



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/05392/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 17<sup>th</sup> May 2016  
Prepared 17<sup>th</sup> May 2016

Decision & Reasons Promulgated  
On 7<sup>th</sup> June 2016

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

[R G]

Appellant

and

ENTRY CLEARANCE OFFICER - MANILA

Respondent

Representation:

For the Appellant: Ms B Asanovic, of Counsel instructed by Selvarajah & Co  
For the Respondent: Mr C Avery, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of the Philippines, born on [ ] 2000, appeals with permission against a decision of Judge of the First-tier Tribunal Hosie who in a determination promulgated on 29 September dismissed her appeal against a decision of the Entry Clearance Officer, Manila, to refuse her entry clearance to join her father, [Mr R G], a British citizen, in Britain.

2. It is useful in this case to set out the relevant family tree. The appellant's great grandparents had four daughters, Lolita who is the mother of the sponsor, the appellant's father; Violetta whose daughter is the mother of the appellant (the appellant's parents are therefore cousins); Emilia and Carmen. The claim is that the appellant's parents had a brief relationship when the sponsor was aged 16 and that before the appellant was born the sponsor had joined his mother in Britain as her dependent child. It is claimed that when the appellant was born her mother, who was aged 15, had wanted to have nothing to do with the appellant and abandoned her, the appellant being brought up by her mother's sister, Carmen. However the sponsor claims that he had married the appellant's mother in 2003 in order to give the appellant a family life but, on realising that she only wanted to come to Britain rather than to start a family life with him and the appellant the marriage was later annulled: this was an action taken under the law of the Philippines which does not allow marriage between cousins.
3. It was the evidence of the sponsor that he had initially given £150 to £200 per month to his mother to send money to her sister Carmen for the upkeep of the appellant and that now £200 to £300 per month is being sent. Only one payment at a time was made to Carmen was made which would include money for food, books, uniform and anything that the appellant needed at school but some money also went on medication for Carmen. The sponsor also said that he paid for private schooling for the appellant and that he communicated with her on Facebook and by telephone daily, discussing her behaviour, her studies and family values with her. He said that he was engaged in decisions regarding her hobbies, class choices, school trips and so on. He had visited the appellant in 2003, 2007, 2010, 2011 and 2015.
4. The appellant produced money transfers showing money sent in his name from 2014 and 2015.
5. The appellant's mother Lolita gave evidence confirming that she sent money to the Philippines which included money from the sponsor. The appellant was now living with Emilia. She asserted there was no contact from the appellant's birth mother's family and that they had had no contact with her since birth. Lolita stated that she visited the Philippines every year for four weeks' holiday. She said that Emilia and Carmen lived together.
6. It was the respondent's contention that the sponsor had not shown that he exercised sole responsibility in daily decision making and control of the appellant - there was no evidence of a Facebook account although there were numerous telephone cards provided. The contact number given at the appellant's school was for Emilia although the sponsor's name was detailed in the registration form. It was not accepted by the respondent that the appellant's mother had not been in contact with her since her birth. The contacts number given on the appellant's ID card gives an emergency contact number for Mr and Mrs De Guzman. The sponsor said that it was his aunt's telephone number. His mother said that it was the mother of Emilia.

The respondent said it was more plausible that it was the appellant's mother's number.

