



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

Appeal Number: OA/23530/2012

THE IMMIGRATION ACTS

Heard at Bradford

On 29th November 2013

Determination

Promulgated

On 13th December 2013

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Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MISS SELINA EWURA ADJOA JONES

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Saffer made following a hearing at Bradford on 3rd September 2013.

Background

2. The Appellant is a citizen of Ghana born on 23rd August 1998. She applied for leave to enter as the dependant of a British national, her father, John Jones.
3. She was refused entry clearance on the grounds that there was insufficient evidence that her father had sole responsibility for her as she lived with her mother Grace and there were no serious and compelling family or other considerations which made her exclusion undesirable.
4. The judge recorded the Appellant's case which was that the Sponsor had taken full responsibility for her education, health and living arrangements, had visited her for four to six weeks each year and was now living with his father because her mother has vanished.
5. The judge said that in 1999 the Sponsor made a decision to leave the child in Grace's care and although he had contributed financially he had failed to establish that he was the sole financial provider. There was evidence that Grace worked and that his father also stepped in. The holidays which they had spent together amounted to only 10% of the time, a total of ten weeks in the previous eight years. He was not satisfied that the Sponsor made all day to day decisions regarding the child's care given his limited direct involvement over many years. He was satisfied that Grace was her primary carer and had been so since 1999.
6. Neither was he satisfied that there were serious and compelling family or other considerations which made her exclusion undesirable. He did not accept that it was established that Grace had abandoned the child and concluded that the witnesses had said so merely in order to bolster the claim. He dismissed the appeal.

The Grounds of Application

7. The Appellant sought permission to appeal on the grounds that the judge had failed to follow the guidance set out in the case of TD (paragraph 297(i)(e) "sole responsibility") Yemen [2006] UKAIT 00049. There was no requirement that the Sponsor be the sole financial provider. The judge's decision was irrational. The judge had concluded that the Sponsor's absence was tantamount to failure to show that he had made major decisions in his daughter's life which went against paragraph 49 of TD which states that -

"The fact that the remaining active parent is in the UK makes no difference to this. Of course the geographical separation of the parent from the child means that the day to day care of the child will necessarily be undertaken by others - relatives or friends abroad - who look after the child. Here the issue under the Immigration Rules is whether the UK based parent has in practice allowed the parental responsibility for the child to be shared with the carer abroad."

8. In summary, the judge's decision was inadequately reasoned and had failed to take into account the best interests of the child.
9. Permission to appeal was granted for the reasons stated in the grounds by Judge Pullig on 30th October 2013.

The hearing

10. Prior to the hearing the Tribunal received notice that the Sponsor's representatives were no longer acting for him. There was also a letter from the Sponsor which stated that his representatives were still dealing with the matter but did not have the documentation available and he requested a postponement of the hearing until 19th December by which time all the documents would be with him.
11. The Sponsor did not appear at the hearing. The application for an adjournment was received on 25th November 2013 by the Arnhem Support Centre and had not been seen by a judge. The Sponsor could have had no expectation that the adjournment had been granted.
12. In any event, more importantly, the decision today is whether the judge erred in law. The judge could only decide the appeal on the basis of the evidence as it was before him on that date and further documentation from Ghana could have no bearing on whether there was an error in this determination.
13. Accordingly, I decided that an adjournment could not be justified and proceeded to determine this appeal.
14. Mr Diwnycz submitted that this was a sustainable decision.

Findings and Conclusions

15. With respect to Ground 1 and the applicability of TD, this was cited in the judge's determination and there is no evidence that he did not properly apply it. The question of sole responsibility is a question of fact. The judge made clear findings. Financial contributions are indicative of sole responsibility but not conclusive. The judge was satisfied that the Sponsor had made some financial contributions towards his daughter's care but was entitled to decide that it was shared with the child's mother and with his own father. He took into account the amount of contact which the Sponsor had had with his child over the years and that was the basis of his decision that the Appellant's mother, the primary carer, had made the important decisions in her life.
16. He heard oral evidence from the Sponsor which he set out in the determination. It was open to him to conclude that it was not true that, post decision, the Appellant's mother had disappeared.
17. The Section 55 duty does not directly impact on the Appellant because she is out of country but in any event was considered in the Article 8 analysis.

The judge recorded that the Appellant is living in a country where she speaks the first language and forms part of the majority culture and has close family support. It was in her best interests to remain with that support which has been felt to be suitable ever since 1999 and to stay with her mother.

18. The judge's conclusions were open to him for the reasons which he gave.

Decision

19. The grounds do not establish any error of law. The judge's decision stands. The Appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor