IAC-AH-VP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/14957/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court	**Determination Promulgated**
On 9th January 2015	**On 21st January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MISS SOBIA BI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

Representation:
For the Appellant: Mr S Vokes (Counsel)
For the Respondent: Mr N Smart (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Lugunju, promulgated on 18th August 2014, following a hearing at Birmingham Sheldon Court on 12th May 2014. In the determination, the judge allowed the appeal of Miss Sobia Bi. The Respondent Entry Clearance Officer, subsequently applied for, and was granted permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Pakistan who was born on 30th April 1995. She appealed against the decision of the Respondent Entry Clearance Officer dated 23rd July 2013, refusing her application under paragraph 297 of HC 395, to join her father, the Sponsor, in the UK.

The Appellant's Claim

3. The Appellant's claim was that her father and mother had divorced. She was living in the home of her father. She was looked after on a day-to-day basis by her grandmother. This was at the control and direction of her father in the UK. Her mother did not have a role to play in her maintenance.

The Judge's Findings

4. The judge proceeded on the basis of the guidance given by the Tribunal in **TD (Paragraph 297(i)(e)) Yemen [2006] UKAIT 00049**. She observed that the test to be applied is whether the parent who is said to have sole responsibility has control and direction over the child including making the day-to-day key decisions (paragraph 9). The judge's findings were that the Sponsor had made it very plain that he, as head of the family, "makes the key and important decisions concerning the Appellant's life and future, including who she will marry and what job she will do. As he cannot be physically present, he exerts his authority and influence from the UK through his mother" (paragraph 14).

Grounds of Application

5. The grounds of application state that the judge, failed to make material findings as to who has responsibility for the day-to-day of the Appellant, and to resolve an anomaly in the evidence relating to this issue.

6. The Tribunal gave permission to appeal on 22nd September 2014.

Submissions

7. At the hearing before me on 9th January 2015, Mr Neville Smart, appearing as Home Office Presenting Officer, focused on ground one of the Grounds of Appeal, namely, the failure by the judge to properly resolve the issue of "sole responsibility" on the part of the sponsoring father. Mr Smart explained that the reason why this was important was because the mother was still in the locality. The judge had misgivings about the evidence, and given that this was so, it could not be concluded that "sole responsibility" remained with the father, who was in the United Kingdom, without these ambiguities and the evidence being first resolved. For example, at paragraph 10 of the determination the judge refers to the fact that the Appellant's mother has continued to refer in the affidavit written by her to the Appellant's father as "her husband" which "she prepared in April 2013" (paragraph 10). Further, at paragraph 17 the Sponsor had maintained that the Appellant does not have contact with her mother but the judge concluded that, "I find it would be in very unusual circumstances

in which the mother can want divorce chooses not to have any contact with her children, thus I do not accept this aspect of the Sponsor's evidence" (paragraph 17). Also, the mother's affidavit refers to the same location in Pakistan as that of the Appellant child. In the Appellant's bundle also, there is (at page 13) a document from the government girl's high school, which again refers to the same location for the Appellant child as for the mother. In fact, the visa application (at questions 19 to 21) gives exactly the same address by the Appellant when she makes the visa application as the address for the mother. Yet, the Appellant's father says that after he divorced the Appellant's mother she moved out of the address. In these circumstances, the judge had to make a finding as to where the Appellant's mother actually lived. She could have lived near enough to be able to provide day-to-day care for the Appellant. In that case, the "sole responsibility" would not be with the sponsoring father in the UK.

