Upper Tribunal
(Immigration And Asylum Chamber)

Appeal Number: HU/05790/2015

THE IMMIGRATION ACTS

Heard at: Field House
On: 12 December 2017

Decision and Reasons Promulgated
On: 02 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR MIGUEL MARIO DEL ROSARIO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER: MANILA

Respondent

Representation

For the Appellant: Mr S Khan, counsel, instructed by Bespoke Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of the Philippines, born on 6 May 2000. He appeals with permission against the decision of First-tier Tribunal Judge Asjad, promulgated on 20 February 2017, dismissing his appeal against the respondent's decision to refuse his application for an entry clearance to join his mother and stepfather in the UK. The appellant did not have legal representation before the First-tier Tribunal. His mother attended and gave evidence. The Judge explained to her the procedure and the issues under appeal [3].

2. She found that his mother, Mrs Policarpio, did not have sole responsibility for the appellant but shared responsibility [14]. Accordingly his mother did not meet the requirements under paragraph E-ECC 1.6(b) of Appendix FM.

3. On 7 September 2017, First-tier Tribunal Judge Chamberlain granted the appellant permission to appeal on the basis that it is arguable that in her assessment of the evidence as a whole, Judge Asjad had not correctly applied the guidance as set out

in cases such as TD (paragraph 297(i)(e): "sole responsibility" (Yemen) [2006] UKAIT 00049, especially with regard to the day to day care of the appellant.

4. Mr Khan, who did not draft the grounds seeking permission to appeal, relied on the grounds of appeal prepared by counsel.

5. He submitted that the findings of the Judge at [12-13] regarding an emergency incident where the appellant was rushed to hospital by his elder brother, did not indicate a lack of sole responsibility for significant decisions in his life. It was a decision which could not wait for consultation.

6. The grounds contended that the finding amounted to a 'perversity'. A spur of the moment reaction is not indicative of the usual pattern of decision making. The Judge was wrong to infer from that incident that his mother did not have sole responsibility for him.

7. He referred to TD, supra, at [10]. There the Tribunal noted that a parent who has settled in the UK may retain sole responsibility for a child and the day to day care and responsibility for that child is necessarily undertaken by a relative abroad. That may include seeing that the child attends school, is fed and clothed and receives medical attention when needed. The Tribunal in the earlier decision of Emmanuel v SSHD [1972] Imm A R 69, identified the mother's financial support as the retention of a close interest in and affection for the child as important to its decision.

8. Further, Mr Khan submitted that although correctly setting out the guidance in TD, Judge Asjad drew an adverse finding from the fact that the appellant skipped school, finding that if the mother was not aware of that, or if she was, she could not have had the level of involvement in his schooling put forward in the letter of of the appellant's head teacher dated September 2015.

9. There was nothing inherently at odds between the head teacher's letter confirming the extent of the appellant's mother's involvement in his education and the fact that he truants. The responsibility for his attending school and the like is an example of delegated responsibility on a day to day basis.

10. Similarly, the finding at [14] that the appellant's brothers who have been told of concerns about the undesirable company which the appellant keeps, led the Judge into further error. She found that fact to be significant. This again simply confirmed that the day to day care must necessarily be undertaken by someone closer to the appellant than his UK based mother. The Judge noted that his brother Raphael was responsible for the budgeting of the household and the money was sent to him. The precise breakdown in the brothers' daily expenditure on the appellant is likewise something which can be delegated to them without detracting from their mother's overall responsibility for him.

11. In reply, Mr Melvin relied on the Rule 24 response. The Judge directed herself appropriately. She was entitled to rely upon the sponsor's inability to provide any information about the outcome of the medical investigations as well as the fact that she was unaware of her son's truanting.

12. Had she been in contact with the school as she claimed, these facts would have been readily known to her. Even assuming that it was an error to find the lack of sole

responsibility based on an emergency situation, it did not detract from the other considerations which the Judge had considered.

Assessment

13. In TD, supra, the Tribunal noted that sole responsibility is a factual matter to be decided on all the evidence. As applied to this appeal, the issue concerned the sponsor and others who have the day to day care of the appellant 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".

14. Judge Asjad has properly directed herself at [10]. She has set out the evidence given by the sponsor, Ms Policarpi. She noted that when she came as a student to the UK in 2010, she left behind her three sons in the care of their father. The marriage broke down in 2012. She continued supporting the three children [11]. Although she only produced evidence of money transfers going back to 2013, the Judge accepted that she had been financially supporting the children since at least 2012 when the marriage ended. She had not been able to bring her children with her to the UK when she came to study in 2010.

