



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/19695/2012

THE IMMIGRATION ACTS

Heard at Field House
On 7 January 2014

Determination Promulgated
On 21 January 2014

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

RUNGNAPA AMSRI

Appellant

and

ENTRY CLEARANCE OFFICER - BANGKOK

Respondent

Representation:

For the Appellant: Mr R Solomon of Counsel instructed by Starck Uberoi LLP
Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

The History of the Appeal

1. The Appellant, Miss Rungnapa Amsri, who was born on 17 June 1998 and is a citizen of Thailand, applied for entry clearance to join her mother, Mrs Nangnoi Bualom, as her child under paragraph 297 of the Immigration Rules. Her appeal against the ensuing

refusal was heard by Immigration Judge Turquet sitting at Hatton Cross on 12 July 2013. Both parties were represented, the Appellant by Mr Solomon. In a determination of 19 July, promulgated on 26 July, 2013, the appeal was dismissed under the Immigration Rules.

2. The Appellant's application for permission to appeal, settled in great detail by Mr Solomon, was refused on 6 September 2013 by Judge Astle on the basis that it represented only disagreement with the judicial findings, but granted on 22 November 2013 by Upper Tribunal Judge Freeman on the basis that arguably not all relevant evidence was taken into account. This exactly encapsulates the issue in this challenging appeal.
3. At the error of law hearing before us on 7 January 2014, the Sponsor was present and the proceedings were interpreted to her. The hearing, which lasted almost an hour, took the form of submissions, Mr Solomon developing the permission application and Mr Bramble responding. We are indebted to both of them for cogent, cerebral and not overstated submissions, which have greatly assisted us.

The Core Issues

4. There are two related core issues which run through the argument.
5. The first core issue is whether Judge Turquet did not take account or sufficient account of relevant evidence. A judge need not discuss every detailed aspect of the evidence, especially in an appeal such as this in which the evidence is copious. But he or she must take account of evidence which is significant and relevant to an issue which arises for decision.
6. The second core issue is whether the conclusions of Judge Turquet were unreasoned or insufficiently reasoned. As recently reiterated in **MK (duty to give reasons) Pakistan** [2013] UKUT 00641 (IAC), , it was held that axiomatically a determination must clearly disclose the reasons for a decision and that reasons for rejecting oral or documentary evidence must be given.
7. We identify a third core issue, which is that a determination must be read holistically. Especially in an appeal like this one in which there is a great deal of evidence, a determination which repeated evidence in each context in which it was relevant would assume inordinate length. If a determination addresses evidence at one point, the onus is upon the party seeking to challenge it to establish that in a chain of reasoning at another point it had escaped judicial consciousness. So, for example, the submissions of the representatives at paragraphs 18 and 28 of the determination (referred to as (18), (28)) and the Respondent's case (20 to 27) is to be taken to be within the consciousness of the judge throughout the determination unless the contrary can be inferred.

The Essence of the Determination

8. The key issues under paragraph 297 of the Immigration Rules were whether the Sponsor had sole responsibility for the Appellant and alternatively whether there were serious and compelling family or other considerations which made the Appellant's exclusion from the UK undesirable and suitable arrangements had been made for her care. As to the first issue of sole responsibility, the key judicial finding is in paragraph 43, which begins:

"Given the inconsistencies in the accounts, I cannot rely on the veracity of the evidence in respect of the Sponsor having sole responsibility."

The Respondent argues that these inconsistencies are the basis for the rejection of evidence going to the issue of sole responsibility. The Appellant argues that the rejection of what is said to be consistent evidence on different aspects of sole responsibility given by the Appellant, the Sponsor, the Sponsor's husband and the aunt with whom the Appellant lives in Thailand is unreasoned or insufficiently reasoned. This, we conclude, is the core issue in the appeal, from which most of the other issues follow.

9. The judge identified inconsistencies within the evidence about visits to Thailand by the Sponsor and her husband (31), photographs of the Appellant (33), money transfers (34), the knowledge of the Sponsor and her husband about money transfers (34), the finances of the Appellant's aunt (34), control of the Appellant's education (35), school trips (35), with whom the Appellant was or was not able to discuss problems (35), the Sponsor's evidence about contact and responsibility (36), the Appellant's schooling arrangements (37), the ability or not of the Appellant's aunt to care for her (41) as well as issues previously identified (41) and the Appellant's contact with her father (42). It is argued that some of these instances are either not inconsistencies (for example understanding of distances may be relative (31)). These we discuss below in relation to the specific grounds of the permission application.
10. The judge heard evidence from the Sponsor and her husband (2) and had statements from them and from the Appellant and her aunt. The Appellant argues that this evidence was broadly consistent. Even if it was broadly consistent, it was not entirely so. For example the oral evidence of the Sponsor's husband was inconsistent with that in his statement (34), which is itself a mirror image of the Sponsor's statement.
11. There is no apparent basis for inferring that the judge did not have all of this evidence in her mind when she considered what she found to be inconsistencies within it. Even if some of those asserted inconsistencies may require some qualification, they afford in the aggregate ample justification for the conclusion which she reached which was that she could not rely on the veracity of the evidence in respect of the Sponsor having sole responsibility for the Appellant. So this finding

was judicially open to her. Hence, in relation to each of the specific grounds of the permission application, the submission of no or insufficient reasoning will not stand.

