



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

Appeal Number: OA/03982/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 July 2016**

**Decision & Reasons  
Promulgated  
On 28 July 2016**

**Before**

**UPPER TRIBUNAL JUDGE WARR**

**Between**

**ENTRY CLEARANCE OFFICER - NAIROBI**

**and**

**[S S]**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr L Tarlow

For the Respondent: Mr C Jacobs of Counsel instructed by Bushra Ali Solicitors

**DECISION AND REASONS**

1. This is the appeal of the Entry Clearance Officer but I will refer to the original appellant, a citizen of Tanzania, born on [ ] 2001, as the appellant herein. The appellant appeals the refusal of an entry clearance on 31 January 2014. The Entry Clearance Officer's decision was summarised by the First-tier Judge in paragraph 11 of the decision as follows:

“In the Notice of Decision the Respondent explained the reasons behind the decision saying that the Appellant has not provided independent evidence that he lived with his grandparents, leading to doubts as to whether he indeed had no contact with his father as claimed. Whilst it was stated that his mother sent him money for his upkeep, no evidence had been provided of this or of visits since she left in 2005. He had not provided evidence that his mother was responsible for the important decisions with regard to his upbringing. The Respondent was not satisfied that his mother had sole responsibility for him or that there were serious compelling circumstances that made his exclusion undesirable.”

2. Issue was also taken on maintenance but the judge recorded in paragraph 14 of the decision that the issue of maintenance was conceded by the time of the hearing.
3. The First-tier Judge heard evidence from the appellant’s mother and her husband. She also had the benefit of a skeleton argument and the lengthy bundle provided by the appellant’s representatives.
4. The judge records the appellant’s mother’s evidence that after her parents’ separation she resided with her father and his new wife and their children. She became pregnant in 2000 with the appellant. She received no support from the appellant’s father during the pregnancy and they never lived together. After the appellant’s birth her father took responsibility for them both and the appellant’s father was less and less involved and cut off all contact when the appellant met her present husband. The determination continues:
  - “6. This new relationship had the approval of her family. Her new husband knew all about the Appellant. In 2005 she applied for and obtained a visa to join her husband in the UK. She didn’t want to leave the Appellant behind but they were not in a position to sponsor him then. She says in her statement that she asked her father to look after the Appellant for one year. It was only going to be a temporary separation. Her father agreed to bring the Appellant up in accordance with her wishes.
7. The Sponsor says that since then she talks to her son on the telephone at least twice a week. She has produced telephone records. She talks about his schooling. She made the choice of school and sends money out to cover school fees. At the hearing she gave evidence that most of her interaction with the teachers is through her father but on one occasion when the Appellant failed his maths she contacted the teachers direct. She also talks to him about whether he has eaten and what he has had to eat. There is friction between the Appellant and his stepfamily and this makes the relationship difficult. In fact since the decision the Appellant has gone to live with his grandmother.

8. Within the Appellant's bundle of documents at pages 153 to 161 are various receipts for foreign currency and letters from the grandfather and a cousin confirming receipt of funds. The Sponsor has made visits to Tanzania in 2006, 2008, 2009 and 2011 as can be seen by the stamps in her passport. She says that when she goes there she takes money with her. She also sends money via friends visiting the country. Her husband confirmed this account. Further visits have been made since the decision. Photographs have been produced of the Sponsor, her husband and their children with the Appellant.
9. The Sponsor and her husband have three children in the UK. They are keen for the Appellant to join them. The Sponsor has now trained as a nurse and works at a hospital in Northampton. She says that her parents are elderly and cannot continue to look after her son. He is keen to join his family in the UK."
5. The judge heard submissions from Counsel then representing the appellant (not Mr Jacobs) and Ms Ashraf for the Entry Clearance Officer.
6. The judge's conclusions were as follows:
  - "16. The Appellant wishes to join his mother in the UK. Following the concession on behalf of the Respondent the issue before me is whether the Sponsor has sole responsibility for her son's upbringing (paragraph 297(i)(e)) or whether there are serious and compelling family or other considerations which make his exclusion undesirable (paragraph 297(i)(f)). It has not been argued that suitable arrangements have not been made for his care and, for the avoidance of doubt, I am satisfied that the Appellant no longer has any contact with his natural father.
  17. In TD Yemen [2006] UKAIT 00049 the Tribunal accepted that "sole responsibility" is a factual matter to be decided on 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.
  18. Contrary to Ms Ashraf's assertion, I do not read the Sponsor's statements as saying that her father agreed to take over full responsibility for the Appellant. When he was born, the Sponsor was unmarried and at that stage her father agreed to look after them both. I am satisfied having had regarded [sic] the evidence as a whole, including the Sponsor's oral testimony, that the

arrangement made in 2005 was only intended to be temporary. It has taken some time for the Sponsor and her husband to be in a position to support the application. Although the present application is the first one, I accept that they took advice previously. No application was made because that advice was that it would be unsuccessful.

