Upper Tribunal
(Immigration and Asylum Chamber)

Buama (inter-country adoption – competent court) [2012] UKUT 00146 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	Determination Promulgated
On 22 March 2012	On 29 March 2012

.....

Before

UPPER TRIBUNAL JUDGE WARR

Between

SELINA AKOSUA BUAMA

Appellant

and

ENTRY CLEARANCE OFFICER - ACCRA

Respondent

Representation :

For the Appellant: Mr A Khushi (Bedfords Solicitors)

For the Respondent: Ms F Saunders, Home Office Presenting Officer

Paragraph 310(vi) of the immigration rules does not appear to contemplate the respondent questioning the order of a competent court which is valid on its face

DETERMINATION AND REASONS

1. The appellant is a child, born in Ghana on 9 September 2001. The sponsors are a married couple, Mr and Mrs Yeboah. They are both Ghanaian and settled in the United Kingdom.

2. The appellant's mother died on 27 December 2003 when the appellant was 2. The appellant has no siblings. The appellant had also lost her grandmother.

3. After the death of the appellant's mother the appellant was looked after for a time by her father but the arrangements were unsatisfactory so the sponsors arranged for her to go stay with her aunt Veronica Kumi and the sponsors supported her financially. They have regularly visited Ghana and the appellant stayed with them when they did so. They were in regular contact with her from the United Kingdom by telephone and sent her Christmas and birthday presents.

4. In or about 2008 they became concerned about Veronica's care for the children and contacted Ghanaian social services to seek advice and subsequently instructed a Ghanaian Counsel and adoption arrangements were made. Following a visit by Ghanaian social services there was a court hearing and an adoption order was granted for the appellant as well as two other children called R and K. These two children are not the subject of any current application for entry clearance.

5. The appellant was unhappy living with Veronica so arrangements were made for her to move to the male sponsor's niece, Abena Acheampong. She resides there with nine other children. The sponsor's application for an entry clearance for the appellant to join them in the United Kingdom as their adopted child was considered under paragraph 310 of HC 395 by the Entry Clearance Officer and in a decision dated 14 January 2011 the Entry Clearance Officer refused the application. The respondent was satisfied that the adoption order had been issued by a competent administrative authority in Ghana but referred to an extract from section 67 of the Ghanaian 1998 Children's Act which stated that "An adoption order shall not be made for a child unless the child has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order." The respondent was not satisfied that the sponsors could meet the requirements of that particular provision. Accordingly the adoption order did not satisfy the requirements set down in the legislation and was not a valid adoption order.

6. There was further no evidence that the appellant had ever met the sponsors – photographs of them together had not been produced. There was no evidence that Veronica Kumi was no longer able to care for her. Accordingly the respondent was not satisfied there had been a genuine transfer of parental responsibility to the appellant's adoptive parents and was also of the opinion that this adoption was one of convenience arranged to facilitate her admission to the United Kingdom.

7. The appellant appealed and her appeal came before Immigration Judge Walker on 12 July 2011. The appeal was dismissed. However, there was an application for permission to appeal. On 4 August 2011 permission to appeal was granted by Designated Judge Shaerf. Among the points made was that the judge had found the adoption order of 18 November 2010 invalid as at the date of the respondent's decision because it had been revoked on 13 June 2011. Judge Shaerf commented that if the adoption order had been revoked on 13 June 2011 it would appear to have been validly made otherwise it could not have been revoked by the subsequent order. The judge appeared not to have considered that the letter from the Ghanaian Circuit Court had explained that the second adoption order was effective from 18 November 2010. The judge did not appear to have given adequate consideration to the documentation before him or to the submissions made. On 22 August 2011 the respondent's representative wrote stating that the respondent did not oppose the appellant's application and invited the Tribunal to determine the appeal with a fresh oral hearing to consider the appellant's appeal under the Immigration Rules and Article 8. There was a hearing before Upper Tribunal Judge Eshun on 3 February 2012 where the issues to be determined were agreed in light of the fact that the respondent did not oppose the appeal. There was the issue of the adoption order, paragraph 297 of the rules and Article 8. Before me it was accepted that the issues were as previously identified and that I should rehear the matter as the judge's decision was flawed in law. Rule 310 provides:

310. The requirements to be met in the case of a child seeking indefinite leave to enter the United Kingdom as the adopted child of a parent or parents present and settled or being admitted for settlement in the United Kingdom are that he:

(i) is seeking leave to enter to accompany or join an adoptive parent or parents in one of the following circumstances;

(a) both parents are present and settled in the United Kingdom; or

(b) both parents are being admitted on the same occasion for settlement; or

(c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or

(d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or

(e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; or

(f) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; or

(g) in the case of a de facto adoption one parent has a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom and is seeking admission to the United Kingdom on the same occasion for the purposes of settlement; and

(ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) can, and will, be accommodated and maintained adequately without recourse to public funds in accommodation which the adoptive parent or parents own or occupy exclusively; and

(v) DELETED

(vi) (a) was adopted in accordance with a decision taken by the competent administrative authority or court in his country of origin or the country in which he is resident, being a country whose adoption orders are recognised by the United Kingdom; or

(b) is the subject of a de facto adoption; and

(vii) was adopted at a time when:

(a) both adoptive parents were resident together abroad; or

(b) either or both adoptive parents were settled in the United Kingdom; and

(viii) has the same rights and obligations as any other child of the adoptive parent's or parents' family; and

(ix) was adopted due to the inability of the original parent(s) or current carer(s) to care for him and there has been a genuine transfer of parental responsibility to the adoptive parents; and

(x) has lost or broken his ties with his family of origin; and

(xi) was adopted, but the adoption is not one of convenience arranged to facilitate his admission to or remaining in the United Kingdom; and

(xii) holds a valid United Kingdom entry clearance for entry in this capacity; and

(xiii) does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974.

It was agreed that the relevant parts of paragraph 310 were subparagraphs (vi) the adoption order point, (ix) – that the appellant had been adopted due to the inability of the original parents or carers to care of him and that there had been a genuine transfer of parental responsibility to the adoptive parents and (xi) – the adoption being one of convenience. As an alternative I was referred to paragraph 297(1)(f). The appellant would be joining a relative present and settled in the United Kingdom "and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements had been made for the child's care … ".

8. I heard evidence from Mr Yeboah. He had confirmed that he had adopted three children but he could only bring the appellant because one of the other children had become sick. The other children were sisters and they could not take one at a time. Also K's passport was missing. The appellant had not been particularly happy with her various carers but she had been asked to exercise patience. The appellant's father had not been able to take proper care of her due to the general poverty in that part of Ghana where there was no school. Accordingly the sponsors had sent remittances for the benefit of the appellant and had contacted social services in 2007. They were advised to adopt the appellant.

9. The appellant's father had taken no interest in her and the appellant considered that the sponsor was her father.

10. The appellant was currently living with Abena who the sponsor referred to as a niece as they came from the same region and he had been a police officer and had lived with Abena's sister and in the circumstances they had become like a family. Abena lived with her husband and nine children and her husband was becoming unhappy with having the appellant living there. Mrs Yeboah had appointed Veronica, who was her sister, to be the appellant's parent and guardian although the appellant was living with Abena. The money transfers had been sent to Veronica for the benefit of the three children. Veronica had the necessary ID to collect the money. Money had also been sent to another individual to give to Abena as appeared from the evidence bundle.

11. To get the adoption organised there had been an adoption application form and their lawyer had assisted the couple with it. The initial order had not been correct as the child's date of birth had not been set out on it. Social services had made a full report following a visit to the sponsor's home in Ghana. The couple had attended a court hearing with the appellant. The appellant believed that the sponsor was her father and would always follow him when he was in Ghana. She knew her parents were in London. They had had to act in 2010 because people were not prepared to continue to take care of the appellant. She could no longer live with Abena because of the position of Abena's husband and this was not adoption of convenience.

12. Mrs Yeboah confirmed that the appellant was her niece – her sister's daughter. Her sister had died in 2001 and she had supported the family even when her sister was alive. She had then asked her junior sister Veronica to look after her which she had done for three or four years. There was a point when Mrs Yeboah became dissatisfied with Veronica's care and the appellant herself was not happy with the arrangement and so she had taken the appellant to stay with Abena. Mrs Yeboah supported her husband's evidence about the adoption procedures and again denied it was an adoption of convenience.

13. At the conclusion of the evidence I heard submissions. Ms Saunders relied on the refusal notice and submitted the adoption was not valid. It had not been demonstrated that the appellant could not

live with a relative and on the face of it this was an adoption of convenience. In relation to paragraph 297(f) it was clear the appellant was being looked after by Abena and was clothed and fed and was not being ill-treated despite the accommodation being cramped. The decision of the respondent should be maintained. In relation to Article 8 the relationship between the sponsors and the appellant was by way of telephone calls and visits and the appellant had a biological parent in Ghana and was being looked after by relatives. The decision was proportionate and it was not shown that it was not in her best interest to remain where she was.

14. Mr Khushi submitted that the adoption order was valid and the social services' report which was included in the appellant's bundle was important in a number of respects.

15. In relation to the point of the adoption being one of convenience he referred to VB v Entry Clearance Officer Ghana [2002] UKIAT 01323 where it was pointed out that most overseas adoptions took place in order to facilitate entry into the United Kingdom and that by itself would not make it an adoption of convenience. The Tribunal approved the approach of an Adjudicator who had directed himself as follows:

"An adoption of convenience, rather like a marriage of convenience, is one that exists purely for a particular purpose, there is no real substance to it, save in relation to that purpose".