7. The judge, having referred to the determination of the Tribunal in **TD (paragraph 297(i)(e); sole responsibility) Yemen [2006] UKAIT 49** set out her findings and conclusions at paragraphs 19 onwards of the determination. She noted that paternity was not disputed and stated that the relevant issue was that of whether or not the sponsor had sole responsibility for the appellant. She considered there were a number of anomalies in the evidence before her: she referred to a note from the appellant's mother, which had been notarised in the same town as the where the appellant was living, which said that she had entrusted the care of the appellant to her aunt Emilia and that she gave consent for her daughter to travel to Britain. The judge stated that given the proximity of the appellant's mother it was unlikely that there was no contact or had been no contact for ten years and no one knew where the appellant's mother was. Taking into account that the letter had been obtained from a close relative who lived nearby that was considered to be improbable. She went on to state that she was troubled by the reference in the refusal letter to the ECO having had sights of the appellant's parents' marriage certificate which was not in the court papers. It was stated in the refusal letter that the parents, that is the sponsor and the appellant's mother had been married at the time of the appellant's birth in June 2000 and the marriage had since been annulled. She stated that this did not tie in with the sponsor's claim that he had been in Britain and not known that his cousin was pregnant. She noted the sponsor's evidence that they had married in 2003. However the appellant had claimed that her mother had left to go and work in Bahrain when she was about 1 year old and that since that time the appellant had lived with her aunt Emilia. The sponsor had however stated that the appellant had lived with her aunt Emilia from birth. The judge stated that it was difficult to reconcile these assertions. She said that she could not be certain, to the required standard, that the appellant's mother had been entirely absent from her life and that in turn made it more difficult for the sponsor to establish sole responsibility.
8. Turning to the other available evidence she noted that there were no correspondence or school reports which had been provided. Although she took into account the international telephone calling cards which had been produced it was stated that these did not necessarily prove that the appellant had been the subject of all the international calls. There had been no evidence which provided a Facebook or social media contact. She did not accept that there was any hard evidence to show that the mother had totally abdicated her role and had had no contact whatever with the appellant.
9. Although she accepted that there was some financial support from the sponsor to the appellant and that there was genuine love and affection between them the judge took the view that there was no direct evidence apart from the sponsor's assertions that he was providing day-to-day direction on important matters to the appellant. At most, the judge stated there was shared responsibility with the appellant's great aunt Emilia. Her conclusion was that "the appellant would appear to have been brought

up by her mother's family in the Philippines". She stated that she was not satisfied that the sponsor had established sole responsibility for his daughter. Having considered the provisions of Section 55 of the Borders, Citizenship and Immigration Act 2009 and having noted the fact that the appellant had been brought up in the Philippines, the judge found that the decision was not a breach of her rights under Article 8 of the ECHR.

10. The grounds of appeal argued that the judge had not taken account of all the evidence before her and stated it was unclear why the judge had not accepted the evidence of the sponsor and his mother that they were unaware of the whereabouts of the appellant's mother and had to trace her through a relative. They stated there were no specific reasons for rejecting that assertion. Moreover it was argued that the judge had been wrong to place weight on the assertion that the appellant's mother had travelled to Bahrain when the appellant was 1 year old. It was the evidence that the sponsor and she had later married and it was stated that the judge had not properly considered the sponsor's explanation.
11. Weight was placed on the fact that the judge had referred to not being certain that the required burden of proof had been met and the decision of the judge that the sponsor and the appellant's great aunt were exercising shared responsibility did not suggest that there was shared responsibility between the appellant's mother, the sponsor and the great aunt. The grounds referred to the oral evidence of the sponsor and stated the judge should have taken that into account and should have been able to make positive credibility findings thereon. The grounds quarrelled with the assertion of the judge that it was difficult to see how the sponsor could have made all the decisions in the appellant's life when she was a young child and he himself was a young adult.
12. The grounds went on to say that it is important for a young child to live with her parent in Britain and it was asserted that the evidence had been that she had been abandoned soon after birth and she had been brought up and cared for by the sponsor. It was also asserted that the decision under Article 8 was wrong in law.
13. At the hearing of the appeal before me Ms Asanovic relied on a skeleton argument which referred to the grounds of appeal and to the relevant test set out in the determination in **TD (Yemen)** which was that "the test is whether the parent is continuing control and direction over the child's upbringing, including making all the important decisions in the child's life" and stated that that was a fact-sensitive issue. It was argued that the judge had not make clear findings of the credibility of the witnesses and had not said why the sponsor's evidence and that of his mother had been rejected. The conclusion that either the appellant's mother lived nearby or that the letter had been falsely notarised was criticised: it was stated that the appellant's mother could not be located. Ms Asanovic argued that the fact that the appellant's mother might have a registered address near that of her sisters did not mean that that was where she was living or that she was not living abroad. It was

stated that there was clear evidence that the mother had wanted nothing to do with the appellant.

