



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

Appeal Number: HU/03422/2019

THE IMMIGRATION ACTS

**Heard Remotely at Field House
On 24 February 2021**

**Decision & Reasons Promulgated
On 2 July 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SUWAYNE TONIAN BENNETT
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Revill, Counsel instructed by Anthony Ogunfeibo & Co Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica who was born in February 2001. She appeals the decision of the First-tier Tribunal dismissing her appeal against the decision of the respondent, by an Entry Clearance Officer, on 1 February 2019 refusing her entry clearance to the United Kingdom for the purpose of settlement.
2. The appeal is brought on human rights grounds but it was the appellant's primary submission that she satisfied the requirements of the Immigration

Rules and therefore refusing her application was a disproportionate interference with her private and family life.

3. In short, it was the appellant's contention that her father, who is settled in the United Kingdom, was the sole responsible parent, but if not there were in any event "serious and compelling considerations" that made her exclusion undesirable and, further, in the unlikely event of anything important to her case not coming within the scope of the rules, it was her contention that the appeal should have been allowed on Article 8 grounds in any event.
4. Permission was given by Upper Tribunal Judge Kamara who said:
 - "2 It is arguable that the First-tier Tribunal erred in its approach to sole responsibility where there are relatives in the country of origin who care for the child, applying **TD (Paragraph 297(i)(e): 'sole responsibility'), Yemen [2006] UKAIT 00049.**
 - 3 It is further arguable that the judge may have erred in relying on historic decision making by the appellant's mother rather than focusing on the present circumstances.
 - 4 Permission is not refused on any ground."
5. I begin by looking carefully at the First-tier Tribunal's Decision and Reasons.
6. The judge began by setting out almost completely the detailed reasons for refusing the application. Here the respondent recognised that there was evidence that the appellant's father in the United Kingdom had given financial support, but the respondent did not regard this as conclusive proof of exercising sole responsibility. The respondent noticed that the appellant's father had moved to the United Kingdom in 2003 and, according to the respondent, had visited Jamaica on only a "handful" of occasions. There was an approving letter from the appellant's mother which the respondent took as an indication that the mother was involved in the appellant's life.
7. There was no documentation to show that the appellant's father had "sole custody" but that is unremarkable because it had never been the appellant's case that her father was the sole custodial parent. The respondent was not satisfied that the appellant's father had sole responsibility for her upbringing.
8. The Decision and Reasons also set out the grounds of appeal which are not particularly illuminating.
9. The judge then noted that she had received evidence from the sponsor, that is the appellant's father and his wife. The judge does not give much detail about that evidence.
10. I will summarise the statements.
11. First is the statement of the appellant's father. Here he makes plain that he and his present wife are happy to provide a home for the appellant and he outlined some of his involvement in the appellant's life. He explained how, when he first came to the United Kingdom, money was short but he always made sure he sent money initially to the appellant's mother for her welfare and later as she grew up the appellant herself. He said when he sent money he gave instructions about how it was to be spent and made sure it was spent properly. He objected to the Entry Clearance Officer's suggestion that he had only visited the appellant "a handful" of times. He said he had been to Jamaica

to see his children (there is another child) at least once a year since he left except for 2007 and sometimes he has visited more than once a year. He spent time with the children. Presently he speaks to the appellant as much as two or three times a day and it is rare that they do not speak at least once on a day. He talked about the pressing need for the appellant to join him. The appellant used to live with her mother who had three sons including his son, that is the appellant's full brother. It was not right for the appellant to share the bedroom with her three brothers and she removed to live with an aunt, that is her mother's sister, although the house was full there too. There would be more appropriate accommodation in the United Kingdom.

12. There is a supporting statement from the appellant's father's wife in which she said she got to know the appellant as a result of her visits to Jamaica and looked forward to her living with them.
13. The bundle of evidence also includes a letter from the appellant's mother which refers to both children having a close bond with their father and how he played an encouraging role in the appellant's life telling her, for example, to work hard at school and there is indeed other evidence suggesting that is precisely what she has done. She said that it was the appellant's father who did not like the idea of the appellant living with her brothers and arranged a move and confirmed that the appellant and her father were in frequent contact, mainly by "WhatsApp".
14. The judge then directed herself correctly on the burden and standard of proof and reminded herself of the decisions in **TD (Paragraph 297(i)(e): 'sole responsibility') Yemen [2006] UKAIT 00049** and **Nmaju [2001] INLR 26**.
15. The judge also recorded things said in cross-examination.
16. Particularly the sponsor confirmed that he had not lived with his daughter for about seventeen years, that she initially lived with her mother and then because the accommodation was limited she did not think it appropriate for the appellant to share accommodation with her brothers and according to the evidence the appellant's mother made the decision for the appellant to live with her maternal aunts. The sponsor confirmed that on a day-to-day basis it was the appellant's aunt who provided care.
17. The judge accepted evidence that the sponsor had made regular financial contributions, more recently directed to his daughter, that the appellant and her father spoke regularly by telephone and there were photographs showing them spending time together and there was evidence of contact with "WhatsApp" messages, sometimes many times in a day.
18. The judge was told that the appellant lives quite close to her mother and sees her regularly with her siblings.
19. The judge said that in cross-examination the sponsor said he shared responsibility for the appellant with the appellant's mother. By way of illustration they were each named on the appellant's medical records as her parents. The sponsor had attended parents' meetings in the eighteen months or so that he was in Jamaica but the appellant's mother attended on other occasions. The judge accepted evidence that the appellant asked her father

for advice and permission to attend places but found that she made similar requests of her mother.

