



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

Appeal Number: OA/12829/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 17 September 2014**

**On 15 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**ENTRY CLEARANCE OFFICER - BEIJING**

Appellant

**and**

**MISS LINLIN SHAO**

Respondent/Claimant

**Representation:**

For the Appellant:

Ms Alice Holmes, Specialist Appeals Team

For the Respondent/Claimant: Ms C Solomon, Solomon Law Solicitors

**DECISION AND REASONS**

1. The Entry Clearance Officer appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Majid sitting at Taylor House on 12 May 2014) allowing the claimant's appeal against the decision by an Entry Clearance Officer to refuse her entry clearance as the adopted child of Shao Wei. The First-tier Tribunal did not make an anonymity order, and I do not consider that such an order is required for these proceedings in the Upper Tribunal.

## **The Grant of Permission to Appeal**

2. Judge Majid allowed the appeal under the rules and under Article 8 ECHR. On 29 July 2014 Designated Judge McCarthy granted permission to appeal for the following reasons:

The grounds argue that the judge has failed to give adequate reasons for accepting that the appellant is the adopted child of the sponsor. The grounds are well made and identify an arguable legal error.

## **Reasons for finding an error of law**

3. The Judge failed to address the cogent reasons advanced by the ECO, and endorsed by the ECM, for challenging the substance of the relationship between the claimant and her aunt Shao Win, the veracity and legality of her adoption by her aunt and the credibility issues raised by her aunt's conduct. Among other things, the ECM had been advised by the adoption office in China that, when applying to adopt, Shao Win had not disclosed to them that she had been living in the UK for three years, and had relied on an employment letter which represented that she was living and working in China. So the adoption office had been falsely induced to believe that Shao Win was living in the same household as the claimant, providing her with motherly care on a day to day basis. Furthermore, there was a legitimate concern as to whether the sponsor could be said to have had sole responsibility for the claimant's upbringing given that the claimant had been brought up in her grandparents' household both before and after the sponsor migrated to the UK; and her father, Shao Win's brother, was at all material times either a member of the same household as the claimant or living close enough to maintain contact with her.
4. While the claimant's representatives sought to address these concerns in the rebuttal evidence tendered for the appeal, the judge failed to engage with the concerns of the ECO and ECM or to make findings on the rebuttal evidence tendered by the claimant.
5. The judge only made a finding on the issue of sole responsibility, and this finding was itself inadequately reasoned. The following paragraphs in **TD (Yemen)** are pertinent:
  45. To understand the proper approach to the issue of sole responsibility, we begin with the situation where a child has both parents involved in its life. The starting point must be that both parents share responsibility for their child's upbringing. This would be the position if the parents and child lived in the same country and we can see no reason in principle why it should be different if one parent has moved to the United Kingdom.
  46. In order to conclude that the UK based parent had sole responsibility for the child, it would be necessary to show that the parent abroad had abdicated any responsibility for the child and was merely acting at the direction of the UK based parent and was otherwise totally uninvolved in the child's upbringing. The possibility clearly cannot be ruled out:

Alagon provides an example of this exceptional situation and turns upon an acceptance by the judge of the wholly unusual situation that the father was 'doing nothing for the child beyond the bare fact of living with her on reasonably good terms'.

6. Because he found the sponsor to be solely responsible for the claimant's upbringing, the judge found her to be credible generally. This was illogical and inadequate reasoning, as the credibility concerns about the sponsor extended beyond the question of sole responsibility, to questions such as whether a formal adoption procured by fraud is valid and/or whether the adoption was one of convenience arranged to facilitate the claimant's admission to the UK.
7. Both parties have been deprived of a fair hearing in the First-tier Tribunal, and so the proper course is for the appeal to be remitted for a fresh hearing *de novo*.

### **Decision**

8. The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside.

### **Directions**

9. **This appeal is remitted to the First-tier Tribunal at Taylor House for a complete rehearing before any judge apart from Judge Majid, with a time estimate of 2 hours.**

Signed

Date **17 September 2014**

Deputy Upper Tribunal Judge Monson