IAC-FH-CK-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: OA/11302/2014

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 7 January 2016** | **On 27 January 2016** |
| **Delivered Orally** | |

**Before**

**UPPER TRIBUNAL JUDGE GOLDSTEIN**

**Between**

**L C**
~~**(NO ANONYMITY DIRECTION MADE)**~~

Appellant

**and**

**ENTRY CLEARANCE OFFICER - MANILA**

Respondent

**Representation:**
For the Appellant: Mr A Krisnan, Trainee Solicitor of D J Webb & Co Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant, born on 18 July 2005, a citizen of the Philippines, against the decision of First-tier Tribunal Judge Britton, who following a hearing at Hatton Cross on 8 May 2015 and in a determination subsequently promulgated on 2 June 2015, dismissed the appeal of the Appellant against the decision of the Respondent dated 20 August 2014 refusing her application for an entry clearance to settle in the United Kingdom with her mother, the relevant Immigration Rules being under paragraph 297.

2. When the appeal came before me on 7 January 2016 my first task was to decide whether the determination of the First-tier Tribunal disclosed an error or errors on a point of law such as may have materially affected the outcome of the appeal.

3. At the outset of the hearing Mr Walker for the Respondent, most helpfully and in my view most realistically and fairly conceded, that the First-tier Tribunal Judge had materially erred in law.

4. That concession did not come as a surprise to me having read with care the Judge's determination. It would be as well notwithstanding the Respondent's concession to set out below what the Judge had to say in terms of the Appellant's immigration appeal in which at paragraph 22 he was clear that he had taken into consideration all of the evidence before him and the guidance of the Tribunal in TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 that stated in the head note:

> "'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/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'."

5. Over paragraphs 23 and 24 the Judge made the following clear and unequivocal findings:

> "I found the Sponsor to be a credible witness. I accept that she came to this country and visited the Philippines on the dates in the schedule. She is making frequent visits. She originally came to this country in 2001 and she fell pregnant during one of her visits to the Philippines. The Appellant was born in 2005. It is understandable that the Appellant's mother did not find it possible to return to the United Kingdom to continue to work full-time and look after the Appellant. The Appellant has been living with her maternal grandparents since birth and it would seem that she has been well looked after during that period. I accept the Appellant's mother's evidence that she has sent money on a regular basis to her parents for the Appellant. I further accept the evidence of how the Appellant's mother and father gradually separated because she was in the United Kingdom and he was in the navy. It was obvious that he did not want to come and live in the United Kingdom as he enjoyed his work in the navy. Now he is a colonel. He has written letters giving his consent to the Appellant coming to live with her mother in the United Kingdom. I find that it was a genuine consent by the father. He is considering the best interests of the Appellant. I hope that the Appellant will remain in contact with her father and that would be in her best interest, even though she would be joining her mother in this country."

6. I pause there because the last sentence *"I hope that the Appellant will remain in contact with her father and that would be in her best interest, even though she would be joining her mother in this country"* could but

only mean that for the reasons he had given thus far, he had concluded that the appeal should be allowed under the Immigration Rules.

7. However, to reinforce that conclusion the Judge continued at paragraph 24 as follows:

> "24. I find that the Appellant's mother has had continuing control and direction over the Appellant's upbringing, and has been consulted on the major issues in relation to her upbringing although the grandparents have had the day-to-day control of the Appellant. Further I accept that the Sponsor's parents are not elderly but are getting older and are having medical problems. Although at this point in time it is not such that they would not be able to look after the Appellant, within a short period of time that may well be the position. Further, the Appellant's mother states that she would like her to get into school in this country as soon as possible so that she can get used to the British system of education **and I think that is a valid reason for her coming as soon as possible.**" (Emphasis added).

8. Indeed in conceding the appeal, Mr Walker stated that the Judge had made clear findings that the Appellant would be joining her mother and as indeed the opening sentence of paragraph 24 by any reading demonstrated, the Judge had found that the mother had sole responsibility for the child and met the relevant criteria under paragraph 297 of the Immigration Rules.

9. Mr Walker agreed that it followed that there was no need for the First-tier Tribunal Judge to then proceed to consider the Appellant's appeal in the alternative under Article 8 of the ECHR, having for all intents and purposes, found that the Appellant met the requirements of the relevant Immigration Rule.

10. Indeed in deciding that he did have to *"consider what is in the best interests of the Appellant"* the Judge expressed concern as to who would look after the Appellant when her mother was at work and whilst appreciating that the Appellant's mother was *"anxious to have her daughter living with her",* he continued that there had to be *"a clear foundation for the care of the Appellant and I am not satisfied there is at present"*. Indeed in consequence, he concluded that the Appellant failed under Article 8 and dismissed the appeal.

11. I find that it was not for the Judge to determine whether the mother's own arrangements to look after the child were adequate. That was not his function. He had clearly found that the Appellant met the requirements of the relevant Immigration Rule and Article 8 has nothing to do with the personal arrangements that the Sponsor makes to look after her child, although one would expect that a mother in such circumstances, would of course make appropriate arrangements in terms of her present working lifestyle in order to ensure that her child upon joining her would be looked after properly.

12. In view of Mr Walker's sensible concession I did not trouble Mr Krisnan to address me.

13. For the reasons I have given above, I have concluded that the decision of the First-tier Tribunal Judge should be set aside and that a fresh decision should be made for like reason allowing this appeal.

**Notice of Decision**

The First-tier Tribunal erred in law such that its decision should be set aside.

I make a fresh decision to allow this appeal.

~~No anonymity direction is made.~~

Signed Date: 23 January 2016

Upper Tribunal Judge Goldstein