



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/02230/2015  
HU/02231/2015  
HU/02232/2015

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 11<sup>th</sup> October 2017

Determination & Reasons Promulgated  
On 20<sup>th</sup> October 2017

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

H K

K K

M K

(ANONYMITY DIRECTION MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

**Representation:**

For the Appellants: Mr Miah of Counsel instructed by Sony Sadaf Haroon Solicitors  
For the Respondent: Mr D Mills, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are nationals of Bangladesh and are sisters. Their dates of birth are 22<sup>nd</sup> December 1999, 11<sup>th</sup> February 2001 and 27<sup>th</sup> June 2003, respectively. Their mother is their sponsor who is a British national, residing in the United Kingdom.
2. On 27<sup>th</sup> April 2015, each of the appellants made an online application for entry clearance to join their mother in the United Kingdom for the purpose of settlement.

On 18<sup>th</sup> June 2015, notices of decision were issued to each of the appellants refusing their applications and they appealed to the First-tier Tribunal.

3. Their appeal was heard by First-tier Tribunal Judge R R Hopkins in Birmingham on 2<sup>nd</sup> November 2016.
4. The Entry Clearance Officer was not satisfied that the appellants' mother ("the sponsor") had sole responsibility for the appellants' upbringing. The Entry Clearance Officer saw money receipts for the period July 2014 to February 2015, but this did not represent the whole of the period since the sponsor had been settled in the United Kingdom and the amount of £300 per month which had been sent, was not considered to be sufficient to cover expenses for payments such as school fees and daily living needs. The Entry Clearance Officer believed that the appellants were also being supported by their father.
5. The Entry Clearance Officer also concluded that the appellants had not demonstrated serious and compelling family or other considerations which would make their exclusion from the UK undesirable. The judge concluded, having properly directed himself on the law, that the responsibility for the appellants' upbringing is shared between the sponsor, their mother and their father. As a result, they cannot meet the requirements of paragraph 397(i)(e) of the Immigration Rules. The judge went on to consider the requirements of paragraph 397(i)(f) and did not find that they had been met.
6. The appellants challenged the judge's determination and their challenge related solely to his findings in respect of paragraph 397(i)(e). At paragraph 31 of his determination, the judge said this:

*"The evidence before me is that the appellants' mother started one of her jobs on 1<sup>st</sup> April 2014 and her other one on 1<sup>st</sup> August 2014. Therefore, it is understandable that she was not in a position to provide financial support for the Appellants prior to July 2014. But it does not mean that someone else must have been maintaining them during the 1½ years before then. No information has been provided as to who was doing this. In the absence of an explanation, I consider that the most likely person to have provided that support was their father."*

7. The grounds suggested that the judge erred in considering the issue of sole responsibility. Whilst assessing financial support available to the appellants, the judge assumes that prior to the sponsor commencing work in the United Kingdom for the preceding one and a half years, it likely that the father was providing support. However, it was submitted that there was clear evidence in the sponsor's statement that was before the judge, in which she confirms she received a lot of support from the stepmother when she was alive and also states that "*the stepmother had income from her land which helped us*". This evidence clearly suggested that it was the stepmother who helped support the children, the grounds urged. In paragraph 10 of the statement of the sponsor, to which reference was made, the sponsor said:

*"I have always looked after my children on my own. I did receive a lot of support from my stepmother when she was alive. She also had income from her land which helped us. I have asked for the help of my mother-in-law."*

8. The second challenge suggests that while accepting that there was a strong bond between the children and accepts there was evidence of contact between the children and their mother while she has been in the United Kingdom and having accepted that the mother sends £300 per month to the applicants to support them financially, and the judge also having accepted the sponsor's evidence that the appellants had developed a stronger bond with her than with their father and that they lived with their mother prior to her departure for the United Kingdom, the judge should have attached more weight to those issues and if sufficient weight had been given to those factors, then on the balance of probabilities there was clear evidence that the sponsor did have sole responsibility for the three applicants.
9. At the hearing before me Mr Miah suggested that the judge had used the wrong approach which is evidenced in paragraph 31. It is not necessary that one parent should be supporting the children for a long period of time; the judge accepted that the mother had been supporting the children since July 2014 and when he says at the end of that paragraph that no information has been provided as to who was doing this, he has overlooked what the sponsor said in paragraph 10 of her statement. He noted in paragraph 32 that money transfers bear someone other than the appellants' father's name, but without a statement from that person as to why that arrangement was made. The judge said that he could not be satisfied that it has not been done, because the appellants' father could not be trusted with the money and it may simply be that it is, because it is more convenient for the individual in question to receive the funds. Mr Miah pointed out that the mother and father are separated and she sends funds to the third party, because she claimed she could not trust her husband. Earlier in his determination, the judge referred to the respondent criticising a lack of evidence of contact between the appellants and their mother and said he did not regard the absence of such evidence as an indication that the bond between them was anything other than a strong one. He went on to accept that having brought up the children it was likely that the sponsor would have remained in contact with them regularly. At paragraph 27 the judge accepted the sponsor's evidence that he has been living in Saudi Arabia for some considerable time and as a result the appellants have developed a stronger bond with their mother than with the father. These were issues, Mr Miah suggested, that should have been taken into account by the judge when reaching his conclusion. Inadequate weight has been given to the appellants' evidence.
10. Mr Mills suggested that the determination was sound and that the grounds amounted only to a disagreement with that decision. They refer to the weight to be given by the judge to the evidence but, that is a matter for the judge and the judge alone. Far from suggesting that it was help from the family that supported the appellants until the sponsor started working and making payments to the appellants in July 2014, the sponsor mother said in a paragraph of her statement that she

