Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08580/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 September 2018	**On 19 September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

MASTER T H N L
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Khalid, Counsel, instructed by Goulds Green Chambers
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought on behalf of a minor child whom I shall refer to as "T" who was 16 years old at the date of application made on 17 March 2017. The appellant's aunt and uncle applied for T to enter the United Kingdom as an adoptive child for

settlement. The case has been argued by Mr Khalid this morning on the basis that I should treat the sponsors in the United Kingdom as his adoptive parents. As a matter of law that is quite wrong. The adoption, for perfectly good legal reasons, has not been recognised in the United Kingdom. Accordingly, these sponsors can only be looked at as if they are the aunt and uncle of T and it is simply a misnomer to call them the adoptive parents.

2. The appeal itself is the second appeal that has been made on behalf of the sponsors to seek leave for the child to enter the United Kingdom for the purposes of settlement. Both sponsors were granted indefinite leave to remain in the United Kingdom in 2005 and it is accepted that the sponsors have been paying for the child's education in India. It is also clear that the sponsors, either separately or together, have visited Nepal on many occasions since 2009 and doubtless will continue to do so. Part of the reason for doing so is that there are family members in Nepal whom, unsurprisingly, they want to visit.

3. The case has a background in that the matter was considered by Judge Thomas in 2015 and his decision is used, as it were, as a foundation for the claim that is made on the appellant's behalf that the judge fell into fundamental error by failing to place adequate weight upon Judge Thomas' finding that family life existed between the appellant and his aunt and uncle. The decision that was made by First-tier Tribunal Judge E M M Smith in a decision that was promulgated on 19 June 2018 uses as its starting point the findings that were made by Judge Thomas which are recited in paragraph 22 of the decision. Judge Thomas found that the appellant could not meet the requirements of paragraph 297 of the Immigration Rules and there were no compelling family or other considerations which made the appellant's exclusion undesirable. He found that the sponsors financially support the appellant and pay for his education, but found that the appellant continues to have contact with his own parents and siblings and indeed there were photographs of the appellant with his mother.

4. He found that the appellant was in good health, that he maintains regular contact with the sponsors, that he was doing well at school and that his best interests were served by his remaining in his present environment. There was no evidence that the appellant's emotional, moral and physical well-being would suffer if he were not allowed to join the sponsors. That was the situation that was before Judge Thomas and that situation has not materially changed at all. It is true that there was some medical evidence from the Meridian Health Centre in Nepal. That evidence is found at page 44 of the bundle that was before Judge Smith and is of a very limited nature. It provides a diagnosis by Dr Prasal that the boy was suffering from anxiety depressive illness and certain medication was provided lasting for a period of two months. That was a diagnosis that was made on 17 October 2017.

5. The other significant finding that was made by Judge Thorne was that the appellant has not lived with the sponsors for any significant period of time, and indeed has lived with his paternal aunt until 2011 when I think he went off to school.

6. It was, in my judgment, of the utmost significance that the judge had to consider what was the nature of the family dynamics in Nepal. Judge Thomas had already found that the appellant maintained contact with T's parents and siblings and that one of the significant issues in the case was the nature of the relationship with his own parents. The judge made his findings in paragraph 25. He began by finding the male sponsor an unreliable witness:

> He was asked by Miss Sandal when the appellant saw his mother. He replied that the only contact there was in 2017 and repeated that when asked. It was put to him that this was not so because Judge Thomas in 2015 referred to photographs of the appellant with his birth mother. Miss Sandal suggested that this shows greater contact between the appellant and his birth mother than the sponsor was prepared to reveal. After some hesitation the only reply by the sponsor was to say he did not remember the date. It was unfortunate to note that a man with impeccable service to the UK was in fact prepared to provide the court with evidence he knew was wrong. I do not accept that he had forgotten any dates and he was well-aware that the appellant had seen his mother on more than one occasion than 2017. I gain the clear impression from the sponsor that his 2017 reply was perceived by him to be helpful to the appellant and he was not prepared to disclose earlier meetings and thereby undermine the appellant's case.

7. It follows from this finding, which in my judgement is an entirely sustainable finding of fact made by the judge upon the evidence that he saw and heard, that the sponsor was not prepared to reveal the existing dynamics of family life that continued to exist between the appellant and his own parents, and that he knew that this was something that was likely to undermine T's claim to enter the United Kingdom and was therefore not prepared to be frank about it. That was a significant finding because it deprived the judge of an ability to assess the claims that were made by the sponsor when compared with the obvious claims that existed between T's parents still in Nepal.

8. The judge found that there was family life on the basis of the findings that he had made and which are clearly set out in paragraph 22 of Judge Smith's decision. They are not a finding that there were no other relationships which existed in Nepal. The fact that the sponsors are paying for the child's education is a factor to be taken into account, but it is not determinative. There are many circumstances where those who enter the United Kingdom and are able to find employment or other sources of income, support relatives in a foreign country by providing them with financial benefits, which in this case was the financial benefit of providing for his education. There is simply nothing unusual in that, nor does it create a situation that the child, by reason of that generosity, (and generosity it is indeed), should then be permitted to enter the United Kingdom effectively as their son. It is said that the judge was in fundamental error in failing to place weight, or adequate weight, on the existence of family life between the sponsors and the appellant; however that overlooks the fact that the sponsor himself deliberately deprived the Tribunal of a proper opportunity of assessing the family life that continues to exist in Nepal. The judge was entitled to say that this would not have been misrepresented unless it was inimical to the case that was being advanced by the male sponsor. It follows from that the depth of the family life still existing in Nepal was not something that was properly revealed by the sponsor.

9. It is said that the sponsor's wife did not give evidence because she could not take time off from work. However, the judge had to deal with the case as he saw it. There was no application for an adjournment, nor is there any indication that the wife of the sponsor would have been able to deal with the problem faced by the judge, and that was of the male sponsor's own making, by not being frank. It is submitted by Mr Khalid that this was a genuine mistake. That simply is not a sustainable assertion to make, bearing in mind the judge's findings in paragraph 25 of the decision. The judge considered whether it was a mistake and rejected that explanation. He rejected that the sponsor had simply overlooked these periods of contact and, in my judgement, that was a significant finding.

10. For these reasons I do not consider that the First-tier Tribunal Judge made an error in the approach that he adopted. He considered paragraph 297, he considered Article 8, he found that the appellant was engaged with his friends at school, and joined in extra-curricular activities. If, therefore, the situation that the appellant was in in 2015 had substantially deteriorated, then Judge Smith rightly said that there should be evidence to support that claim and there was no independent evidence that the education that the appellant was receiving was anything other than normal. There was no evidence of neglect or abuse. The judge then rightly concluded that nothing had materially altered since Judge Thomas had decided the issue in 2015 and it was on that basis that Judge Smith dismissed the appeal. I see nothing wrong in law in the approach that was adopted by Judge Smith and I therefore direct that the decision of the First-tier Tribunal 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 his 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.

DECISION

First-tier Tribunal Judge E M M Smith made no error of law in the decision of the appeal of T and the determination in the First-tier Tribunal shall stand.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL
Date: 18 September 2018