



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

Appeal Number: OA/04550/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1 September 2015**

**Decision & Reasons
Promulgated
On 4 September 2015**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**TINOTENDA ZEMBE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss M Hannan, Corban Solicitors

For the Respondent: Miss E Savage, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision promulgated on 31 March 2015 of First-tier Tribunal Judge Napthine which refused the appeal against refusal of entry clearance as a dependent child.

2. The appellant is a citizen of Zimbabwe, born on 17 May 1996.
3. Judge Naphthine found that the sponsor, the appellant's father, did not have sole responsibility and that it had also not been shown that the decision amounted to a disproportionate interference with his rights under Article 8 the ECHR.
4. The grounds at paragraph 1 and 2 appear to misunderstand what was said by the First-tier Tribunal Judge at paragraphs 11, 12 and 13 of the decision. Judge Naphthine states at [12] that the relevant date for establishing whether the Immigration Rules were met was 26 February 2014, the date of the decision. That is correct. At [11] the judge finds that the evidence indicated that the appellant was living with his maternal aunt until the end of 2014 and that the reference to difficulties after that in the letter of the appellant's uncle was not relevant to the date of the decision. That is also correct. The reference to the appellant becoming 18 years old on 17 May 2014 and at that point no longer subject to paragraph 297 is correct, if irrelevant. The judge is not saying here that the application did not fall to be considered under paragraph 297. The determination considers that paragraph, and no other, in terms.
5. Paragraph 3 of the grounds submits that the First-tier Tribunal Judge did not take into account properly a social worker's report contained at pages 61 to 66 of the appellant's bundle of materials. The First-tier Tribunal Judge clearly did take account of the social work report. He indicates at paragraph 9 that he considered all the evidence before him.
6. In addition it is difficult to see how this document taken at its highest could have made a material difference to the decision of Judge Naphthine. The report does not indicate the context in which it was prepared, who instructed the social worker, how or when the information in the report was obtained or set out a proper understanding of the need for independence if the report is to be relied on in these proceedings.
7. Further, the report contains a number of references to the appellant's ongoing relationship with his mother, for example at 64 recording that the appellant's mother wants to be there for her son and continues to attempt to do so albeit she is constrained by her new relationship. As in the reported case of TD (Paragraph 297(i)(e) "sole responsibility") (Yemen) [2006] UKAIT 00049 at paragraph 45 the starting point is that both parent do share responsibility for a child even if one partner has moved to the United Kingdom. At paragraph 46 the same decision sets down that it is necessary for a parent to "abdicate" responsibility if sole responsibility is going to be clearly made out for the other parent. Further, where the evidence showed that both parents were involved whatever the extent, paragraph 52(iv) of TD indicates that "it will be exceptional that one of them will have sole responsibility". Given the references to the mother still playing a role in the appellant's life, the social work report could not show that the mother had abdicated responsibility or that, exceptionally, she did not retain some parental responsibility for him.

8. At paragraph 4 the grounds maintain that the First-tier Tribunal failed to refer to other documentary evidence. That argument can have no merit given what the judge says at paragraph 9 as to having given careful consideration to all of the documents and evidence before him. He was not required to refer to every piece of evidence before him and that included the visits between the appellant and sponsor. In the context of the matters in the previous paragraph concerning the role of the appellant's mother, the visits were not matters obliging the First-tier Tribunal to decide the appeal differently, the key issue being not whether the sponsor had a close relationship with the appellant but whether he had sole responsibility as of the date of the decision.
9. Paragraph 5 of the grounds suggests that there was a requirement for the First-tier Tribunal to state the "period of sole responsibility in respect of which the evidence was assessed." There is no such requirement. As above, the First-tier Tribunal considered the situation as of the date of the decision which was correct.
10. The grounds at paragraph 6 and 7 challenge the Article 8 decision. The grounds are incorrect in asserting that Section 55 of the Borders, Citizenship and Immigration Act 2009 applies to entry clearance appeals. It does not; see T (s.55 BCIA 2009 - entry clearance) Jamaica [2011] UKUT 00483 (IAC) applied. In any event, a fair reading of the Article 8 consideration at paragraphs 27 to 30 shows that relevant material matters were taken into account. As above, Judge Naphine was entitled to find that the appellant was being cared for by family members including his mother and that he had family life in Zimbabwe as well as his relationship with his father. The Immigration Rules were not met, a significant factor weighing against the appellant in any Article 8 consideration; see Haleemudeen v SSHD [2014] EWCA Civ 558. The grounds do not show a material error has been shown in the Article 8 assessment.
11. For all of those reasons I did not find that an error on a point of law had been shown in the First-tier Tribunal decision.

Decision

12. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed 
Upper Tribunal Judge Pitt

Date