



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08184/2017 (R)

THE IMMIGRATION ACTS

Heard at Birmingham CJC
Parties appeared remotely by Skype
On 2nd February 2021

Decision & Reasons Promulgated
On 23rd February 2021

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

S J C M
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Shah, Taj Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS (R)

1. The hearing before me on 2nd February 2021 took the form of a remote hearing using skype for business. Neither party objected. I sat at the Birmingham Civil Justice Centre. At the outset, I was informed by Mr Shah that the appellant's sponsor (*the appellant's mother*) had been advised that she did not need to attend the remote hearing. I reminded Mr Shah that although the hearing is being conducted remotely,

the hearing will proceed, and I will be addressed by the representatives in exactly the same way as I would have been, if the parties had attended the hearing together. I also reminded him of the direction made by Upper Tribunal Judge Norton Taylor on 20th March 2020 that if an error of law is found, the appellant's representatives should be prepared to make submissions so that the decision can be remade in the Upper Tribunal with the proviso that the precise manner in which proceedings are dealt with, will be a matter for the particular judge with conduct of the case.

2. As requested by Mr Shah, I permitted him an opportunity to contact the appellant's sponsor to give her an opportunity to join the hearing remotely. The appellant's mother did join the hearing at 10:45am, but I was unable to establish whether she could see and hear me, or the representatives. Mr Shah confirmed that he had spoken to the appellant's mother the previous day and had discussed the appeal with her. He confirmed that no Rule 15(2A) application has been made to adduce further evidence, and in the event that I find there to be an error of law in the decision of the First-tier Tribunal, he was prepared to make submissions so that the decision can be remade in the Upper Tribunal.
3. At the outset of the hearing, Mrs Aboni also confirmed that the respondent had failed to file and serve a Rule 24 response, as directed. She was unable to provide any, let alone any reasonable explanation for the respondent's failure to do so. She simply confirmed that the respondent opposes the appeal.
4. In proceeding with a remote hearing I was satisfied: no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the

parties. At the end of the hearing I was satisfied the parties had been able to participate fully in the proceedings.

5. The appellant is a national of Bangladesh. Her appeal against the respondent's decision of 3rd July 2017 refusing her application for indefinite leave to enter the United Kingdom as the child of a parent present and settled in the UK was dismissed by First-tier Tribunal Judge Lodge for reasons set out in a decision promulgated on 11th July 2019.

The grounds of appeal and the appeal before me

6. Permission to appeal was granted by First-tier Tribunal Judge Bird on 5th September 2019. The matter comes before me to determine whether the decision of First-tier Tribunal Judge Lodge is vitiated by a material error of law.
7. The appellant claims Judge Lodge made multiple errors in the application of the law. At paragraph [4] of the grounds of appeal the appellant claims Judge Lodge erred in finding that the appellant's sponsor does not have sole financial and emotional responsibility for the appellant. The appellant refers to the decision of the Upper Tribunal in TD (paragraph 297(i)(e): 'sole responsibility') Yemen [2006] UKAIT 00049 and submits that having found that the sponsor is the mother of the appellant, the judge erred in his analysis of the evidence and his approach to the question of sole responsibility. The appellant claims that at paragraph [45], Judge Lodge refers to an absence of objective documentary evidence with regard to such matters as healthcare, out-of-school activities and religious education, but his remarks all go beyond the requirement of the rules. The appellant also claims Judge Lodge erroneously referred to the delay in making the application for entry clearance, because the rules do not provide that an application must be made within a certain timeframe. It is said that the fact that the appellant's sponsor decided to leave the appellant with relatives and make the application after she had obtained ILR was, "her prerogative", and should not be counted against the appellant. The appellant claims the judge assumed that [HK's] responsibility for the appellant went beyond

day-to-day responsibility for the appellant's welfare and is not supported by the evidence of [HK] or the letters from the school attended by the appellant.

