



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/02017/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 26 January 2016**

**Decision & Reasons
Promulgated
On 4 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR YASH BHARTI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India, born on 19 August 1999.
2. His appeal against the decision of the Entry Clearance Officer dated 6 January 2014 to refuse him leave to enter as a dependent of his mother, was allowed by Judge Majid (the judge) in a decision dated 16 January 2015.
3. The appellant applied under paragraph 319 of the Immigration Rules, but the Entry Clearance Officer did not accept that paragraph 319H(f) was satisfied. In particular, the Appellant's mother in the United Kingdom did not have sole responsibility for his upbringing in terms of 319H(f)(ii). That decision was upheld by the Entry Clearance Manager on review.

4. The judge found the sponsor had sole responsibility for the appellant and allowed the appeal under the Rules and on human rights grounds.
5. The grounds claimed the judge failed to give reasons or adequate reasons for findings on material matters. In particular that the judge failed to provide adequate reasons for his findings that the sponsor had sole responsibility for the appellant. In the sponsor's Business Visa Application Form in August 2013 she said she was living with the appellant's father. There was a discrepancy which the judge had not addressed.
6. The grounds submitted that the judge erred in his approach to the Article 8 assessment. He gave no consideration to the new Immigration Act 2014. See **Gulshan [2013] UKUT 00640 (IAC)** and **Nagre [2013] EWHC 720 (Admin)**.
7. The grounds submitted that the judge failed to identify why the appellant's circumstances were either compelling or exceptional.
8. Judge Hollingworth in his decision dated 12 May 2015 found that the judge had arguably erred. At [22] the judge allowed the appeal on the basis that the appellant satisfied the Immigration Rules and was entitled to the protection of the ECHR but it was arguable that both were inadequately analysed and with regard to the Rules, there was an arguable error in relation to the scope of the analysis of the available evidence and consequently, the weight to be attached in respect of the findings of fact.
9. There was no Rule 24 response.

Submissions on Error of Law

10. Mr Duffy relied upon the grounds. In summary, there were either no reasons or inadequate reasons for the judge's findings and decision.

Conclusion on Error of Law

11. It was the sponsor's claim that she had sole responsibility for the appellant, however, there were unexplained inconsistencies in that regard as in her business Visa Application Form dated August 2013, she said she was living with the appellant's father. She said that was in error, but there was a further inconsistency in that she claimed to have separated from the appellant's father and to have moved out of the matrimonial home some time ago. The judge accepted the evidence with no adequate analysis notwithstanding that it was challenged by the respondent. In particular, there was no consideration that the appellant's father might well have continued to be responsible for his care. In any event, it appeared there were other family members in India who could care for the appellant.
12. I find the judge further erred in his Article 8 assessment as he gave no consideration to the new Immigration Act 2014, in particular, s. 117.
13. The grounds refer to the judge's failure to engage with **Gulshan** and **Nagre**, however, **SS (Congo) [2015] EWCA Civ 387** and **Sunasse**

[2005] EWHC 1604 (Admin) are instructive. See in particular the analysis at [32]-[38] of **SS. Sunassee** gave a helpful analysis of **SS** and sought to simplify the complex requirements under the Rules by suggesting that whether circumstances were “compelling” or “exceptional” was not a matter of substance. Rather they must be relevant, weighty and not fully provided for within the Rules. That is, there must be a “gap”, not covered by the Rules. Whilst in practice those gap issues were likely to be both compelling and exceptional, that was not a legal requirement. The judge was required to carry out a public interest analysis which was absent from the decision.

14. In the circumstances, none of the judge’s findings shall stand. Directions are attached to this short decision.

Decision

15. The decision of the First-tier Tribunal contains errors of law, is set aside and will be remade following a de novo hearing.

Anonymity direction not made.

Signed

Date 26 January 2016

Deputy Upper Tribunal Judge Peart



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

Appeal Number: OA/02017/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 January 2016**

**Decision & Reasons
Promulgated
On 4th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR YASH BHARTI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr Duffy, Senior Home Office Presenting Officer

DIRECTIONS

16. List for hearing at Taylor House first available date.
17. Time estimate three hours.
18. Not later than ten working days prior to the hearing, the parties must file with the First-tier Tribunal and serve upon each other, all documentary

evidence (including witness statements) upon which they intend to rely at the hearing as well as any skeleton arguments.

Signed

Date 26 January 2016

Deputy Upper Tribunal Judge Peart