received a lot of support from her mother-in-law when she was alive and she also had income from her land which helped her and the appellants. That was not the way in which the case was put before the judge. In any event, this is not the only reason for doubting that the appellants' father has some involvement in their life. He lives in an adjoining building and it has not been claimed that there is no regular contact between the children and the children's father. No medical evidence has been submitted in relation to the appellants' father's claimed depression. He also referred to paragraph 37 of the determination where the judge records that the appellants' mother's statement that her husband's presence was necessary for the welfare of the children, but that he is not capable of taking responsibility for them is a contradiction.

11. Responding briefly, Mr Miah suggested that it was wrong of the judge to refer to a contradiction. It was much more of an explanation. The appellants' father was necessary for the appellants' welfare but that does not mean that he was exercising any responsibility.
12. I reserved my decision.
13. What the judge noted, applying *TD (paragraph 297(i)(e): "sole responsibility") Yemen [2016] UKIAT 00049 (IAC)*, is whether the appellants' mother has had continuing control and direction over the appellants' upbringing, including making all important decisions in their lives. The fact that she has entrusted day to day care to others does not necessarily preclude her from having sole responsibility.
14. The judge is criticised for what he said at paragraph 31 but, with very great respect, I do not believe that he has materially erred in law by what he said. For one and a half years prior to July 2014, when the sponsor started work and sent remittances to the appellants, someone must have been maintaining them and the sponsor's reference to her step mother does not say that it was financial help she gave, or how frequently she gave help. The judge says that no information has been provided to him as to who was doing this and, in the absence of any explanation, he considers that the most likely person to provide that support was their father. The appellants assert that this ignores what their mother said in her statement.
15. It is clear from the determination that the judge has read the sponsor's statement: he refers to it at paragraph 14. On the other hand, all the appellants' mother said at paragraph 10 of her statement was that she received a lot of support from her stepmother when she was alive. She does not claim that this was financial support and she does not claim that that was during the period after she had left Bangladesh and come to the United Kingdom, but before the time when she started supporting the children from her own earnings. Paragraph 10 also continues by suggesting that the stepmother also had income from her land which "helped us". It gives no details of the income, in terms of how much it was, or how much she received, or the frequency of its payments and she certainly has not claimed that in the period after she left Bangladesh, but before she was in a position to make payments to the

appellants, it was her stepmother who made the payments. I do not believe therefore that the judge has materially erred in law in what he said at paragraph 13.

16. At paragraph 32 of his determination, the judge merely points out that he is not satisfied that simply because the money was sent to some third party, rather than to the appellant's father, that meant that the appellant's father could not be trusted with money. As the judge says, it could be simply because it is more convenient for the individual in question to receive the funds rather than the father. So far as the second challenge to the determination is concerned, I am satisfied that this is nothing more than a series of disagreements with the decision. Of course, if a judge places greater weight on one piece of evidence than he does on another, this is likely to affect his decision, but the weight to be given to a particular piece of evidence is a matter for the judge and for the judge alone. It cannot in my view be said that a reasonable judge could not possibly have come to the same decision when considering the evidence. It is not asserted that the decision of the judge is perverse. I might very well have reached a different conclusion to this judge, but that is not the test.

#### **Notice of Decision**

17. Having listened very carefully to Counsel's arguments and carefully considered the determination in the light of the grounds submitted I have concluded that the determination does not contain an error of law and shall stand.

#### **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.

***Richard Chalkley***

Upper Tribunal Judge Chalkley

#### **TO THE RESPONDENT** **FEE AWARD**

No fee is payable.

***Richard Chalkley***

Upper Tribunal Judge Chalkley