



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/10580/2017

THE IMMIGRATION ACTS

Heard at Field House in London  
On 09 September 2019

Decision and Reasons Promulgated  
On 27 September 2019

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

AYESHA SIDDIKA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER (Post Reference SHE515886)

Respondent

**Representation:**

For the Appellant: Mr Karim (Counsel)

For the Respondent: Ms Jones (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. On 22 August 2017 an Entry Clearance Officer refused to grant the claimant entry clearance which would have enabled her to come to the UK, for the purposes of settlement, as a child. The claimant appealed (out of country) but on 15 February 2019 the First-tier Tribunal (the tribunal), following a hearing of 21 January 2019, dismissed her appeal. But on 28 May 2019 following a hearing of 08 May 2019 I set aside the tribunal's decision and I directed that the decision under appeal be re-made by the Upper Tribunal after a further hearing. My reasons for setting aside the tribunal's

decision may be found in my written reasons of 28 May 2019. It is not necessary for me to go into that in any detail but, essentially, I had concluded that the tribunal had conflated the concepts of day to day care and sole responsibility. I did not preserve any of the findings and conclusions made by the tribunal. When the matter again came before me, on 9 September 2019, that was for the purpose of remaking.

2. Each party was represented before me. I am grateful to both representatives for their helpful submissions. I heard oral evidence from the claimant's mother and sponsor Shamina Rahman to whom I am also grateful. In addition to the oral evidence and submissions which I received, I had before me the documentation which had been before the tribunal when it heard the appeal together with a supplementary bundle filed on behalf of the claimant by her representatives. That bundle included, amongst other items, an affidavit of one Sahera Begum; a letter written by (I think) a teacher at a college the claimant attends in Bangladesh and some evidence of monies being sent by the sponsor from the United Kingdom to Bangladesh. I confirm I have given careful consideration to all of the above evidence and submissions.
3. As to the relevant background, the claimant was born on 07 June 1999. She is, therefore, now an adult but was a minor at the time she made the application for entry clearance which has ultimately led to this appeal. She is the eldest of four siblings and has lived all of her life in Bangladesh. There was a time when she and her siblings resided with the sponsor and the sponsor's former husband (the claimant's father) in Bangladesh. However, that marriage obviously ran into difficulties. The sponsor entered the United Kingdom on 7 October 2013. She divorced her former husband on 19 March 2017. She says that a court in Bangladesh has appointed her as guardian for all four of the children. It is claimed that the claimant's father no longer has any involvement with the claimant's upbringing although he did look after her and at least some of her siblings immediately after the claimant had gone to the United Kingdom. It is now said, though, that the claimant is looked after by her grandmother (the sponsor's mother) on a sort of supervisory basis but that the sponsor herself retains parental responsibility for her.
4. Although there was initially dispute about a range of matters, by the time the appeal was put before the tribunal, the issues had narrowed considerably and it had been agreed that the sole issue for it to decide was whether the claimant was able to bring herself within paragraph 297 (i)(e) of the Immigration Rules. That paragraph relevantly provides:

297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

(I) Is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances ...

(e) One parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; ...

5. I checked with the appellant's representatives concerning what the live issues were. It was initially agreed that, with respect to the Immigration Rules, the only issue was that of 'sole responsibility'. However, it subsequently transpired the claimant was also seeking to rely, in the alternative, upon paragraph 297 (i)(f). But those were, indeed, the only issues.
6. The claimant, in this appeal, has the burden of proof. The standard of proof is that of a balance of probabilities.
7. As to circumstances in which 'sole responsibility' might be established, I have taken guidance from the decision of a Deputy Presidential Panel of the Asylum and Immigration Tribunal in *TD (Paragraph 297 (i) (e): 'sole responsibility') Yemen* [2006] UKAIT 00049. So, in particular, I have not approached the issue of sole responsibility on the basis that the phrase should not be taken entirely literally. The assessment is a fact based one and a central consideration will be the role of the person said to have sole responsibility with respect to matters concerning the making of or approving of important decisions about the relevant child's upbringing.
8. There is documentary evidence demonstrating that the sponsor sends money to Bangladesh for the benefit of the claimant and the claimant's two siblings who are still in Bangladesh (one is in the UK with the sponsor). It was not disputed by Ms Jones that money was sent. The documentation in the claimant's supplementary bundle evidences remittances in 2018 and 2019 only. But there is other documentation relating to remittances in the bundle which was before the tribunal. I accept that the sponsor has been sending money, on a regular basis, to Bangladesh for the benefit of her children who have continued to reside there, including the claimant, effectively since she came to the United Kingdom and became settled here. The sending of money does not, of itself, evidence sole responsibility but it does constitute concrete evidence of a continuing commitment to the welfare of the children including the claimant.
9. There is some evidence before me to the effect that the sponsor maintains an interest in and an involvement with the claimant's education in Bangladesh. That evidence is really quite limited, it's not amounting to very much more than a brief letter of 19 May 2019 to which I have already referred and which appears to have been prepared and sent by a teacher at the college the claimant attends. It does, though, confirm, and I accept the truth of it, that the sponsor has been paying for the claimant's education. Again, that is not of itself decisive evidence with respect to sole responsibility, but it is evidence of an ongoing interest and concern.
10. The father of the claimant, it seems to be accepted by all parties, has remained in Bangladesh. The question of any continued involvement on the part of the father with the claimant's upbringing was explored, in some detail, in cross examination before me. Clearly, if a parent is involved with a child's upbringing it is very unlikely indeed

