IAC-AH-KEW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/07290/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 8 July 2015	**On 26 August 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

KINGSLEY KUDAKWASHE KAUNDURA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:
For the Appellant: Mr Chinyoka, Abbott Solicitors
For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Kingsley Kudakwashe Kaundura, was born on 6 September 1999 and is a citizen of Zimbabwe. By a decision dated 30 April 2014, the Entry Clearance Officer (ECO) Pretoria refused the appellant's application for entry clearance to the United Kingdom for settlement with the sponsor (Christine Muwirimi) who is the mother of the appellant. The appellant appealed to the First-tier Tribunal (Judge Chapman), in a decision dated 17 February 2015, dismissed the appeal on all grounds. The appellant had applied for entry clearance with his father (Nowell Muwirimi) who had also been refused and had appealed to the First-tier Tribunal. However, Mr

Muwirimi has not been granted permission to appeal. Granting permission to the appellant, Judge White considered that the First-tier Tribunal may have erred in law in determining the issue of "sole responsibility." In particular, applying the principles of *TD (Yemen) (Paragraph 297(i)(e): "Sole Responsibility") Yemen* [2006] UKAIT 00049, he considered that the judge may arguably have erred in finding that sole responsibility may not depend entirely upon what "has happened recently" [34] and also that "responsibility may have been for a short duration in that the present arrangements may have begun quite recently." [34]

2. Judge Chapman noted that the appellant, born in 1999, had been deserted by his father not long after his birth. In [36], Judge Chapman noted that:

> "There is no evidence that [the sponsor] was taking such an interest in the eight or so years before [she started paying school fees etc.] ... for example, there is no evidence from the sponsor's sisters which might have confirmed the role that the sponsor was playing in her son's life throughout this time. Indeed there was no evidence from the appellant himself about his mother's role in his life."

3. The judge went on at [37] to state,

> "Except for the sponsor's own evidence, to which I attached little credibility, there is very little evidence she has resumed any greater role in her son's life than she previously had played. I also note that, had she wished to do so in 2006 after an asylum claim had been rejected, the sponsor could have returned to Zimbabwe to play a more active role in her son's life. She chose not to do so, nor to seek his entry into the UK to join her at that time."

4. Judge Chapman concluded

> "Having considered all these factors, I am not satisfied on a balance of probabilities that the sponsor has had sole responsibility for the appellant. I do not go as far as saying she has abrogated all responsibility for her son, but I find that it is more likely than not that, at the very least, responsibility for the upbringing of her son has been shared with her sisters and therefore not her sole responsibility."

5. The findings of the judge could not be clearer. First, she has not accepted the credibility of the evidence of the United Kingdom sponsor, the appellant's mother. Having rejected her credibility, she has clearly found that the appellant has failed to discharge the burden of proof upon him in the appeal; it was for the appellant to prove that his mother had sole responsibility for him. Even if the judge had accepted that the sponsor had assumed a much greater role in her son's life in recent years, it is absolutely clear that she believes that role has always been shared with her sisters and, as a consequence, the sponsor has not had "sole" responsibility for the appellant. I do not find that the judge has erred in law for the reasons stated in the grounds of appeal or at all. The remaining grounds are little more than a disagreement with the findings which were open to the judge on the evidence before her. I note that there was no challenge to the judge's Article 8 ECHR assessment.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed Date 10 August 2015

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 10 August 2015

Upper Tribunal Judge Clive Lane