15. She had regard to the contents of a short letter dated 4 September 2015, provided by the school principal, who stated that Ms Policarpio financially supports the appellant and pays for his fees and miscellaneous expenses. The principal also asserted that she has regular contact with the school and shares her views and provides assistance to help him fulfil his potential. The principal asserted that she is aware that the appellant '….speaks to his mother on a daily basis and is very appreciative and thankful to her with the support and guidance she gives him'.

16. When Ms Policarpio was cross-examined about this however, Judge Asjad stated at [12], that the reality of the situation was quite different. She referred to paragraph 9 of Ms Policarpio's witness statement where she stated that fortunately the appellant has not had major health problems. However, she ensures that if he has any issues, relevant arrangements are made for him to visit a doctor.

17. The letter from Gabriel led Judge Asjad to question how much input the appellant's mother actually had with the school. She referred to the emergency incident in July 2016 which Gabriel mentioned in his statement, namely, that the appellant 'turned blue' after being confronted about skipping school. As a result Gabriel took the appellant to hospital. He also stated that his mother was hysterical when told about this.

18. In cross-examination, Mrs Policarpio stated that she was not told about the appellant's admission to hospital until afterwards as her sons did not want to worry her. That, the Judge found, was inconsistent with her being the appellant's sole decision maker. Although the actual decision to take him to hospital was made on the spot, the Judge found that it was also clear from her evidence that she was either unaware that the appellant was skipping school or that if she was, she could not have had the level of input with the school that was put forward in the September 2015 letter from the Principal - [12-13].

19. Having set out the evidence and cross examination on these issues, Judge Asjad then considered at [14] whether or not the sponsor was responsible for the appellant. She found that she clearly provides financial support. However, it was her son, Raphael, who stated that he was responsible for the budgeting of the household and the money sent to him. It was his brothers who had been told that the appellant was suspected of being involved with undesirable company. It is they who stated that they can no longer look after him.

20. She found that the 'situation' is that the appellant had been looked after by his adult brothers since at least 2012. Whilst the sponsor might be responsible for his upkeep, and some decision making such as the choice of schooling, nevertheless, that responsibility was shared [14].

21. In coming to that conclusion, the Judge had regard to Mrs Policarpio's witness statement as well as her evidence at the hearing. She has set out the sponsor's evidence from [4]. In paragraph 7 of her witness statement Mrs Policarpio contended that she has been and continues to be, the primary decision maker for his day to day activities. She contends that she has been responsible for all aspects of his life, with respect to education.

22. She also stated that she ensures that if he has issues, relevant arrangements are made for him to visit a doctor. However, no evidence substantiating those assertions was produced.

23. She stated that she transfers money into his account which is used for daily food and separate school fees. At paragraph 16 she stated that since his father left, his brothers Raphael and Gabriel are responsible for his care. Raphael has however now begun his own life with a girlfriend with whom he is expecting a child and cannot care for the appellant any longer.

24. Since then, Gabriel has assumed responsibility for the appellant. However, he also intends to move on with his life and cannot be expected to care for his younger brother while she is willing and capable. He is often left at home alone which is not something she feels comfortable with.

25. The Judge noted her evidence that she keeps in contact with the appellant and that she has in recent years been to the Philippines to visit her children and attended his graduation in 2012. She attended her son's school opening event in June 2015. She travelled twice in 2016 during her son's school holidays.

26. There was no statement from the appellant. In his application, the Judge noted that the brother who was looking after him is about to start work and will be busy [6]. This was again referred to at [7].

27. The Judge noted that although his mother has been financially supporting the appellant since at least 2012, financial responsibility is not the determinative factor.

28. There was no evidence produced of any contact with the school, let alone "regular contact" as stated by the principal. Nor was there any evidence that Mrs Policarpio 'shared her views and provided assistance to help the appellant fulfil his potential' as asserted by the Principal.

29. No documentary or other evidence was produced or relied on by Mrs Policarpio as to such regular contact and communication between her and the school. There was

no evidence of any discussions with the school or any of his teachers. There was no evidence that she had ever received reports relating to his progress at the school. Nor was there evidence of any input that she had provided in respect of any important decisions relating to his schooling. The only document produced was a school leaving certificate from pages 124 indicating that he has 'enrolled his back subjects and passed them last summer, April 2014'.

30. The finding in these circumstances that whilst the sponsor may be responsible for the upkeep and some decision making, such as the choice of his schooling, the responsibility in this case is shared and not sole, is sustainable on the evidence available.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Anonymity direction not made.

Signed Date 22 December 2017

Deputy Upper Tribunal Judge Mailer