8. Before me, Mr Shah adopted the grounds of appeal and submits there was sufficient evidence before the First-tier Tribunal to establish, applying the guidance set out in TD (paragraph 297(i)(e): 'sole responsibility') Yemen, that the sponsor has maintained sole responsibility for the appellant. He submits Judge Lodge failed to give adequate weight to the letters from the Israb Ali High School in which the principal confirms that the school maintains full contact with the sponsor and has her listed as the appellant's parental contact. Mr Shah submits the observation made by the school principal that the appellant suffers due to her distance from her mother, was a perfectly reasonable observation for the principal to make and did not undermine what was said in the letter. Mr Shah submits that having accepted, at [46], that the letter from the school confirms the sponsor pays the fees, Judge Lodge expected too much when he went on to say that the sponsor has not provided any official receipts. He submits that with the evidence from the school, nothing further was required.
9. Mr Shah submits that although Judge Lodge appears to have been concerned about the evidence of the sponsor's husband, he does not identify any inconsistency in the evidence between the sponsor and her husband, and in any event, the focus of the decision should have been upon whether the sponsor has had sole responsibility for her daughter's upbringing. He submits the evidence of the sponsor's husband was not relevant, and it is entirely reasonable that he had not wished to be involved in the day-to-day arrangements concerning his stepdaughter. Mr Shah submits that Judge Lodge failed to have proper regard to the fact that geographical separation does not prevent the sponsor having sole responsibility for the appellant.
10. Mr Shah submits that insofar as the judge's reasons for concluding that there are no serious and compelling family or other considerations which make exclusion of the appellant undesirable and suitable arrangements have been made for her care are concerned, Judge Lodge failed to consider the position the appellant would find

herself in, if [HK] were not around. The evidence before the Tribunal was such that the appellant would have no one to look after her. He referred me to the witness statement of [HK] that is to be found at page [48] of the appellant's bundle and paragraph [14] of the sponsors witness statement. The sponsor confirmed that she had been reluctant to leave the appellant with her mother (*i.e. the appellant's maternal grandmother*) because of her age and health, and because she did not wish to burden her brother and sister-in-law with having to look after the appellant, in addition to her mother. Mr Shah submits that the health of [HK] is such that she is unable to continue caring for the appellant and if [HK] were not around, there would be no suitable arrangements for her care.

11. Finally, Mr Shah submits that having found the requirements of the immigration rules are not met, at paragraph [60] of his decision, Judge Lodge erred in his consideration of the Article 8 claim outside the rules. He erred in concluding that his analysis under the rules was sufficient for the purposes of Article 8 and that there are no exceptional circumstances which required him to look outside the rules.
12. In reply, Mrs Aboni submits there is no material error of law in the decision of the First-tier Tribunal. She submits Judge Lodge directed himself correctly and reached conclusions open to him on the evidence before the Tribunal. She submits that although the Judge makes no express reference to the decision of the Upper Tribunal in TD (paragraph 297(i)(e): 'sole responsibility') Yemen, Judge Lodge directed himself correctly as to the relevant test at paragraph [44] of his decision. Mrs Aboni submits Judge Lodge engaged with the evidence before the Tribunal. Having considered the sponsor's involvement in the life of the appellant, including the evidence of money transfers, regular telephone contact, the written evidence from the school, and the fact that the appellant's father plays no role in her life, it was open to the judge to conclude that he was not satisfied that that is sufficient to establish sole responsibility. She referred to the appellant's application for entry clearance in which the appellant had referred, in answer to question 89, to [HK] as her legal guardian. Mrs Aboni acknowledged that that was not referred to by Judge Lodge in his reasons, but submitted it was referred to in the respondent's decision. Mrs Aboni

submits Judge Lodge was entitled to find there was a lack of satisfactory evidence to establish sole responsibility, and, in reaching his decision, was entitled to have regard to the delay in making the application and his concerns regarding the evidence of the sponsor's partner.

