



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

Appeal Number: OA/16361/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 February 2015**

**Decision & Reasons  
Promulgated  
On 13 February 2015**

**Before**

**UPPER TRIBUNAL JUDGE WARR**

**Between**

**ENTRY CLEARANCE OFFICER (ACCRA)**

**and**

**MASTER LAMIN TOURAY  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: No appearance

**DECISION AND REASONS**

1. This is the appeal of the Entry Clearance Officer but I will refer to the original appellant, a citizen of Gambia, born on 20 July 1995, as the appellant herein. The appellant applied for an entry clearance to join his father, Mr Dembo Touray, in the United Kingdom, for settlement. His application was refused by the respondent on 20 August 2013 on the basis that the respondent was not satisfied that the appellant's father had sole responsibility for the appellant. Refusal was under paragraph 301(i)(b).

The matter was reviewed by an Entry Clearance Manager on 18 December 2013 but the decision was maintained.

2. The appellant's appeal came before First-tier Judge Clapham on 14 October 2014. The judge heard oral evidence from the sponsor and the appellant's mother-in-law. The appellant was the son by a previous relationship.
3. The sponsor said he had left the Gambia in 2008. He had returned to get married and then had come back to the United Kingdom in 2011. He had returned to Gambia on two occasions and had lived with the appellant in 2011. There was an issue about whether the appellant had not been living with the sponsor but the sponsor said this was an error.
4. The appellant's father said he was in contact with the appellant by telephone twice a week. While the appellant lived with his uncle, his uncle was not well and was now too old to look after the appellant. The sponsor had been remitting money back to the Gambia since his arrival in the United Kingdom. He had sent money every month for the appellant's school and for food. He made decisions in relation to the appellant by calling his uncle and would speak to the appellant too.
5. The judge helpfully summarised the submissions and set out his conclusions in the following passages from his determination.

“21. The Home Office Presenting Officer said that the issue was whether the sponsor had sole responsibility for the appellant. Her submission was that the sponsor did not have sole responsibility for the appellant. Reference was made to his visa application which had indicated that he and the appellant were not living together.

22. There was said to be no evidence that the appellant's father was exercising sole responsibility.

23. The Presenting Officer said there was nothing from the appellant's school to show that the school was in contact with the appellant's father or indeed to show any relationship between the school on the one hand and the father on the other. There was said to be no information from the father about when the appellant last attended the hospital and it appeared that contact with the appellant was in fact through the uncle.

24. In relation to the remittances that had been produced, the Presenting Officer said these were from 2014 so they were all recent and there was said to be no medical evidence in relation to the appellant's father's uncle's health. It was also submitted that the appellant's great uncle has a wife.

25. The representative said he would rely on his skeleton argument. He said it was clear from the entry clearance application that various documents had been provided including money transfer receipts and he said that there must have been receipts in relation to transfers of money that pre-dated 2014. He said the recent remittances simply added clarity.
26. I accept the submission on the part of the appellant's representative that it does appear that there were earlier money transfers.
27. In relation to the answer on the entry clearance application form which the appellant's father thought might have been erroneous, the representative explained that the witness had gone to the Gambia in order to apply for entry clearance to allow him to come back to the United Kingdom and he had used an agent. However at the precise point at which the application form was completed, the appellant and his father were not residing together so the representative suggested that the answer that had been given might in fact have been an accurate one.
28. It was also submitted that it was respectful on the part of the father of the appellants for him to communicate with his son via the uncle. It was submitted that money is sent. In relation to correspondence from the school it was submitted, and I have to accept this, that the school system in Gambia may not be the same as the school system in the United Kingdom. There may not be a system for example, of report cards.
29. In relation to the question of when the appellant was last in hospital, the representative pointed out that there was nothing to say that the appellant had been in hospital either recently or at all and I accept that submission.
30. In relation to the appellant's father's uncle having a wife who could look after the appellant, I agree that the appellant's father was not asked about this and we cannot speculate as to what answer he might have given or what age the great aunt might be.
31. The representative referred to the case of **TD**. In particular, he referred to paragraphs 8 to 14. The representative explained in his skeleton argument that the phrase 'sole responsibility' was intended to reflect a situation where the primary parental responsibility for the child's upbringing rested to all intents and purposes with one parent. The person claiming sole responsibility must satisfactorily demonstrate that he or she has been the person exercising responsibility for the child's upbringing in the sense of decision making, control and obligation towards the

child. The representative said that sole responsibility was a factual matter to be decided upon all of the available evidence. He said that the test was whether the parent had continuing control and direction over the child's upbringing including making all of the important decisions in the life of the child.

