



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

Appeal Number: OA/20344/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 22nd January 2015

**Decision & Reasons
Promulgated**

On 11th February 2015

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**MASTER DBB
(ANONYMITY DIRECTION MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Lynch of Arndale Solicitors

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Dearden made following a hearing at Bradford on 8th August 2014.

Background

2. The Appellant is a citizen of Jamaica born on 31st January 2000. He applied to come to the UK as the child of a parent present and settled here on 25th July 2013 but was refused entry clearance on 16th October 2013 on the

grounds that the Entry Clearance Officer was not satisfied that the child was seeking to join a parent who had had sole responsibility for his upbringing.

3. The Sponsor, the child's father, left Jamaica for the UK in September 2000 when the child was 8 months of age. Thereafter he lived with his mother until she left for the Bahamas some time in 2011, and then went to go to live with the Sponsor's brother. His mother returned to Jamaica some time in 2013. No evidence was put forward as to exactly when she returned.
4. The judge wrote as follows:

“No one could be precise as to the date on which the Appellant's mother returned to Jamaica but as the date of decision is at the end of the year, on 16 October 2013 I consider it more likely than not that the Appellant's mother returned to Jamaica before that date.”
5. The judge recorded that the evidence was that the Appellant spends two weekends a month with his mother and that she has a continuing interest in him. He concluded that the Sponsor had joint responsibility for the child and not sole responsibility.
6. The Appellant sought permission to appeal on the grounds that the judge had given weight to immaterial matters and failed to give adequate reasons for findings on material matters. The grounds record that the Sponsor agreed that he had joint custody of the boy and the admission of joint custody should not be read as to mean sole responsibility. By treating the period of separation as temporary the judge effectively found that the relationship with the mother continued after 2013 as it had been before 2011 whereas there was clear evidence of remittances from the father from 2011 to 2013.
7. Permission to appeal was granted by Judge Lambert on 20th October 2014. Rather mystifyingly the grant refers to the Sponsor having insisted in the grounds that his son was in the care of his elderly mother whereas in fact there is no mention of any mother in the grounds and this was never been a part of the Sponsor's evidence.
8. The judge also granted permission on the basis that there was no obvious reason to support the judge's view that it was more likely than not that the Appellant's mother returned to Jamaica before the date of decision.

The Hearing

9. Mr Lynch accepted that there had been an error in the grant. He submitted that since the judge did not know when the mother returned he should have found that she returned afterwards since, had the Sponsor known of the return beforehand, he would have been able to give evidence to that effect. He pointed to paragraph 16 of the determination where the judge said that his finding might be seen as controversial but even if the

Appellant's mother had returned after the date of decision, entry clearance would not have been granted in any event.

10. It was not necessary to call upon Mr Diwnycz.

Findings and Conclusions

11. This grant is misconceived and it may be that the judge granting permission became confused between two files.

12. Since the standard of proof is the balance of probabilities, and there was no evidence before the judge as to the mother's date of return, he was plainly justified in concluding that it was more likely than not that she returned before 15th October 2013 since 44 weeks of the year had already passed with less than 8 remaining. The observation that entry clearance would not have been granted in any event was irrelevant to the decision, the judge having reached his conclusions in the preceding paragraph.

13. The grounds themselves amount to a simple disagreement with the decision. This is a clear and properly reasoned decision and the judge was fully entitled to reach the conclusion that he did for the reasons which he gave.

Decision

14. The original judge did not err in law. The decision stands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date **10th February 2015**

Upper Tribunal Judge Taylor