13. Mrs Aboni submits Judge Lodge was entitled to conclude that the requirements for indefinite leave to enter the UK set out in paragraph 297(i)(f) are not met for the reasons given in paragraphs [55] to [58] of the decision. She submits there was no evidence that HK is unable to care for the appellant and no evidence of neglect or abuse or of any unmet needs. It was, she submits, open to Judge Lodge to conclude that everything indicates there are stable arrangements in place for the physical care of the appellant. Mrs Aboni submits that having found that the requirements of the immigration rules are not met, it was open to Judge Lodge to conclude that there are no other exceptional circumstances which required him to look outside the rules.

Discussion

14. Judge Lodge noted, at paragraph [32], that there is no dispute that the appellant is the daughter of the sponsor.
15. Mr Shah submits Judge Lodge did not adequately consider the judgement of the Upper Tribunal in TD (Paragraph 297(i)(e): "sole responsibility"). In TD (Paragraph 297(i)(e): "sole responsibility"), the Upper Tribunal noted, at paragraph [10] of its decision, that a parent who has settled in the UK may retain "sole responsibility" for a child where the day-to-day care or responsibility for that child is necessarily undertaken by a relative abroad. That day-to-day responsibility may include seeing that the child attends school, is fed and clothed and receives medical attention when needed. The appellant claims that in reaching his decision, Judge Lodge did not consider the fact that it is quite possible that the sponsor has sole responsibility for the appellant, but the day-to-day implementation of decisions made have been carried out by [HK] because of the geographical separation.

16. I reject the claim that Judge Lodge erred in finding that the appellant sponsor does not have sole responsibility for the appellant. Judge Lodge had the benefit of hearing evidence from the appellant's mother and her partner (i.e. the appellant's stepfather). Their evidence is set out at paragraphs [6] to [27] of the decision. Judge Lodge sets out his findings and conclusions at paragraphs [30] to [61] of the decision. Drawing together the threads, in TD (Paragraph 297(i)(e): "sole responsibility") the Upper Tribunal, at paragraph [52], summarised the issue in this way:

Questions of "sole responsibility" under the immigration rules should be approached as follows:

- i. Who has "responsibility" for a child's upbringing and whether that responsibility is "sole" is a factual matter to be decided upon all the evidence.
- ii. The term "responsibility" in the immigration rules should not be understood as a theoretical or legal obligation but rather as a practical one which, in each case, looks to who in fact is exercising responsibility for the child. That responsibility may have been for a short duration in that the present arrangements may have begun quite recently.
- iii. "Responsibility" for a child's upbringing may be undertaken by individuals other than a child's parents and may be shared between different individuals: which may particularly arise where the child remains in its own country whilst the only parent involved in its life travels to and lives in the UK.
- iv. Wherever the parents are, if both parents are involved in the upbringing of the child, it will be exceptional that one of them will have sole responsibility.
- v. If it is said that both are not involved in the child's upbringing, one of the indicators for that will be that the other has abandoned or abdicated his responsibility. In such cases, it may well be justified to find that that parent no longer has responsibility for the child.
- vi. However, the issue of sole responsibility is not just a matter between the parents. So even if there is only one parent involved in the child's upbringing, that parent may not have sole responsibility.
- vii. In the circumstances likely to arise, day-to-day responsibility (or decision-making) for the child's welfare may necessarily be shared with others (such as relatives or friends) because of the geographical separation between the parent and child.
- viii. That, however, does not prevent the parent having sole responsibility within the meaning of the Rules.
- ix. The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child's

upbringing including making all the important decisions in the child's life. If not, responsibility is shared and so not "sole".