20. In paragraph 11 of the Decision and Reasons the judge particularly found that it was the appellant's mother's decision that the appellant should go and live with her aunts who are the mother's sisters. The judge did not believe that the appellant only asked permission of her father in London.
21. At paragraph 13 the judge found that the appellant and his wife had exaggerated their role in the day-to-day life. She did not believe that the appellant needed to ask her father's permission for every activity that she attended with her friends.
22. At paragraph 15 the judge found that both parents attended school and took an interest in her studies and that the appellant consulted with her aunts and her mother as well as her father about various decisions in her life. The judge found that the appellant's mother had not abdicated responsibility for her. She did not live in the same house as her mother but they were in frequent contact.
23. The judge said at paragraph 16:

"In taking the evidence as a whole, I find that whilst the sponsor financially supports the appellant including paying for her studies, I do not find that he has sole responsibility. I find that the circumstances in which the appellant lives with various family members makes it clear that responsibility shared for her by her aunts, her mother and the sponsor."
24. The judge then moved on to consider if there were "serious and compelling family or other circumstances which makes the appellant's exclusion from the United Kingdom undesirable". The judge looked at evidence of accommodation and seemed to accept evidence that her house was overcrowded and not very peaceful but found no credible evidence that the appellant was not looked properly. She had access to education and to a mobile telephone and welfare was monitored by close relatives.
25. The grounds of appeal to the Upper Tribunal were drawn by Ms Revill.
26. Ground 1 maintains that the judge was wrong in her approach to the evidence. The judge made findings about the involvement of the appellant's aunts who were "on site" and readily available rather than her father who lived in a different time zone and, according to the grounds, found that it undermined the claim for sole responsibility that the appellant was on good terms with her aunt. This according to the grounds was wrong. In **TD** it was clearly established that the day-to-day responsibility may be shared without preventing sole responsibility. The judge should have been more impressed with her own findings that the sponsor was in daily contact.
27. Ground 2 complains that the judge lost sight of the need to consider the present arrangements because the judge placed considerable weight on the appellant's mother's decision that the appellant should move out but this appellant's removal was some time ago.
28. Ground 3 was directed to the "serious and compelling" reasons relied upon by the appellant and criticised the judge for accepting that there was overcrowding but rejecting the evidence of the extent of the overcrowding

because it was not supported by “independent evidence”. It did not have to be proved independently and there were inadequate reasons for rejecting it.

29. This point was refined in “Additional Grounds” which are signed by the appellant’s solicitors. I do not find that they add anything that needs specific comment. Permission was granted on all the grounds as a whole.
30. Ms Revill also produced written submissions, partly to deal with the question of whether there was a need for a hearing. In as far as they relate to the merits of the case, these are essentially reworkings of the points made in the grounds and none the worse for that.
31. The respondent made written submissions signed by N Willocks-Briscoe in the specialist appeals team, which maintain essentially that there was no error of law.
32. Before me Ms Revill relied on her grounds and on the written submissions. Particularly she emphasised that, as was explained, in **TD**, some day-to-day responsibility does not displace sole responsibility being elsewhere and there was little in the Decision to show that the judge was looking at how things were now rather than how they had been in the past. There were no clear findings on overcrowding and the appeal should be redetermined.
33. Ms Revill’s arguments are narrow and clear and I have considered them. I am not persuaded by them.
34. It is difficult where there is regular contact with both parents playing a significant part in a child’s life to show that there is sole responsibility in only one parent. In relying on the fact that it was the appellant’s mother that initiated the move, the judge was not losing sight of the need to look at present circumstances but was rather seizing on the change of address which, according to the evidence before her, was something that the appellant’s mother initiated, as an indication that the mother’s involvement in the life of the child is significant.
35. The judge was careful also to note that the appellant is still in good terms with her mother and sees her frequently as she does her aunts. The judge was looking at the present circumstances.
36. This is a case where the appellant’s father, notwithstanding his decision to leave his country of nationality and re-establish himself many thousands of miles away, has remained supportive and involved in the life of his child. This was never doubted and was clearly accepted by the judge. However, although there is good evidence of his being involved in the life of the child and of his being on good terms with the child, there was very little that pointed to him having *sole* responsibility. Rather the evidence pointed to both parents with the assistance of the maternal aunts who the appellant’s father plainly trusted, together, making the important decisions in the life of the child. There is no fault in the judge’s approach and the conclusion was plainly open to her.
37. Similarly, this is not a case where there are compelling circumstances. There is evidence that the child would be better off in the United Kingdom. That is very often (not always) the case and may well very well be the case here. Although the judge might have been a little equivocal about what the circumstances

were her finding was clearly on the assumption that the accommodation is overcrowded by UK standards but that is not at all the same as establishing compelling reasons. Each case must be considered on its own merits but it will only be in extraordinary circumstances, if ever, that a person can establish a right to enter the United Kingdom because they are living in poverty in their country of nationality.

38. The appellant is now a young woman living in her country of nationality with a caring family and supportive relatives as well as a father who continues to be supportive in her life. In reality, Article 8 adds nothing to both elements of the Rules taken together.
39. The judge cannot be criticised fairly for reaching the conclusion that she did.

Notice of Decision

40. This is a decision that will no doubt disappoint the appellant and her father but the First-tier Tribunal's decision was open to the judge for the reasons given. I find no error of law and I dismiss the appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 2 July 2021