



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: OA/06382/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 January 2018**

**Decision & Reasons Promulgated  
On 7 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**[M S]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER (ACCRA)**

Respondent

**Representation:**

For the Appellant: Mr J Gaffar, Counsel instructed through Direct Access  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals from the decision of the First-tier Tribunal (Judge NJ Bennett sitting at Hatton Cross on 16 March 2017) dismissing his appeal against the decision of an Entry Clearance Officer to refuse him entry clearance as the dependent child under the age of 18 of his father and sponsor, [SS]. The Judge dismissed the appellant's appeal as he was not satisfied that his father had had sole responsibility for his upbringing, or that the appellant had discharged the burden of proving that there were serious and compelling considerations which made his exclusion from the UK undesirable.

## **The Reasons for the Grant of Permission to Appeal**

2. On 18 December 2017, First-tier Tribunal Judged Shimmin granted the appellant permission to appeal to the Upper Tribunal on all grounds raised. In particular, it was arguable that the Judge had erred in law in consideration of the evidence in relation to remittances made by the appellant's father and sponsor; that he had erred in respect of a consideration of the evidence in relation to the school letters, including letters that post-dated the decision; that he had erred in failing to put matters in relation to the Welfare Report to the sponsor during the hearing, and that he had irrationally rejected the findings of the Welfare Report.

## **Relevant Background**

3. The appellant is a national of Ivory Coast, whose date of birth is [ ] 2000. In May 2014 or early 2015, the appellant applied for entry clearance to join his father in the UK. In his application form, at Part 9 (Additional information) he said that he would like to join his father in the UK because he really missed him and he would also have a chance to study in one of the best countries in the world, which would give him a great chance in his future life. He gave details of a permanent residential address in Abidjan where he had been residing for the past 3 years and 6 months.
4. The application was supported by a Certificate of Parental Authorisation and a Welfare Report. The certificate, dated 29 October 2014, recorded that the appellant's mother, Mrs [A] (the wife of Mr [A]) had under the rights of parental authority conferred by law allowed her minor child [SA] to join his father in the United Kingdom for the purposes of family reunification.
5. The Welfare Report dated 10 December 2014 had been prepared by a Social Worker, Mr Kouame Georges. In a section headed "*Case History*", he said that the appellant's birth mother had brought him up on her own since his birth father had left to go to England. She was now living with her new spouse, and because of the continued presence of the appellant in their home, the new couple always had issues.
6. In a section headed "*Situational analysis*", he said that the appellant did not enjoy the affection of his step-father, who did not appreciate his presence in the house. So, the appellant felt rejected, and that was why he had sought at all costs to live with his birth father. Mr Georges opined that the birth father was the best person to look after the appellant, and to give him a better future; and he opined that the child's mother, for reasons beyond her control and ability, was not able to take care of the appellant any more.

## **The Reasons for Refusal**

7. By a notice dated 25 February 2015, an Entry Clearance Officer in Accra

(post-reference Accra\857371) gave his reasons for refusing the appellant's application. He noted that he had provided evidence from his mother, and a report from the Welfare Court. Both stated that he was unsettled at home, following his mother's re-marriage, and that it would be in his best interests to move to the UK to join his father. His mother said that violence reigned at home, so that the police were obliged to intervene sometimes. But, there was no evidence to support the claim of police intervention. The object of Rule 297(i)(f) was to allow a child to join a parent or relative in the UK only when that child could not be adequately cared for by his parents or relatives in his own country. It had never been the intention of the Rules that a child should be admitted to the UK due to the wish of or for the benefit of other relatives in the UK. No independent evidence had been provided which would demonstrate that his mother was unable to care for him in Ivory Coast.

8. While the Social Services Report stated that his father was involved in decisions relating to his welfare, he had not claimed that his father had had sole responsibility for his upbringing. Accordingly, he was satisfied that he did not.
9. It also had been considered whether his application raised any exceptional circumstances which, consistent with the right to respect for family life contained in Article 8 ECHR, warranted a grant of entry clearance to come to the UK outside the requirements of the Rules.
10. He had lived apart from his sponsor since 2001, which is one year after he had been born. He had been able to maintain a relationship with the sponsor for the last 14 years, and no reason had been advanced as to why he could not continue to do so.

### **The Hearing Before, and the Decision, of the First-tier Tribunal**

11. Both parties were legally represented before Judge Bennett. The appellant's father gave oral evidence, and he was cross-examined by the Presenting Officer. He said that in around 2012 his son had moved from the house where he lived with his mother to live with Dr [S]. The address which he had given in his visa application form was Dr [S]'s address. He had then moved to Miss [B]'s house almost two years ago.
12. The sponsor was asked why he had sent money to the appellant's mother in 2014, if the appellant had left her house by that point. His initial explanation was that he had only sent her money once or twice to help her out. When it was put to him that Western Union's records showed that he had sent her money six times between January and May 2014, which suggested that the appellant was still living with his mother, he replied that his son was living with her at this time, "*but not always*". He had sent her money to support both the appellant and her, despite the fact she was living with another man who had driven his son out of the house.
13. The sponsor was asked about the remittances to Dr [S]. Pages 1-18 of the

appellant's bundle showed that he had sent money to Dr [S] between September 2014 and January 2015. The sponsor said he did this because the appellant was living with Dr [S]. He sent money every month for the appellant's maintenance.