17. At paragraphs [30] to [53] of his decision, Judge Lodge considered whether the requirement set out in paragraph 297(i)(e) of the immigration rules is met. At paragraph [36], Judge Lodge refers to the evidence before the Tribunal regarding money transfers sent to a paternal cousin of the sponsor's ex-husband, and the explanation provided by the sponsor that money was sent to him, as a proxy, because he had previously been a support to her. At paragraph [37], the judge refers to the appellant's evidence regarding the important decisions in the appellant's life, noting the appellant appeared to deflect a question when she was asked to identify the telephone number of the school that she claimed to be in regular contact with. Judge Lodge refers to the letters from the school attended by the appellant at paragraphs [38] and [39] of his decision. At paragraph [41], Judge Lodge states there is no evidence that the appellant's father plays or has played any part in the appellant's upbringing. He refers to the evidence regarding the limited time spent by the appellant with her maternal uncle and the explanation provided as to why the appellant is unable to remain with him, on a long-term basis. He noted, at paragraph [43], that there is voluminous evidence of telephone/WhatsApp contact between the appellant and her mother. Judge Lodge went on to consider the evidence before the Tribunal including the documentary evidence relied upon, and the oral evidence given by the appellant's mother and her step-father. For reasons set out at paragraphs [45] to [51], Judge Lodge concluded, at [52]:

"I have given this matter anxious consideration. At its highest I have evidence of money transfers, evidence of regular telephonic contact, and written evidence from the school of contact. I also have the fact that the father plays no role in the appellant's life. I am not satisfied that that is sufficient to establish sole responsibility. At the most it might establish joint responsibility with [HK] who, given the lack of evidence with regard to the sponsor, is responsible, I find, not simply for day-to-day care but moral guidance and religious activity, healthcare, monitoring school progress and out-of-school activities."

18. The issue of "sole responsibility" must depend upon the facts of each case. A central part of the notion of "sole responsibility" was the sponsor's continuing interest and involvement in the appellant's life, including making or being consulted about and

approving important decisions about her upbringing. Judge Lodge was in my judgement entitled to have regard to the evidence of the sponsor's husband and make the observation that his evidence was "extraordinary", for the reasons he gave at paragraph [51]. I reject the submission made by Mr Shah that Judge Lodge failed to give adequate weight to the letters from the Israb Ali High School and that having accepted, at [46], that the letter from the school confirms the sponsor pays the fees, Judge Lodge expected too much when he went on to say that the sponsor has not provided any official receipts.

19. The decision must be read as a whole and in my judgement, it was open to Judge Lodge to conclude that the sponsor does not have sole responsibility for the appellant for the reasons set out at paragraphs [45] to [52] of his decision. In TD (Paragraph 297(i)(e): "sole responsibility"), the Upper Tribunal highlighted that financial support is clearly relevant since it may be an indicator of the obligations stemming from an exercise of responsibility by a parent. At paragraph [16] of its decision, the Upper Tribunal said:

"Financial support, particularly sole financial support, of a child is relevant since it may be an indicator of obligation stemming from an exercise of "responsibility" by a parent but it cannot be conclusive. **[my emphasis]** There may be other reasons why an individual financially supports a child and so it can only be a factor to be taken into account along with all the other facts. Rudolph v ECO, Colombo [1984] Imm AR 84 illustrates this."

20. The provision of financial support is therefore clearly a factor that is relevant and must be considered but is not conclusive. Financial support, even exclusive financial support, will not necessarily mean that the person providing it has "sole responsibility" for the child. It is a factor but no more than that.
21. As the Upper Tribunal noted in TD (Paragraph 297(i)(e): "sole responsibility"), the issue of sole responsibility is not just a matter between the parents. Even if there is only one parent involved in the child's upbringing, that parent may not have sole responsibility. The findings and conclusions reached by Judge Lodge followed a careful consideration of all the evidence before the Tribunal and a fact specific analysis. It was in the end open to Judge Lodge to conclude, as he did at paragraph

[52] of the decision, that at the most, the evidence might establish the sponsor has joint responsibility with [HK]. The findings and conclusions reached by Judge Lodge were neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusions that were wholly unsupported by the evidence.

