Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: OA/13466/2014
OA/13467/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17th March 2017	**On 8th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MISS KADEJA SHANELLA CAMPBELL
MISS CHANTAY SAMOYA CAMPBELL
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms C Bexson, Counsel
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Jamaica born respectively on 11th September 1998 and 17th July 1996. Both Appellants made application prior to their 18th birthdays for entry clearance as a child of a person settled in the UK and their applications were considered pursuant to paragraph 297 of the Immigration Rules. In both cases the Entry Clearance Officer in Notices of

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Refusal dated 4th July 2014 found that the parent they were seeking to join has not had sole responsibility for their upbringing pursuant to paragraph 297(i)(e) and that there were no serious and compelling family or other considerations which would make their exclusion undesirable pursuant to paragraph 297(i)(f). The Appellants' appeals were reviewed by the Entry Clearance Manager and he upheld the decision to refuse entry clearance.

2. Thereafter the Appellants appealed and the appeals came before Judge of the First-tier Tribunal O'Garro sitting at Hatton Cross on 8th February 2016. In a Decision and Reasons promulgated on 16th February 2016 the Appellants' appeals were dismissed.

3. The Appellants through their legal representatives on 16th February 2016 lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended:

   (a) That the First-tier Tribunal Judge had erred in respect of the findings on sole responsibility and that whilst the First-tier Tribunal Judge correctly directed herself to the leading authority of *TD (Yemen)* on sole responsibility the judge failed to distinguish paragraph 46 of *TD* given that there was no parent living abroad.

   (b) That because of the unusual factual circumstances of the appeals the First-tier Tribunal Judge should have departed from the test as to sole responsibility as set out in *TD (Yemen)*. The grounds pointed out that as is accepted *TD (Yemen)* is concerned with the vast majority of cases where only one parent is in the UK and the other parent is outside the UK, usually in the applicant's home country. Therefore it was submitted that the test for sole responsibility is framed against that factual norm in that where both parents were involved in a child's upbringing it would be exceptional that one of them will have "sole responsibility". However, it was contended that that framework was not appropriate given that both parents live in the UK.

   (c) The judge erred in her assessment of paragraph 297(i)(f) in that the judge relied on her own knowledge when considering the effects of the various health conditions affecting the Appellants' carer and that in any event the judge should have considered the health of the grandmother as at the date of decision and not as she considers it would likely be in the future. Further it was contended that the judge had erred in failing to give weight to the fact that both legal parents are long-time residents of the UK and the fact that there exists family life between the grandmother and the Appellants did not necessitate that an analysis was conducted as to whether the exclusion of the Appellants would be undesirable, particularly in circumstances when neither parents live in the Appellants' home country.

   (d) That the First-tier Tribunal Judge failed to consider the Article 8 position as at the date of decision.

4. On 3rd February 2017 Judge of the First-tier Tribunal Parker granted permission to appeal. In granting permission Judge Parker had carefully considered the judge's decision, particularly with regard to the fact that the judge had applied *TD (Yemen) [2006] UKAIT 00049* despite the Appellants' circumstances being materially different to those of the Appellant in that case and that the judge's assessment of paragraph 297(i)(f) appeared to rely on her own knowledge and that it was infected. On 21st February 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24.

Submissions/Discussion

5. Ms Bexson relies on those Grounds of Appeal, submitting that her main point is the distinction between the factual matrix of this case and *TD (Yemen)* and the failure, it is submitted, of the judge to distinguish the different factual circumstances of this matter. She reminds me that both the Appellants' parents live in the UK and that there was evidence that they both have responsibility. Further she submits it could not be shown that responsibility had been abdicated as the Appellant's parents were here in the UK and that therefore there had been a failure by the judge to consider the facts and that *TD* could be departed from given the circumstances. She submits that the judge has construed the test for sole responsibility in a literal way and that it had never been the contention of the Appellants that their mother was not partly responsible for their upbringing. What she submits is that the judge should have looked at the position of the Appellants' grandmother and that this has not been properly considered.

