Appellant.

41. Mr Dingley had no further questions for the sponsor, following my own.

42. In re-examination by Mr Beyebenwo the sponsor was asked about financial remittances to the Appellant. He confirmed that they are always sent. He said that his late brother had been illiterate and that funds had been sent to a gentleman who assisted and who was able to produce appropriate identity documentation to collect the remitted funds. He would then pass the money to his late brother. They were aware that funds were sent for school fees and the

provision of food. The sponsor again confirmed that he had always taken major decisions in relation to the Appellant. As to the Appellant's schooling, the sponsor confirmed that he remains still in direct contact with the school administration and director.

43. I invited the representatives' submissions. Following protocol, Mr Dingley addressed me first.

44. The Respondent relies upon the reasons for refusal letter and the Respondent's Review. It was accepted that further documentation had been provided, including translated documents and the positive DNA report. Mr Dingley questioned whether prior to the death of the sponsor's brother the sponsor had not himself had sole responsibility for the Appellant. It is for the Tribunal to determine whether the sponsor now makes the major decisions relating to the Appellant. Mr Dingley was of the view that the circumstances outlined portrayed currently a shared responsibility for the Appellant.

45. Mr Beyebenwo, for the Appellant, asserted that cogent and unembellished evidence had been given by the sponsor. The application on appeal needed to be considered both with respect to paragraph 297 of HC 395 and Article 8 ECHR outside the Immigration Rules. The public interest arose with reference to consideration of Article 8 ECHR. As to paragraph 297 of the Immigration Rules, are either *sub*-paragraphs (i)(e) or (f) engaged?

46. When the uncle of the Appellant was alive, the sponsor was still sending funds. There was school contact. The uncle is now deceased. If previously there had been shared responsibility between the sponsor and the deceased uncle, those are not now the circumstances. Sole responsibility is with the sponsor.

47. Mr Beyebenwo rightly referred me to the decision of the former Asylum and Immigration Tribunal in TD Yemen [2006] UKAIT 49. Day-to-day care may not amount to sole responsibility.

48. With respect to Article 8 ECHR, the sponsor is present in this country and he provides funding for the needs of the Appellant. Family life is engaged for the purposes of Article 8(1) ECHR. Additionally the sponsor has visited the Appellant in Benin. There is emotional attachment and the interference with engaged family life rights would be unlawful if the appeal were to fail.

49. I reserved my decision and reasons in this appeal.

THE LAW

50. In this appeal I consider first the terms of paragraph 297 of the Immigration Rules. It is clearly established that if an appellant succeeds with reference to the Immigration Rules, a human rights appeal will succeed on that

basis. This requires my consideration of *sub*-paragraphs 297(i)(e) and (f) of HC 395.

51. This appeal is brought on human rights grounds. However, where an appeal concerns the Immigration Rules, such provisions remain significant. If an individual persuades the Tribunal that he or she met the requirements of the Immigration Rules and that the Respondent had been in error in deciding otherwise, then the usual outcome would be for the appeal to be allowed on the basis that an individual who meets the Immigration Rules should be granted leave and that a decision made to the contrary when the Rules are met should be considered as disproportionate.

52. If an individual fails to meet the Immigration Rule requirements then in an Article 8 ECHR appeal it is appropriate to consider a second stage, namely the assessment of Article 8 ECHR rights outside the Rules. In those circumstances the steps set out by the House of Lords in Razgar [2004] UKHL 27 should be followed. Usually that will lead to the requirement for an assessment of proportionality to be undertaken. That is essentially a balancing exercise with the Tribunal considering those factors which favour each party. It is recognised that the maintenance of an effective system of immigration control is itself in the public interest.

53. In considering proportionality the factors set out within Part 5A of the 2002 Act must be taken into account. Section 117B of the Act specifically identifies matters which are to be considered in assessing the public interest in any given circumstances and such provisions are potentially applicable in every appeal where an assessment outside the Immigration Rules is made.

FINDINGS AND REASONS

54. I confirm that I take into account all evidence presented. That includes all documentation, whether or not specifically referred to hereafter. It is for this specialist and independent Tribunal to determine whether decisions were correctly made by the Respondent. If not, then this appeal may be allowed. If correctly taken, this appeal should be dismissed. The burden of proof in this appeal rests with the Appellant and the standard of proof applied is that of the balance of probabilities.

55. In this appeal I heard the sponsor give evidence. He did so in some detail and, as I was urged to find by the Appellant's representatives, it did not include any embellishment. My overall view of the evidence of the sponsor is that it was given truthfully and that therefore weight is accorded and it may be relied upon in support of the Appellant. Indeed, it was not asserted on behalf of the Respondent that the sponsor had been dishonest in giving his evidence.