22. At paragraphs [54] to [58], Judge Lodge went on to consider whether the requirement for indefinite leave to enter the UK set out in paragraph 297(i)(f) is met. That is, whether there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care. He noted, at [55], the claim made that [HK] is too ill to continue to look after the appellant but noted there was no solid evidence to support that claim. He noted the medical evidence to support the claim that [HK] has a number of health issues, but also noted that the GP has not specifically related those health issues, to an inability to care for the appellant. Judge Lodge also considered the evidence from the appellant's maternal uncle but found it is highly unlikely he would abandon his sister's daughter after seven years of having some input into her welfare. At paragraph [57] of his decision, Judge Lodge addresses the evidence of [TM] and his claim that his personal and financial business mean he cannot continue to be available to receive financial payments from the sponsor. At paragraph [58], Judge Lodge noted there is no evidence of neglect or abuse and no evidence of unmet needs that should be catered for. Judge Lodge noted that everything indicates there are stable arrangements in place for the physical care of the appellant, and he concluded that the requirement set out in paragraph 297(1)(f) of the immigration rules is not met.
23. The difficulty with the submission made by Mr Shah that in reaching his decision, Judge Lodge failed to have regard to the circumstances the appellant would find herself in, if [HK] were not available to provide the care that she requires, is that the submission is wholly divorced from the facts and circumstances of this case. The fact is, [HK] is available, and has been providing care for the appellant for a lengthy period. At paragraph [55], Judge Lodge referred to the claim that [HK] is too ill to continue to look after the appellant but noted there was no solid evidence to support

that claim. He clearly had regard to the medical evidence that was before the Tribunal. I have carefully read the witness statements of [HK] and the letter from Dr Hussain Ahmad dated 22nd March 2018 that is to be found at page [65] of the appellant's bundle. Dr Ahmad states [HK] does not take care of her nephew (*sic*), [SJCM] "...because her health condition is not good. She wants to send [SJCM] to her mother...[HK] was suffering by diabetes, Ischemic heart disease (IHD), liver diseases and arthritis...". Quite apart from the reference by Dr Ahmad to [HK] not taking care of "her nephew" (*her nephew attends a Boarding School, and the appellant is her niece*), as Judge Lodge said at paragraph [55] of his decision, [HK] has a number of health issues but the GP has not specifically related those health issues to any inability to care for the appellant.

24. In Mundeba (s55 and para 297(i)(f)) UKUT 00088 (IAC), the Upper Tribunal said:

"34. In our view, 'serious' means that there needs to be more than the parties simply desiring a state of affairs to obtain. 'Compelling' in the context of paragraph 297(i)(f) indicates that considerations that are persuasive and powerful. 'Serious' read with 'compelling' together indicate that the family or other considerations render the exclusion of the child from the United Kingdom undesirable. The analysis is one of degree and kind. Such an interpretation sets a high threshold that excludes cases where, without more, it is simply the wish of parties to be together however natural that ambition that may be.

...

37. Family considerations require an evaluation of the child's welfare including emotional needs. 'Other considerations' come into play where there are other aspects of a child's life that are serious and compelling - for example where an applicant is living in an unacceptable social and economic environment. The focus needs to be on the circumstances of the child in the light of his or her age, social background and developmental history and will involve inquiry as to whether:-

- (i) there is evidence of neglect or abuse;
- (ii) there are unmet needs that should be catered for;
- (iii) there are stable arrangements for the child's physical care.

The assessment involves consideration as to whether the combination of circumstances sufficiently serious and compelling to require admission.

38. As a starting point the best interests of a child are usually best served by being with both or at least one of their parents. Continuity of residence is another factor; change in the place of residence where a child has grown up for a number of years when socially aware is important: see also SG (child of a polygamous marriage) Nepal [2012] UKUT 265 (IAC); [2012] Imm AR 939."