14. In his closing submissions on behalf of the respondent, the Presenting Officer highlighted some discrepancies in the evidence. In his witness statement, the father said that the appellant had left his mother "*last year*", which would have been in 2015. He invited the Judge to find on the balance of probabilities that the appellant had continued to live with his mother up until 2015 and probably until after the date of decision. The Welfare Report contradicted the father's evidence. If his evidence was correct, the Welfare Report was wrong because the appellant was not living with his mother (contrary to what was stated in the Welfare Report). The Tribunal could not therefore be satisfied that they had been given an accurate account of the situation in Ivory Coast.
15. In reply, Counsel submitted that the fact that the appellant's father had been sending money to Dr [S] since September 2014 was consistent with the appellant living with Dr [S]. He accepted that the father's evidence was not, on its face, consistent with the Welfare Report, but he relied on the finding in the Welfare Report that the care which the appellant received from his mother was almost non-existent. He submitted that the father was "*not spinning a tale*". The teacher's letter dated 18 March 2015 said that the appellant had had to move from the mother's house because of problems at home. This was a measured and sincere letter from the teacher which did not sit well with the respondent's case. The father had had sole responsibility and he had to make very difficult decisions for the appellant. Due weight should be given to the Welfare Report.
16. At paragraphs [15]-[31], the Judge found that there were significant discrepancies in the evidence and he gave his reasons for finding that responsibility for the appellant's upbringing had probably been shared between mother and father. At paragraphs [32]-[37] (comprising two closely-typed pages), the Judge gave his reasons for finding that he was not satisfied that there were any serious or compelling family or other considerations which made the appellant's exclusion undesirable.

### **The Hearing in the Upper Tribunal**

17. At the hearing before me to determine whether an error of law was made out, Mr Gaffar (who did not appear below) developed the arguments advanced in the grounds of appeal. He submitted that there had been material unfairness, in that the discrepancies identified by the Judge had not been put to the sponsor in cross-examination. It was too late for the Presenting Officer to raise credibility issues in his closing submissions. The appellant had not been given an adequate opportunity to put his case in response to the adverse credibility findings made by the Judge.

18. In reply, Ms Everett submitted that the grounds of appeal were in essence no more than an expression of disagreement with findings that were reasonably open to the Judge for the reasons which he gave. It was not the case that every single piece of evidence needed to be put to the sponsor. Firstly, there were matters which lay outside the sponsor's direct knowledge; and, secondly, he had been put on notice of the areas of challenge by the terms of the refusal decision and the contents of the ECM's Review.

## **Discussion**

19. At paragraph [27] of his decision, the Judge set out the guidance on sole responsibility given by the Tribunal in **TD (Yemen) [2006] UKAIT 49** at paragraph [52]. The guidance cited by the Judge included the following:
- (iv) Wherever the parents are, if **both parents** are involved in the upbringing of a child, it will be exceptional that one of them will have sole responsibility.
  - (ix) The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of a child's upbringing, including making all the important decisions in the child's life. If not, the responsibility is shared so not 'sole'.
20. The representatives were in agreement that this was an old-style immigration appeal, and accordingly the focus was entirely on the circumstances appertaining at the date of the refusal decision.
21. Shortly before the refusal decision, the mother had (as the Judge held at paragraph [28]) used her parental authority to allow the appellant to join his father in the UK. The Judge also held that this was probably the most important decision which had yet been made about the appellant's upbringing. In addition, the message of the Welfare Report dated December 2014 was that the appellant was still living with his mother, as the Judge held at paragraph [23].
22. So it was open to the Judge to find that his mother was probably very much involved in his upbringing at the date of decision, because he was probably living with her at the time and because she was also very much involved in the decision for him to come here.
23. At paragraph [29], the Judge addressed the countervailing evidence which, if accepted, supported the alternative scenario of the mother having abdicated responsibility for the child's upbringing by the date of decision, with the consequence that the father had assumed sole responsibility.
24. On the topic of school letters, the Judge observed that a letter from the appellant's previous school said that the school had had "very limited contact" with his mother. The Judge held that 'very limited contact' was not synonymous with 'no contact', and so the letter did not show that the

mother was probably not involved at the time in his upbringing. Mr Gaffar referred me to this letter, and submitted that the Judge had engaged in impermissible 'cherry-picking'. He had not fairly considered the entirety of the contents of the school letter, which highlighted the extent to which the father took a close interest in the appellant's schooling.