that a different parent will be able to establish sole responsibility. So, the question of the father's involvement or otherwise is one of significance. The sponsor has been steadfast in saying that the father has had no involvement. But, of course, since she wishes the claimant to come to the UK she has a motive for saying so even if it is not true. But she has produced what is said to be a court order (and translation) vesting guardianship of the claimant in her on a sole basis. She has also produced evidence that she has secured a divorce from her former husband. That documentation goes some way to demonstrating that the former husband does not now have a responsibility for or involvement in the claimant's upbringing and did not have as at the date of the Entry Clearance Officer's decision under appeal.

11. There are, nevertheless some difficulties with respect to the sponsor's evidence about the involvement of the father. I do not regard her evidence as having been entirely consistent as to when it was that he ceased to have any involvement. Further, there is the problem that according to the visa application form, the father and the sponsor herself were sharing the same address. If that is right then it is obviously very damaging to the claimant and sponsor's case. Her oral evidence to me, on the point, as I understand it, was that when the entry clearance application was made the sponsor did not have an address in Bangladesh so she 'used' the address where her ex-husband had been living. I have hesitated over that but have concluded I am just about able to accept the explanation to a balance of probabilities.
12. As to other candidates in Bangladesh who might have sufficient responsibility for the claimant's upbringing to preclude the sponsor having sole responsibility, there is really only the sponsor's own mother (the claimant's grandmother). The sponsor told me that the children live at an address in Bangladesh where they are cared for on a day-to-day basis by a 'maid servant' and that the sponsor's mother visits from time-to-time. That oral evidence is, in fact, consistent with what is said by the sponsor's mother in an affidavit which appears in the claimant's supplementary bundle.
13. There is a letter from one Dr Md Jawed which indicates that the sponsor pays medical fees in relation to the claimant. The letter also suggests that there are occasions where the sponsor contacts the doctor. The sponsor gave evidence to the effect that there were certain things the claimant felt unable to discuss directly with the doctor and that she intercedes. I find that to be plausible.
14. Putting everything together, whilst this is a case where the evidence does not point all one way, I am satisfied that the totality of the evidence supports the proposition that the sponsor does indeed have sole responsibility for the claimant's upbringing and did have such responsibility at all material times. Of course, the appeal has been brought on human rights grounds as it must be, mere satisfaction of the Immigration Rules no longer being an available ground of appeal. It does not necessarily follow that because a claimant succeeds in demonstrating that the Immigration Rules are satisfied, that the appeal should succeed on human rights grounds. But it is a strong indication. Further, it has not been argued at any point in this case that if the claimant is able to bring herself within the Immigration Rules, and I have decided she is, she should not succeed on human rights grounds. So, I allow the claimant's appeal.

## **Decision**

The decision of the First-tier Tribunal has been set aside.

In re-making the decision I allow, on human rights grounds, the claimant's appeal from the Entry Clearance Officer's decision of 22 August 2017.

Anonymity is not directed.

**Signed**

**M R Hemingway  
Judge of the Upper Tribunal  
12 September 2019**

**Dated**

**To the respondent**

**Fee award**

I make no fee award. I was not urged to do so.

**Signed**

**M R Hemingway  
Judge of the Upper Tribunal  
12 September 2019**

**Dated**