6. Further she contends that the judge was wrong to rely on her own knowledge of the health of the grandmother and that the grandmother's health should have been considered at the date of decision. She submits that this taints the decision and creates a material error of law. Finally she submits that the judge has erred in looking at the position under Article 8 at the date of hearing and not at the date of decision. She asked me to allow the appeal and to either remake it allowing it or to remit the matter back to the First-tier Tribunal for rehearing.

7. In response Mr Tarlow relies on the Rule 24 reply and he asked me to give it due consideration. Consequently adopting that approach I note that the Rule 24 response contends (at paragraph 3) that the distinguishability or otherwise of *TD* is "a red herring" given that both of the Appellants' parents were present in the UK then the issue is that of "serious and compelling family or other considerations that make the exclusion of the children undesirable under 297(i)(f) of the Rules". It is Mr Tarlow's contention that the judge from paragraph 31 onwards has considered this and made sustainable findings.

8. Further he submits that a reading of paragraph 32 does not discern that the First-tier Tribunal Judge imported her own knowledge when considering the Appellants' grandmother's health and that her letter dated

11th June 2014 was provided from Dr Forbes to the effect that there was "no significant deterioration" in the grandmother's condition. He submits that the remainder of the challenges amount to little more than disagreement.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

11. This matter turns on whether or not the judge has materially erred in law in particular with regard to the manner in which she has followed *TD (Yemen)* and thereafter gone on to consider paragraph 297(i)(f). I am satisfied that there is no material error of law disclosed in the First-tier Tribunal Judge's decision. It is important that I give my reasons. It is also important to note that the issue before me is not whether I, or another judge, would have come to a different decision but as to whether or not there are material errors of law disclosed in that decision. The judge has immediately grasped the nettle with regard to the guidance given in *TD (Yemen)* and has set out at paragraph 22 the questions that should be answered. Thereafter the judge has gone on to consider those factors in some detail at paragraphs 23 through to 29.

12. However, it is contended that because both parents are in the UK that the approach adopted by the judge is wrong. I agree with the comments of Mr Tarlow which follow the expressed view set out by Mr Whitwell in the Rule 24 response that to try to make such arguments is effectively a red

herring and that the real issue is whether there were serious and compelling family or other considerations which make exclusion of the Appellants undesirable.

13. The judge has considered these factors very thoroughly at paragraphs 31 to 35. She has found that there was no evidence before her that the Appellants are not fit and healthy young persons living a comfortable life in Jamaica. She has noted their education and she has not overlooked the position regarding the grandmother's health which has been given due, full and proper consideration at paragraph 32. She has noted the Appellants' ages and that they have a settled life in Jamaica where they have formed strong bonds with friends in the community. The judge has made a finding that it would be in their best interests not to disrupt the settled life that they have there. That is a finding that I think the judge was perfectly entitled to make. She cannot be criticised for the approach which she has adopted.

14. Further the judge has gone on to give due and proper consideration albeit brief to the position under Article 8 and has made findings at paragraphs 36. At paragraph 37, having considered the evidence in the round, she sets out the correct burden of proof and makes findings that she is entitled to.

15. In all the circumstances this is a judge who has properly addressed the issues that were before her and has properly applied the case law. I acknowledge that reference is made to the manner in which at paragraph 32 the judge has shown her own knowledge or imparted her own knowledge with regard to treatment that could be provided for the Appellant by way of dialysis. It may well be an error for a judge even, as I am sure in this case, inadvertently to impart his or her own knowledge but I agree with the submission made by Mr Tarlow that even if that is an error bearing in mind the manner in which this case is properly addressed it is not material.

16. For all the above reasons this is a decision that discloses no material error of law and the appeal is consequently dismissed and the decision of the First-tier Tribunal Judge is maintained.

Decision

The decision of the First-tier Tribunal Judge discloses no material error of law. The appeal of the Appellants is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed D N Harris Date 30th March 2017

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed D N Harris Date 30th March 2017

Deputy Upper Tribunal Judge D N Harris