



(Immigration and Asylum Chamber)

Upper Tribunal  
Appeal Number: HU/09013/2017

THE IMMIGRATION ACTS

Heard at: Field House  
On: 17 July 2018

Decision and Reasons Promulgated  
On: 16 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

P O  
(ANONYMITY DIRECTION MADE)

Appellant

And

ENTRY CLEARANCE OFFICER

Respondent

Representation

For the Appellant: Sponsor present  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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.
2. The appellant is a national of Nigeria, born on 22 March 2011. She appeals with permission against the decision of the First-tier Tribunal Judge Cox who dismissed her appeal against the decision of the Entry Clearance Officer refusing her application to join her father, the sponsor, in the UK, pursuant to paragraph 297 of the Immigration Rules.
3. The appeal was determined on the papers on 15 March 2018 and was promulgated on 5 April 2018.
4. The Judge found on the totality of the evidence, and applying the decision in TD (Paragraph 297(1)(e); “sole responsibility”) Yemen [2006] UKAIT 0049, that the sponsor was not solely

responsible for the appellant. Further, there was a lack of cogent or credible evidence to suggest that there are serious and compelling family or other considerations which make her exclusion undesirable. There was no evidence from an independent source to suggest that the appellant's present living arrangements are inappropriate. Letters from her school head teacher and local pastor did not raise any concerns about her welfare [30–31].

5. The Judge went on to consider the child's best interests when assessing the proportionality of the decision. He found that the respondent's decision did not interfere with the appellant's present circumstances. She is Nigerian and will remain living there. The relationship with her father will continue in its present form. There was a lack of evidence to suggest that her welfare and development was being hindered or damaged in Nigeria.
6. He was satisfied on balance that her interests are best served by her remaining in Nigeria. Her father is a British citizen, which weighed in her favour. Article 8 did not give an individual the right to choose where they can live.
7. Having regard to the fact that at the date of decision the appellant did not meet the requirements under the rules, he found on balance that any interference with the family life is necessary and proportionate [40].
8. In granting permission to appeal, First-tier Tribunal Judge C A Parker referred to the grounds. The appellant's aunt has now moved out of Lagos and she is cared for by two teenage cousins and a neighbour. The sponsor speaks to them daily on WhatsApp. It is contended that the sponsor has sole responsibility.
9. Judge Parker stated that she has carefully considered the decision. She found that the Judge's findings on the limited evidence before him were sustainable and he arguably applied the correct legal test.
10. She found however that although the appellant elected a paper hearing there was nothing to suggest that the Judge considered whether it would be appropriate to direct an oral hearing. Although documentary evidence of the child's circumstances had been submitted, there was a complex factual matrix which potentially required exploration at a hearing. The failure to consider whether to direct an oral hearing was arguably an error of law, particularly as the best interests of a young child were at issue.
11. On behalf of the appellant her sponsor referred to the documentary evidence before the First-tier Tribunal. The appellant's mother abandoned and abdicated responsibility. There was nobody else except him. He has continuing control and direction over her upbringing.
12. On behalf of the entry clearance officer, Mr Tufan submitted that the Judge's findings with regard to sole responsibility as well as compelling circumstances under paragraph 297 are sustainable.
13. He submitted that the Judge did have regard to the appellant's best interests - at [36–37]. He expressly referred to the best interests when assessing proportionality, directing himself in accordance with Azimi-Moayed and others (Decisions affecting children; onward appeals) [2013] UKUT 197 (IAC).
14. He submitted that the Judge noted that the sponsor provided photographs of the appellant at different stages of her young life. However, photographs of her with the sponsor were taken on her second birthday and during her naming ceremony. He found that '...surprising

as if the Sponsor has been regularly visiting the appellant, I would have expected additional photographs of them together during these visits' [25]. Mr Tufan submitted that this has not been challenged.

15. In addition, the Judge noted that the sponsor has not provided evidence of his daily contact with the appellant or her carer [26]. The fact that the appellant obtained a letter from her mother confirming that she gave custody to the sponsor suggests that she still has some contact with her, which in turn suggests that she is likely to have some role in her upbringing [27].
16. Mr Tufan submitted that the issue was whether or not the Judge was entitled to come to the conclusions which he did. He has given a proper decision based on sustainable findings. There was in the circumstances no duty upon the Judge to consider whether to direct an oral hearing.

### Assessment

17. First-tier Tribunal Judge Cox has given a detailed decision based on the evidence before him. He has properly directed himself in accordance with a leading authority, TD. He has referred to supporting documents from the appellant's mother, his sister and friend, A C.
18. He had regard to the sponsor's grounds of appeal in which he made the 'statements,' which the Judge set out at [21].
19. However, the Judge noted that he had not provided any evidence of daily contact with the appellant or her carer. It appeared that the appellant's mother has contact with her which in turn suggests that she is likely to have some role in her upbringing. That was not challenged in the grounds of appeal.
20. There was also found to be a lack of cogent or credible evidence of contact between the sponsor, his sister and the appellant. That he found to be fatal to the appellant's appeal. The sponsor could not in those circumstances demonstrate that he has continuing control and direction over the appellant's upbringing.
21. He considered whether there were any serious or compelling family or other considerations which make the appellant's exclusion undesirable. The sponsor had stated that the appellant was in a pitiable situation as she was now living with his sister's two teenage daughters. However, he had provided any evidence from any independent source to suggest that her present living arrangements were inappropriate. No concerns were raised in the letters from her head teacher or the local pastor [31].
22. Judge Parker stated that the Judge's findings on the evidence before him were sustainable and that he had applied the correct legal test.
23. The appellant, through her sponsor, elected a paper hearing. Pursuant to directions, the sponsor provided evidence relating to the appellant's claim. This included a witness statement from the sponsor himself.
24. The Judge has properly considered the best interests of the appellant as part of the proportionality assessment, based on the available evidence placed before him. In the circumstances I do not consider the Judge erred in failing to consider whether to direct an oral hearing.

**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 continued.

Signed  
Deputy Upper Tribunal Judge Mailer

15 August 2018