14. It was also argued that the findings of the judge were unclear and that she had taken into account matters which were not before her particularly with regards to the marriage of the appellant's father and mother in 2003. It was stated the judge should not have placed weight on the letter from the appellant's mother which said that the appellant had been left in the care of her great aunt, Emilia. It was also argued that the judge was not entitled to state that it was difficult to see in what way the sponsor had made all the decisions in the appellant's life when she was a young child and he himself was a young adult trying to establish himself in another country.
15. Finally with regard to the issue of the Article 8 rights of the appellant it was argued that there was no requirement under Article 8 for sole responsibility and that, absent exceptional factors, family life between the parent and child should continue to exist. Voluntary separation did not end family life. It was argued that the decision was disproportionate.
16. In her oral submissions Ms Asanovic referred to the letter from the appellant's mother and stated that there was nothing to suggest that it had been falsely notarised or was not genuine but in any event it did not indicate that the appellant's mother was living close to the appellant and her sister. Moreover there was nothing to suggest that the assertions relating to the departure of the appellant's mother and the marriage were irreconcilable. There was nothing to indicate that the assertion of the respondent that the appellant's parents had been married at the time of the birth but in any event the Entry Clearance Officer was not relying on that. The fact that the appellant's mother may have been around until the appellant was 1 year old did not undermine the issue of sole responsibility. She referred to the appellant's bundle including the affidavit from the appellant's great aunt, Emilia and argued that clear findings had not been made.
17. In reply Mr Avery asked me to take into account the context of this case in the terms of the letter of refusal. He argued that the judge had properly considered all the evidence before her and reached conclusions which were again fully open to her. She was entitled to take the view that the sponsor had not exercised sole responsibility for the appellant. He stated that the conclusions of the judge with regard to the appellant's Article 8 rights were entirely appropriate.

### **Discussion**

18. I consider that there is no material error of law in the determination of the First-tier Tribunal. There were considerable anomalies in the evidence which I consider were properly dealt with by the judge. Not only was there some conflict regarding the date of marriage and also the issue of when the appellant's mother had left to go to Bahrain but the ages of the sponsor and of the appellant's mother were issues which themselves gave rise to further matters of concern. I consider that the judge was

entirely right to note that on his own evidence the sponsor had come to Britain at the age of 16 when he asserts that he did not know that his cousin was pregnant and it is very difficult to accept that thereafter he was sending money to the appellant. Moreover the circumstances surrounding the marriage are surprising given the documentary evidence which was before the Entry Clearance Officer which indicated that the appellant's parents were married at the time of the appellant's birth (although clearly that is difficult to accept giving the young age of both her parents) and the assertion that they were married in 2003 and that shortly thereafter the marriage was annulled. The sponsor should have been able to produce documentary evidence to show the date of marriage and the date of the annulment. Moreover there is a paucity of evidence that the sponsor has been exercising sole responsibility for the appellant who has, of course, always lived with her aunt Emilia in the Philippines. There are, for example, no letters from the school or evidence of communications between the appellant and the sponsor showing that he is exercising control over her education and upbringing. The judge did weigh up the evidence before her and I consider that she reached conclusions which were fully open to her thereon. The reality is that the sponsor has seen very little of the appellant over the years only managing to travel to the Philippines every three or four years at most. I would add that the judge's scepticism regarding the virtual disappearance of the appellant's mother was fully justified and indeed she was entitled to place weight on the fact that the notarised letter indicated that the appellant's mother was living not far from where the appellant lives. Even if I were to accept Ms Asanovic's assertion that the address given for the attorney did not prove that the mother living in the Philippines that was a conclusion which was indeed open to the judge to make.

19. There is a paucity of evidence to show the involvement of the sponsor with the appellant's life and the evidence from the appellant's great aunt does not assist. Although her statement, which corroborates that of the sponsor, states that the family having been informed that a letter from the appellant's mother would need to be obtained and that the appellant's great aunt Emilia had contacted one of the appellant's mother's relatives who had lived in the area to get the letter the claim that it was unknown why the appellant's mother did not put her own address on the letter and that no one knew where the appellant's mother lived, was a claim of which the judge was rightly to be sceptical.
20. While I accept that it is the case that the judge did not state, in terms, that she did not believe that the evidence of the sponsor and his mother and indeed what was written in the appellant's great aunt's statement, the reality is that she did weigh up the evidence before and came to conclusions which were fully open to her. That conclusion was that the sponsor was not exercising sole responsibility for the appellant.
21. I consider that the judge did consider all relevant matters and that her decision is in no way perverse. I therefore find that her decision dismissing this appeal on immigration grounds shall stand.

22. Moreover, given the fact that the appellant and sponsor have only very briefly spent time together during the appellant's lifetime and that there was nothing to show that the appellant is living in difficult circumstances in the Philippines, I consider that the judge's conclusions relating to the Article 8 rights of the appellant were fully open to her.
23. I therefore conclude that there is no material error of law in the determination and that the decision of the judge to dismiss this appeal on a immigration and human rights grounds should stand.

**Notice of Decision**

The appeal is dismissed on immigration and human rights grounds.

Signed

Date

Upper Tribunal Judge McGeachy

7.6.2016