19. It is inevitable that day-to-day arrangements will be handled by the adult in the country in question. The question is whether he also makes the important decisions. There is not a continuing line of documentary evidence showing money being sent but in addition to the documents that have been produced, I have the testimony of the Sponsor and her husband, evidence of regular telephone calls and evidence of regular visits. The photographs show a genuine bond between the Sponsor and her son. I found the Sponsor's evidence to be clear, open and credible. The occasional small detail added credence to the testimony as a whole, such as that concerning the Appellant failing his maths and the Sponsor's action on hearing the news. I am satisfied that it is more likely than not that she chose the Appellant's school and pays for it. I am satisfied that she does whatever she can do to remain in touch with her son's life and exercise parental control over it. On the totality of the evidence I am satisfied that she has sole responsibility for his upbringing."
7. The judge accordingly allowed the appeal. The Entry Clearance Officer applied for permission to appeal and permission was granted on 8 June 2016 by the First-tier Tribunal. It was found to be arguable that the judge had failed to make a finding on the issue of serious and compelling family circumstances and had given inadequate reasons for findings.
8. Counsel lodged a skeleton argument for the hearing before me and I gave Mr Tarlow time to read it.
9. Mr Tarlow relied on the grounds and submitted there was a lack of documentary evidence to support the decision that there were serious and compelling reasons for the child to get an entry clearance. There was no evidence of contact with the child's school. There were already safe and suitable arrangements for the appellant's care. There was no credible evidence of financial remittals. The sponsor could maintain contact with the child by modern methods of communication. The conclusions on the sole responsibility issue were unsustainable and inadequately reasoned. The determination was a short one and materially flawed in law.
10. Mr Jacobs relied on his skeleton argument where he had made the point that the grounds proceeded on a misunderstanding of the construction of paragraph 297 of the Rules which he helpfully set out. It was clear that 297(e) - which dealt with sole responsibility - was separated from 297(f) by the word "or" and not "and".

11. The ground claiming that the judge had failed to give reasons or adequate reasons for findings on material matters was simply an expression of disagreement with her findings of fact. The judge had had before her a very detailed statement from the sponsor. There had also been a statement from her husband, the stepfather and also from the grandfather in Tanzania. There was substantial and extensive evidence and there was no requirement for corroboration in this case. Clear findings on sole responsibility having been made, it was not necessary to deal with the issue of serious and compelling circumstances.
12. It was submitted by the Entry Clearance Officer that there were no letters from the sponsor to the school but the First-tier Judge had considered the evidence of the sponsor and the other evidence and found that she was fully involved.
13. It was further submitted that no credible evidence had been produced to demonstrate that the sponsor financially remitted funds for the use of the appellant. The First-tier Judge had accepted the sponsor's account as credible. There had been evidence in the bundle before the First-tier Judge and the sponsor had referred in paragraph 75 of her witness statement to sending money regularly.
14. With reference to reliance on modern means of communication, this went to Article 8 and not the sole responsibility issues. The judge had directed herself by reference to **TD (Yemen)** and her approach had been entirely correct. There had been no material error of law.
15. Mr Tarlow in reply submitted that the statements made by the witnesses before the First-tier Tribunal were from the sponsor and members of the family and were obviously self-serving.
16. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the decision if there was a material error of law in it.
17. It is plain that the grounds were based on a fundamental misunderstanding of the Rule. As the judge herself says in paragraph 16 of the decision

“The issue before me is whether the Sponsor has sole responsibility for her son's upbringing (paragraph 297(i)(e)) or whether there are serious and compelling family or other considerations which make his exclusion undesirable (paragraph 297(i)(f)).” [emphasis added].

The First-tier Judge did not misdirect herself in any way on this issue. In relation to her approach she was guided by what is said in **TD (Yemen)**. I am not satisfied that she misdirected herself on what she had to do under

the Rules and find that the Entry Clearance Officer's grounds in respect of the construction of paragraph 297 are without merit.

18. In relation to the reasons challenge the determination is, it is true, not a long one, but on the other hand it is none the worse for that. The judge summarised the evidence that she heard in paragraph 7 to 9 of the determination. She refers to the sponsor's involvement and the money remitted for the appellant's schooling. She refers to particular pages in the bundle before her. I should mention that the bundle was very thoroughly prepared and a further bundle was prepared for the proceedings before the Upper Tribunal. Skeleton arguments were provided for both proceedings and I am grateful to Counsel for his assistance.
19. It is plain that the judge took into account the submissions made on behalf of the Entry Clearance Officer - see, for example, paragraph 18 of the decision which I have set out above - and gave proper reasons for her decision.
20. The First-tier Judge relied it is true on oral evidence but also on the documentary evidence which was before her. There had been regular visits as well as telephone calls and photographs. The judge gives an example of a detail in the sponsor's testimony in paragraph 19 of the determination which contributed to her positive credibility assessment. It was open to her to find on the evidence that the sponsor had sole responsibility for the appellant's upbringing.
21. The grounds do not disclose a material error of law and the decision of the First-tier Judge is confirmed. The appeal of the Entry Clearance Officer is dismissed.

### **Anonymity Order**

The First-tier Judge made no anonymity direction and I make none.

### **FEE AWARD**

The First-tier Judge made no fee award and I make none.

Signed

Date 26 July 2016

G Warr, Judge of the Upper Tribunal