8. For his part, Mr Vokes submitted that, whilst he would accept that the mother also lived in "village Gianchoor" which was the same village as the Appellant child, there was no evidence further to this that the Appellant herself could provide, and if it was the Respondent's case, that the mother was indeed living with the child, then the burden rested on the Respondent. The Appellant's evidence, and that of the sponsoring father, was that the mother had left the family home. At question 23 of the visa application the question was "How long have you lived in this address" and the response had been "Since birth". This was the ancestral home of the Appellant's father. What was in issue was "sole responsibility". In that event, one had to look at the evidence of the Sponsor. The Sponsor states, "I am also Sponsor for the day-to-day" care "through my mother …….my mother also helps". As to the mother at page 15 of the bundle, the mother states (at paragraph 3) that after the divorce, the children were under her supervision, as she looked after them for a long time.

9. If one now turns to the findings of the judge, the judge observes (at paragraph 10) that the mother "did not take well the divorce" and continued to refer to the Appellant's father as "her husband". The judge observes (at paragraph 14) that, "As he cannot be physically present, he exerts his authority and influence from the United Kingdom through his mother". There was simply no evidence that the child's mother was exerting any responsibility. The evidence was that it was the grandmother because the child's father was working through his own mother. At the same time, the judge did not accept willy nilly everything that was said by the Sponsor. This is because (at paragraph 17) the judge rejected any suggestion that the mother had absolutely no role to play in the Appellant's life. She found that there would be some contact by the mother with her child.

10. But the judge had then gone on to say that, "However, whether or not the mother maintains contact with the Appellant, I find she is no longer responsible for her. Her affidavit dated in April 2013 could certainly be considered as confirmation of this …" (paragraph 17). Mr Vokes drew my

attention to the older Tribunal determination of **Omar Sumani (HX/70205/1998)** which was a "starred" decision by Mr Justice Collins, in which he had stated that,

> "The reality is that it is quite impossible to set out a detailed checklist of what must be done in all cases. It will in many cases be quite unnecessary to set out the evidence regarded as irrelevant, indeed, very few judges would recognise that as an exercise they carry out in giving judgments following a trial. …. The only guidance needed is that the conclusions reached must be justified and it must be clear that any adverse findings in particular are based on evidence put before the Adjudicator or the Tribunal and a proper explanation must be given to show why the conclusions on the issues of substance have been reached …" (paragraph 10).

11. There was no further reply from Mr Smart.

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law, such that I should set aside the decision (see Section 12(1) of TCEA 2007. This is for the following reasons. First, the judge properly sets out the case being put forward by the Appellant, which is that her mother is no longer actually involved in her upbringing because the mother and father are divorced (see paragraph 10). Second, the judge concludes that, "I accept and have no reason to doubt the Sponsor's evidence that culturally on divorce the husband gets custody of the children". This is the first reason going to how the responsibility would shift to the father.

13. The second reason are letters from the Appellant's school and from her doctor both of which confirm the Appellant's father is named in their records. These institutions have contact with the father. The third reason given is that the school letter is dated postdecision, but the judge is satisfied that it appertains to matters that predate of the decision. The fourth reason given is that, following on from the cultural responsibility taken on by the father, it is he who remains financially responsible for all his children and that, "I note the money transfer receipts and letter from the money transfer company contained in the bundle which named the Sponsor" (paragraph 12). Finally, the sponsoring father visits Pakistan and this evidence was also before the judge (see paragraph 13).

14. As against this, there was an affidavit produced by the Appellant's grandmother, which "confirms that she supervises the children in his absence as an adult presence is required" and from this the judge concludes that, "There is no question that the Sponsor meets the test in **TD Yemen**, in that, he has control and direction of the Appellant's life". At the hearing before Judge Lugunju the Respondent's approach was to suggest "that the evidence tells a different story, that the Appellant actually lives with her mother" but the judge held that, "I do not find any

support for this suggestion; there is no evidence before me that leads me to this conclusion" (paragraph 15).

15. In the circumstances, I find that the present approach is to re-argue the case that has already been properly determined by Judge Lugunju and there is simply no error of law. It was for the judge to make findings of fact. She did so on the basis of the evidence presented. Those findings were open for her to make.

Decision

16. There is no material error of law in the original judge's decision. The determination shall stand.

17. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 21st January 2015