56. I also find that the account set out overall is plausible. The circumstances are relatively straightforward and I acknowledge that a degree of cultural

understanding should also be appreciated with respect to family units when considered in relation to African society.

57. The circumstances outlined are that the sponsor came to this country for whatever reason. His immigration status was subsequently established. The Appellant had lived with his birth mother until February 2010. Thereafter the Appellant had been staying with family members. Day-to-day care had rested with the Appellant's uncle, the brother of his sponsoring birth father.

58. Various documents have been provided and I take into account not only the documents to which I have referred above, but the further documentation which was submitted for this month's hearing. Those documents are within a supplementary bundle which extends to page 138 the original bundle provided on behalf of the Appellant. There are English language translations, duly certified, of WhatsApp conversations between the Appellant and his father and there is a definitive DNA Report provided by eurofins, dated 21 December 2020, which definitively confirms the parentage and relationship as between the Appellant and his sponsor. The further documents also include certificates in English with respect to the education of the Appellant.

59. With respect to all the documents submitted on behalf of the Appellant, which I have considered based on the guidance in Tanveer Ahmed [2002] Imm AR 318, I find there to be no basis to doubt the authenticity of documents produced before me, either in original or photocopy format. There has been no specific contrary allegation made by the Respondent in that regard. Weight is to be given to the documents before me. They are supportive of the stated facts in this appeal and therefore of the account given by the sponsor in his oral evidence, including in his adopted witness statement, and also in the witness statement of the Appellant, who was not able to give evidence before me.

60. It is asserted that the sponsor has – and has had - sole responsibility for the Appellant. I agree with that view. It might be argued that whilst the late uncle of the Appellant had responsibility in Benin, to a degree, for the Appellant each day, that responsibility technically may have been assessed as then shared between him and the sponsor. However, there is no doubt that at least since the death of the uncle the sponsor has had sole responsibility for the Appellant. There is no particular time period for which sole responsibility must be held and in that respect I am entirely satisfied, and find, that for the purposes of this appeal it is accepted that the sponsor has sole responsibility for his son.

61. If it were necessary for me to consider Article 8 ECHR outside the Immigration Rules, I am also of the view that family life rights are engaged with respect to Article 8(1) ECHR. That is due to my finding as to sole responsibility and also because the sponsor has visited his son in Benin and maintains very regular, and virtually continuous, correspondence with him by use of social media and modern methods. That being so it would be my view, taken into account the requirements of Part 5A of the 2002 Act, that the factors

favouring the Appellant in terms of proportionality outweigh those matters which might otherwise favour the Respondent. On balance the Respondent would not be entitled to rely upon Article 8(2) ECHR because on the fact-specific circumstances, dismissing this appeal and denying entry clearance to the Appellant would result in unjustifiably harsh circumstances for the Appellant and his sponsor.

CONCLUSIONS

62. For the above reasons I find that the Appellant succeeds with reference to the Immigration Rules. He consequently succeeds on human rights grounds. The Respondent's refusal was a breach of the requirements of section 6 of the 1998 Act. Accordingly appropriate documentation should be issued to the Appellant in order that he may join his father in this country.

63. As stated, due to the age of the Appellant at the June hearing I confirmed the direction of an anonymity order in this appeal. The terms are confirmed below.

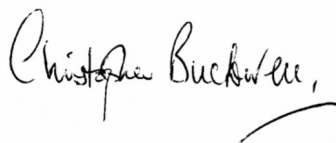
Notice of Decision

The appeal is allowed.

An anonymity order applies in the following terms:-

Anonymity Order

No report or other publication of these proceedings, or of any part or parts of them, shall name or directly or indirectly identify the Appellant. Failure by any person, body or institution, whether corporate or unincorporated, which, for the avoidance of doubt shall include a party to this appeal, to comply with this order may lead to proceedings for contempt of court under the Contempt of Court Act 1981.



19 August 2022

Judge Buckwell
Judge of the First-tier Tribunal

**TO THE RESPONDENT -
FEE AWARD**

As I have allowed this appeal I have considered whether it would be appropriate to make either a full or a partial fee award favouring the Appellant. However, because in my consideration I took into account evidence submitted during the appeal process on behalf of the Appellant, any fee award favouring the Appellant would be inappropriate. No fee award is made.

A handwritten signature in black ink that reads "Christopher Buckwell," with a horizontal flourish underneath the name.

Judge Buckwell
Judge of the First-tier Tribunal

19 August 2022