25. However, this criticism is unmerited, as the Judge makes this very point himself in paragraph [30]. He accepts that the father has taken interest in the appellant's schooling, as the letters from the appellant's schools testify. The fact that the father had taken a close interest in the appellant's schooling did not mean that the mother had taken no interest. Accordingly, it was open to the Judge to find that the school letters did not show that the birth mother was probably not involved in the appellant's upbringing.
26. The grounds of appeal take a different point in respect of the Judge's findings at paragraph [29]. It is pleaded that the Judge's rejection of the findings of the Welfare Report is irrational. For it was an independent report which had been accepted by the Family Court in the Ivory Coast; and the Presenting Officer had advanced no submissions which undermined the findings of the Family Court or of the Welfare Report.
27. This error of law challenge is inaccurate and/or highly tendentious in a number of respects. The Judge did not in terms reject the findings of the Welfare Report at paragraph [29]. He identified one shortcoming in the report at paragraph [29], and he discussed the shortcomings in the report at much greater length at paragraphs [35] and [36], as a prelude to his conclusion at paragraph [37] that he was unable to accept that the conclusions in the Welfare Report led to a finding that there were probably serious and compelling family or other considerations which made the appellant's exclusion undesirable at the date of decision.
28. Although the English translation (the French original having not apparently been disclosed) refers to the Welfare Report as a Court report, there is in fact no evidence that the report was presented to a Family Court in Ivory Coast, or that it was prepared on the instructions of a Family Court. Moreover, it was open to the Judge to hold that the Welfare Report had serious shortcomings, which he discusses at paragraphs [35] and [36]: (a) the writer of the Welfare Report did not explain the methodology used for preparing the report; (b) it was unclear who was interviewed while the report was being prepared, and whether the writer went to the appellant's home to observe the situation there, what other enquiries were made, and how far the evidence was critically examined to produce an objective assessment; (c) the findings of the report were at variance with the implications of the letter from the appellant's current school, which said that his conduct was good, or very good, and that his work was satisfactory, thus giving no reason to believe that the appellant's studies or conduct at school were suffering because of past or present problems at home; (d) the Welfare Report gave little analysis of the underlying factual basis for the conclusions it reached - for example, it said that the mother's

care of the appellant was almost non-existent, but it did not explain the shortcomings in her care or how this affected the appellant.

29. The appellant and sponsor were put on notice by the refusal decision, and also by the Entry Clearance Manager's review, that the respondent contested the reliability and probative value of the Welfare Report. They were put on notice that the respondent did not accept the central thrust of the appellant's case, which was that it was essential for his welfare and wellbeing that he should be granted entry clearance to join his father in the UK as his mother was no longer able to care for him.
30. It is apparent from the Presenting Officer's lines of cross-examination referred to in paragraphs [9] and [10] of the decision, and from the Presenting Officer's closing submissions, that he maintained and developed the adverse credibility challenge inherent in both the refusal decision and the Entry Clearance Manager's review. The appellant was legally represented, and his Counsel was able to respond to the adverse credibility points made by the Presenting Officer in his closing submissions in reply. Accordingly, I am wholly unpersuaded that there has been material unfairness as submitted by Mr Gaffar. The appellant knew the case that he had to meet, and he had an adequate opportunity to put his case at the appeal hearing in the First-tier Tribunal.
31. Paragraph 7 of the grounds raises the issue of the absence of a mention of domestic violence in the Welfare Report. It is pleaded that it was wrong for the Judge not to put these matters to the sponsor or to appellant's Counsel. This submission is wholly without merit, and I note that Mr Gaffar did not adopt it in his oral submissions. The absence of a mention of domestic violence in the Welfare Report was specifically raised in the refusal decision. In the circumstances, it was clearly not incumbent upon the Judge to ask the sponsor or appellant's Counsel to comment on it. Similarly, it was not incumbent upon the Presenting Officer to cross-examine the sponsor on the issue. The burden rested with the appellant to bring forward independent evidence of domestic violence, and the appellant failed to discharge this burden.
32. Another specific area of challenge relates to the Judge's findings on the remittances made by the father. It is pleaded that the Judge materially erred in law by finding that it was not credible that the appellant's father would continue to remit funds to the appellant's mother, even after the appellant had left his mother's house. It is pleaded that it was not open to the Judge to find that there could be other reasons as to why the appellant's father had remitted funds to Dr [S] between 1 September 2014 and 10 January 2015 - that is other reasons apart from the appellant residing with Dr [S] for that period.
33. This error of law challenge ignores the fact that the Presenting Officer had successfully demonstrated, through his cross-examination of the appellant's father, that there were significant discrepancies in the evidence he gave about the alleged motive for the remittances.

34. Contrary to what had been represented in the application, the new claim advanced by way of appeal was that the appellant had long since ceased to reside with his mother, and from 2012 he had resided with Dr [S] for a substantial period of time, followed by him taking up residence with Miss [B]. It was open to the Judge to find that the appellant was still living with his mother at the time of the refusal decision, as indicated by the Welfare Report, and to reject the father's evidence about his motivation for the proven remittances in 2014-2015 to the appellant's mother and to Dr [S], for the reasons which he gave in paragraphs [16]-[23].

### **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 30 January 2018

Judge Monson  
Deputy Upper Tribunal Judge