



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/03576/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 25 September 2017**

**Decision & Reasons
Promulgated
On 3 October 2017**

Before

JUDGE OF THE FIRST-TIER TRIBUNAL MONSON

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**ABDUL TURAY
(ANONYMITY DIRECTION NOT MADE)**

Claimant/Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent/Claimant: Mr A Kamara, Bestway Solicitors

DECISION AND REASONS

1. The Specialist Appeals Team appeals on behalf of an Entry Clearance Officer (post reference: SHEFO/177805) from the decision of the First-tier Tribunal (Judge Kevin Moore, sitting at Taylor House on 23 March 2017) allowing the claimant's appeal against the decision to refuse to grant him entry clearance for the purposes of settlement under Rule 297. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the claimant requires anonymity for these proceedings in the Upper Tribunal.

Relevant Background

2. The claimant is a national of Sierra Leone, who was born on 12 June 1998. Eight weeks prior to his 17th birthday, he applied for entry clearance to join his father on a permanent basis in the United Kingdom. On 23 July 2015, the Entry Clearance Officer (“ECO”) refused the application under Rule 297(i)(e). He was not satisfied that one parent was present and settled in the UK who had had sole responsibility for his upbringing.
3. His reasoning was that the claimant stated in his application that his mother had passed away in May 2006, and since that time that he had resided in the care of his uncle. In support of this claim, a death certificate issued by the Ministry of Health had been submitted. But it was dated two months prior to the date of application. No explanation had been provided to explain the delay in registering his mother’s death or why his father had waited until now to make an application for him to join him in the UK. This indicated that his father was satisfied that he was being adequately cared for and maintained in Sierra Leone. For, there had been no immigration restrictions on his father’s ability to sponsor a dependent child from Sierra Leone. Given the timing of the application, and the fact that he had now completed his secondary education, the ECO was satisfied that the decision for him to join his father in the UK was one of choice rather than *“a core responsibility and necessity.”*
4. Although he claimed to have lost his mother in May 2006, there was no evidence to demonstrate that his father had played an integral role in his life since his mother’s alleged passing. While the ECO was satisfied that his father had supported him, this was limited to financial responsibility only. There was no evidence that his father had played any other role in his life in terms of decision-making, emotional support and the general care and support a parent provides for their child.

The Hearing before, and the decision of, the First-tier Tribunal

5. At the hearing of the claimant’s appeal, both parties were legally represented. Mr Bahja of Counsel appeared on behalf of the claimant. The Judge received oral evidence from the sponsor, Mr Sheku Turay. The Judge’s finding of facts and conclusions were set out at paragraphs [18]-[26] of his subsequent decision.
6. He was satisfied that substantial reliable and credible evidence had been provided to show that the sponsor had kept in regular contact with his son in Sierra Leone since the sponsor came to the UK in 2006. He was further satisfied that since that time the sponsor had exercised sole responsibility with regard to his son, notwithstanding that the claimant had been living with the uncle on the instructions of the sponsor since 2006. The Judge went on to explain how he had reached this conclusion in paragraphs [20]-[25].
7. At paragraph 25, he said: *“I have no concerns with regard to the death*

certificate of the [claimant's] mother which I find to be genuine and authentic and the fact that registration was delayed was not an issue of concern in this case. I am satisfied that at the present time, due to the condition of the uncle, he would not be in a condition to look after the [claimant] albeit the [claimant] is nearing adulthood."

The Reasons for the Grant of Permission to Appeal to the Upper Tribunal

8. A member of the Specialist Appeals Team settled an application for permission to appeal on behalf of the ECO arguing that the Judge had failed to give adequate reasons for a finding on a material matter. At paragraph [25], the Judge had given no reasons for finding that the death certificate was genuine and authentic. In the light of this error, the Judge's finding on sole responsibility was also flawed, such that the decision should be set aside.
9. Permission to appeal on this narrow ground was granted by Judge Paul Doyle on 26 July 2017. He observed that at paragraph [9] the Judge had correctly considered the guidance given in **TD (paragraph 297(i)(e): Sole responsibility) Yemen [2006] UKAIT 00049**. However, the Judge had not said why he found the appellant's mother's death certificate to be genuine, or explained why the delay in the registration of the appellant's mother's death was not an issue of concern in the case. The Judge further observed as follows: *"Article 8 ECHR is not raised in the grounds of appeal. The Judge's decision allows the appeal under the Immigration Rules only. The parties may want to consider their respective positions now that permission to appeal is being granted."*

The Rule 24 Response

10. Mr Bahja of Counsel settled an extensive Rule 24 response opposing the appeal. The issue of the death certificate had not featured with any prominence at the hearing. The case advanced by the Presenting Officer at the hearing was that the responsibility for the claimant had been shared between the uncle in Sierra Leone and the sponsor in the UK. The Judge's finding at paragraph [25] was in effect a finding that he accepted that the claimant's mother was dead. There were *"silent facts"* with regard to the death of the claimant's mother in 2006 which supported the Judge's conclusion that the mother was probably dead. Mr Bahja went on to list the findings of fact made by the Judge in paragraphs [18] to [24] which, he submitted, supported this inference.

Discussion

11. The headline guidance given in **TD (Yemen)** is as follows:

"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 (or she) has 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 would be exceptional that one of them will have sole responsibility.

12. The question of sole responsibility arises under Rule 297(i)(e). However, the facts asserted in the application disclosed an alternative basis on which the claimant qualified for entry clearance under the Rule, namely that one parent was present and settled in the UK and the other parent was dead, which is the alternative gateway requirement set out in Rule 297(i)(d).
13. The position taken in the refusal decision with regard to the asserted death of the claimant's mother was not one of outright disbelief, but of scepticism, particularly with regard to the asserted date of death. For, on the face of it, his mother's death had been registered some 9 years after the event.
14. In his witness statement signed on 5 February 2017, the sponsor asserted that the claimant's mother had died on 20 May 2016. He said that he had obtained a replacement death certificate because the original death certificate was missing. He explained that the replacement death certificate was issued to him bearing the date of issue - not the date of original registration.
15. If, as part of his reasoning, the Judge had expressly accepted the credibility of this explanation, his reasoning would have been beyond reproach. However, his failure to make an express finding on the credibility of this explanation does not translate into a material error of law. For, in finding that the death certificate was "*genuine and authentic*", the Judge was accepting the evidence of the sponsor, recorded earlier at paragraph [11], that the claimant's mother had died in 2006. The Judge had had the benefit of receiving oral evidence from the sponsor, and the Presenting Officer had had the opportunity to test such evidence in cross-examination. The Judge found the sponsor credible in his account of what had happened in 2006, and subsequently, with regard to the claimant's upbringing. Against this background, the finding in paragraph [25] that the claimant's mother died in 2006 was both fully sustainable and adequately reasoned.
16. As the appeal is governed by the new regime, an appeal against the refusal of entry clearance for the purposes of settlement could only be pursued on the basis that the Entry Clearance Officer had thereby refused a human rights claim, and the decision was unlawful under section 6 of the Human Rights Act 1998. By the same token, the Judge should have formally allowed the appeal on human rights (Article 8 ECHR) grounds, rather than allowing it under the Rules.
17. However, as Mr Tufan conceded, the claimant was pursuing a deemed human rights appeal; and, in allowing the appeal under the Rules, which

are presumptively human rights-compliant, the Judge is to be understood as allowing the appeal on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 2 October 2016

Deputy Upper Tribunal Judge Monson