32. In the whole circumstances, I accept the submissions of the appellant's representative. It appears to me that a case of this kind must be fact sensitive but I am prepared to accept that the appellant's father has been the person exercising primary responsibility for the child in the sense of decision making, control and obligation towards the child."
6. The appeal was accordingly allowed. The Entry Clearance Officer was granted permission to appeal on the basis that it was arguable that the judge had failed to elaborate on the contents of the letter from the appellant's school and had failed to consider the appellant's uncle's role in the appellant's upbringing to the extent that responsibility for the appellant may be shared with the sponsor.
7. The appellant was unrepresented before me. On 14 January 2015 the representatives had applied for an adjournment. This adjournment application had been refused on 16 January 2015. It did not appear that this adjournment application had been renewed and in all the circumstances I determined it was appropriate to proceed.
8. Mr Bramble relied on the grounds although he was without the file and was not in a position to identify the particular letter referred to in the grant of permission. He submitted that the First-tier Judge had failed to fully reason the appeal on the sole responsibility issue. If there was a letter relating to the school the judge had not dealt with it. There was a question whether the father as sole carer had an input on the appellant's education. There was the question of the uncle and a wife who might be able to look after the appellant. The judge should have had regard to the relationship between the appellant and the uncle and the uncle and the sponsor and to have decided whether it was a case of shared or sole responsibility.
9. At the conclusion of the submissions I reserved my decision. I remind myself I can only interfere with the judge's decision if it was materially flawed in law.
10. The sole issue before the First-tier Tribunal Judge was whether the sponsor had sole responsibility for the appellant. The judge was referred to the authority of **TD (Yemen) [2006] UKAIT 00049** where the Tribunal summarises its findings in the head note as follows:

"'Sole responsibility' is a factual matter to be decided upon all the evidence. Where one parent is not involved in the child's upbringing

because he (or she) had abandoned or abdicated responsibility, the issue may arise between the remaining parent and others who have day-to-day care of the child abroad. The test is whether the parent has continuing control and direction over the child's upbringing, including making all the important decisions in the child's life. However, where both parents are involved in a child's upbringing, it will be exceptional that one of them will have 'sole responsibility'."

11. It does appear that the First-tier Tribunal Judge was fully aware of the legal test he had to apply by reference to the case of **TD** and in the light of the submissions made to him. In essence what the Tribunal in **TD** decided was that the question of sole responsibility was a factual matter to be decided upon all the evidence. In addition the judge had the benefit of hearing oral evidence.
12. In relation to the letter Mr Bramble was in difficulty because he did not have his file. The judge refers to correspondence and I am not satisfied that it is arguable that he overlooked any relevant matter. It was open to the judge to look at the appeal in the cultural context as he did in paragraph 28.
13. It is plain from looking at the determination as a whole that the judge satisfactorily probed the evidence, expressing reservations, for example about the testimony of the appellant's wife. However he did accept the essential elements of the case, as is clear from the determination. As I have already said, he correctly addressed himself on the law. As he states, each case of this kind must be fact sensitive. This is not a case where responsibility is shared with another parent. The judge accepted the sponsor's case that he was primarily responsible in the way established in the case of **TD (Yemen)**. It does appear with due respect that the grounds of appeal submitted by the respondent are more in the nature of a factual rather than a legal challenge. I do not find there is any material error of law in the judge's decision.

#### Notice of Decision

The appeal of the Entry Clearance Officer is dismissed and I direct that the decision of the First-tier Judge allowing the appeal shall stand.

No anonymity direction is made.

Signed

Date 11 February 2015

Upper Tribunal Judge Warr

#### **FEE AWARD**

The First-tier Judge made a fee award in favour of the appellant and that stands