I should note that I was provided with this case in hard copy; it was chaired by the President, Collins J. although I have not been able to locate it on the database of reported decisions.

The appellant's mother had died and the appellant's father had effectively abandoned her and so the adoption had been due to the inability of the original parents to care for the appellant and I was referred to MF (Immigration – adoption – genuine transfer of parental responsibility) Philippines [2004] UKIAT 00094 [2004] UKAIT 00094 at paragraph 15:

"The rule requires the adoption to have been due to the inability of the natural parents to care for the respondent. There is no evidence that is the case, although, arguably, if the respondent's mother died and her father abandoned her, that could be the situation."

In relation to paragraph 297 one of the relevant matters had been that for a long time it had been thought that the appellant would be adopted by the sponsors – see paragraph 39 of SK ("Adoption" not recognised in UK) India [2006] UKAIT 00068. There was also a long history of visits. In relation to Article 8 there was plainly family life and ZH (Tanzania) v Secretary of State [2011] UKSC4 made it clear that the best interests of the child should be a primary consideration.

16. At the conclusion of the submissions I reserved my decision.

17. In relation to the order of the Ghanaian Court it is on the face of the order valid. The immigration rules do not appear to contemplate a refusal to accept the validity of the order of a competent court. Further, any challenge to the validity of the order had to be by expert evidence in my view. Simply setting out the provisions of a statute is not sufficient. In any event the Court itself has confirmed the validity of the order in a letter dated 13 June 2011. As the High Court Registrar explains in that letter the date of the adoption remains as stated in the previous order dated 18 November 2010 and the effect of the subsequent order is simply to correct it. Insofar as there was any burden on the appellant in this matter I find that it has been discharged. As at the date of decision there was and is a valid court order.

18. That of course is not by any means the end of the matter. However, in connection with the remaining issues under the rules relating to adoptions the material presented to the court by social services is of interest. That confirms the history of the case and in addition confirms that the appellant's father could not take care of the appellant and the fact that there have been unsatisfactory arrangements since then. The important point is made that the appellant is not aware of the death of her mother and that she knows the sponsors as her biological parents. The report notes that sixteen people reside in the accommodation where the appellant resides, there are four bedrooms. Social services record that the sponsors have been solely responsible for the upkeep of the appellant for the previous eight and a half years.

19. It is clear that the court was acting on appropriate material having made the necessary enquiries.

20. This appears to me to be a proper arrangement made in accordance with the local culture and practice following the death of the appellant's mother and the sponsors have acted in accordance with the practice and have taken it upon themselves to provide for the appellant. They had made various arrangements for the appellant but these have not proved satisfactory.

21. It is an important feature of the case that the appellant regards her adoptive parents as her natural parents.

22. I am satisfied on the evidence that subparagraph (ix) is complied with. The appellant's mother is dead and her father has played no significant part in her life and on the evidence before the social services, is not able to look after her. The sponsors have exhausted the alternative options about the appellant's care and I am satisfied that they have done what they could but the care arrangements have not proved satisfactory and the appellant has been unhappy and is now living in very difficult conditions. In the circumstances of this case there has plainly been a genuine transfer of parental responsibility to the sponsors – as I say the appellant herself regards them as their natural parents.

23. I do not see how this adoption can be considered to be one of convenience in the particular circumstances of this case. It is based on proper and appropriate applications made by the sponsors following a long period of trying to do their best for the appellant and they took the decision having taken advice to apply for adoption of the appellant. I reach this conclusion independently of what is said in VB v Entry Clearance Officer (Ghana) which I have referred to above.

24. Accordingly I find that the appellant does make out her case under paragraph 310.

25. It is not necessary in the circumstances to consider the appellant's case under paragraph 297(f). However, for the reasons I have already given there would appear to be serious and compelling family or other considerations which make exclusion of the appellant undesirable. Firstly, she regards the sponsors as her natural parents as well as her adoptive parents and the circumstances in which she is currently residing are temporary and unsatisfactory and what is said in paragraph 39 of SK (India) is apposite in this case. Not only has the appellant considered that she would be joining the sponsors as adoptive parents she considers that they are her natural parents. There has been a long history of visits as well. Accordingly, if the appeal had failed under paragraph 310 in my view it would have succeeded under paragraph 297. It is not necessary, therefore, to go into Article 8 but it is plainly in the best interests of the appellant to be with the sponsors whom she regards as her natural parents and who are in a position to give her the care she needs.

26. It has been agreed in this case that the decision of the Immigration Judge was flawed in law. I accordingly remake it. The appeal under the Immigration Rules is allowed under paragraph 310 and I direct the production of an appropriate entry clearance.

Signed Date 29 March 2012

Upper Tribunal Judge Warr