12. Against this background we consider each of the grounds of the permission applications.

The Specific Grounds of Appeal of the Permission Applications

Ground 1. Sponsor's Visits

13. The judge gave reasons for rejecting the evidence, which are sufficient even if the relative perception of distance is not an inconsistency. Corroboration is not as a matter of law required, and the judge did not erroneously suggest that it was needed, but corroborative evidence from the hotel might have addressed the judge's concerns about the evidence.

Ground 2. Photographs

13. The photographs of the Appellant are school photographs, mostly of a group and one of the Appellant individually. The judge was entitled to doubt the shyness of the Appellant in front of the camera. Again, whilst corroborative evidence is not as a matter of law required, the judge was entitled to note the absence of any photographs of the Appellant and the Sponsor together, despite the Sponsor's evidence, at pages 8 and 9 of the Appellant's bundle, that she had visited the Appellant eleven times over the last eight and a half years, with no explanation save that of the Sponsor's husband that the camera had been lost.

Ground 3. Money Transfers

14. The judge noted two plus three plus more money transfers (34, first sentence). The separate copy of the money transfer of £1,000 on 28 December 2011 which is in the Respondent's bundle and which Mr Solomon told us that he could not locate is on the Tribunal file as a separate document and was presumably handed to the judge during the hearing. Both are photocopies, so that neither is an original. The one handed to the judge shows the name of the receiver, whilst that in the Respondent's bundle does not. The judge was entitled to note this fact.
15. The Appellant submits that this matter was not put to the Sponsor at the hearing, and that this was a procedural irregularity. In cases with much documentary evidence such as this one, points can be identified by the judge after the hearing which were not raised during it. It is not invariably a procedural irregularity to note these points. Whether fairness demands that the point be put to the parties, by way of directions or of reconvening the hearing, is a matter of judicial judgement, depending upon the significance of the issue to the appeal. The point was one of numerous matters upon which the judge expressed her concerns and it was not of such subtlety that it could not be anticipated and addressed by counsel at the

hearing. In our view it was not sufficiently significant to have required her to afford the parties the opportunity to comment before noting the point.

16. The Sponsor's memorandum of statement on parental power over child of 19 July 2012 at page 38 of the Appellant's bundle was made in readiness for the application which was submitted on 26 July 2012. Although Mr Solomon submits that it is a significant document, it reiterates the Sponsor's written and oral evidence and adds nothing to it except legal formality. The judge took into account the documents in the Appellant's bundle (3(b)), and it was not an error of law for her not to mention this document individually.
17. As discussed, the judge was entitled to doubt the evidence of sole responsibility. She stated the correct standard of proof (4). Reading the determination as a whole there is no basis for suggesting that she applied a different standard, and the use of the words "vague and unconvincing" about the financial evidence (34) does not lend any support to this argument.

Ground 4. The Letter from the Appellant's Teacher

18. This letter, at page 35 of the Appellant's bundle, together with its translation, is referred to (35). In the light of the judge's concerns about the evidence of sole responsibility, it is not possible to say that it was not given due weight.

Ground 5. The Sponsor's Statement

19. The judge noted that in her oral evidence the Sponsor did not refer to the evidence in her statement about meeting the needs of the Appellant. The grounds submit that she did not have to, because she had adopted her statement. One needs to hear, as the judge did, the line of questioning. Plainly the judge did not derive from the oral evidence of the Sponsor a sense of her adoption of responsibility for the Appellant. The judge was entitled to view this as an inconsistency between the written and oral evidence of the Sponsor.

Ground 6. The Ability of the Appellant's Aunt to Care for her

20. The judge did not reflect the evidence of the Appellant at interview that her aunt was not able to look after her any more because of the aunt's health. Had she done so, she would have doubtless identified this as another inconsistency within the evidence, because of the evidence that the aunt worked and the absence of any medical evidence about her (41). So nothing turns on the fact that the judge did not specifically address the interview evidence on this point.

Ground 7. Contact between the Appellant and her Father

21. The Letter from the Appellant's father at page 28 of the Appellant's bundle, together with its translation, were considered (17), as was the evidence of the Appellant, the

Sponsor and the aunt about the father's lack of involvement in the Appellant's life. Against the background of the judge's rejection of the evidence of sole responsibility of the Sponsor, the judicial findings about the father's contact with the Appellant were a reasoned inference from the evidence (42).

Ground 8. Decisions about the Appellant

22. The statement that there had been no evidence relating to the Sponsor making decisions about the Appellant's discipline and friendships (44) may, following the rejection of the evidence of sole responsibility (43) mean that there was no accepted evidence about this. Alternatively it may be, as submitted, an overstatement. On either basis, the evidence about this matter was considered throughout the determination (10, 11, 14, 15, 16, 35, 36).

Ground 9. The Appellant being uncared for

23. The judge found that there was no evidence that the Appellant was unwell or uncared for (45, 49). The domestic sleeping arrangements were considered (10), but presumably not viewed as being as significant as is submitted on behalf of the Appellant.

Ground 10. Conclusion

24. Reading the determination holistically and analysing each of the detailed grounds of appeal, we conclude that the judge did not fail to take material evidence into account and that her conclusions were grounded in the evidence and sufficiently reasoned. Any individual shortcomings within a long and conscientious determination ranging over a volume of oral and documentary evidence were not material. No error of law has been established. The determination is upheld.

Decision

25. The determination of the First-tier Tribunal does not reflect any error of law and is upheld.

Signed

Dated: 21 January 2014

Deputy Upper Tribunal Judge J M Lewis