25. Having carefully considered all the evidence before the Tribunal, it was in my judgment open to Judge Lodge to conclude that the requirements of paragraph 297(i)(f) are not met for the reasons given.
26. As the Court of Appeal said at [18] of Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. Judge Lodge was required to consider the evidence as a whole and in my judgment, he plainly did so when he considered whether the requirements set out in paragraph 297 of the immigration rules are met, giving adequate reasons for his decision.
27. Having found the requirements of the immigration rules are not met, Judge Lodge said, at [60]:

“I am satisfied that my analysis is sufficient for the purposes of Article 8, I am satisfied there are no exceptional circumstances which require me to look outside the rules. I am equally satisfied that the best interests of the appellant are served by her remaining with her extended family in Bangladesh, remaining with her school friends and continuing her education. All the evidence indicates she is an accomplished student who is meeting her expected goals.”
28. The only ground of appeal available to the appellant was that the respondent’s decision is unlawful under s6 of the Human Rights Act 1998. The judgment of the Supreme Court in Agyarko -v- SSHD [2017] UKSC 11 confirms that the fact that the immigration rules cannot be met, does not absolve decision makers from carrying out a full merits-based assessment outside the rules under Article 8, where the ultimate issue is whether a fair balance has been struck between the individual and public interest, giving due weight to the provisions of the Rules. That was plainly not the approach adopted by Judge Lodge at paragraph [60] of his decision.
29. In the circumstances I am satisfied the decision of Judge Lodge is vitiated by a material error of law and the decision is set aside.

Re-making the decision

30. I informed the parties at the hearing before me, that in my judgment it was open to Judge Lodge to conclude that the requirements for indefinite leave to enter as the child of a parent settled in the United Kingdom, as set out in paragraph 297 of the immigration rules are not met for the reasons given by Judge Lodge. Those findings were preserved. I informed the parties that in my judgement Judge Lodge had failed to adequately address the Article 8 claim outside the immigration rules and that having set aside the decision of Judge Lodge, the appropriate course is for the decision to be remade in the Upper Tribunal. Neither party objected.
31. As I have already set out, the only ground of appeal available to the appellant pursuant to s84(2) of the 2002 Act is that the respondent's decision is unlawful under s6 of the Human Rights Act 1998. The burden of proof is upon the appellant to show, on the balance of probabilities, that she has established a family and/or private life, and that the refusal of leave to enter would interfere with that right. It is then for the respondent to justify any interference caused. The respondent's decision must be in accordance with the law and must be a proportionate response in all the circumstances.
32. There is no Notice provided by the appellant or her representatives under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 inviting the Tribunal to admit further evidence that was not before the First-tier Tribunal. As no further evidence has been filed I have no up-to-date evidence from the appellant, her sponsor or [HK] as to the appellant's current circumstances, or identifying the factors relied upon to support her claim that the refusal of leave to enter is disproportionate.

The submissions

33. Mr Shah submits the appellant has plainly established a family life with her mother. He submits the decision to refuse the application for indefinite leave to enter the UK is entirely disproportionate because the sponsor cannot regularly travel to Bangladesh. She last travelled to Bangladesh in 2014 and is unable to do so now,

because she has three children, the youngest of whom is only 4 months old. The appellant's mother confirms in her witness statement that she has not travelled to Bangladesh since 2014.

34. I invited Mr Shah to draw my attention to the evidence that is before the Tribunal to establish that the sponsor is unable to travel to Bangladesh to visit her daughter, and indeed, her son, who remains in Bangladesh and has not made any application to join his mother in the UK. Mr Shah drew my attention to paragraphs [21] and [22] of the witness statement of the appellant's sponsor that is to be found at page [19] of the appellant's bundle. In those paragraphs the sponsor confirms that she travelled to Bangladesh between April and June 2014 to see her daughter and spend time with her. She also confirms that she is now married to a British citizen and she has had two children with her husband. She confirms that her eldest child in the UK, was enrolled at nursery towards the end of 2015 and so it has not been simple to frequently visit the appellant. She confirms her husband has been working full-time and she has been a housewife taking care of the family home and children.
35. Mr Shah submits that it would be very difficult for the sponsor to travel to Bangladesh because she has three young children and the cost of the family visiting Bangladesh would be prohibitive. He submits that in all the circumstances, the decision to exclude the appellant is disproportionate.
36. Mrs Aboni submits the appellant cannot meet the immigration rules. She accepts the appellant has a relationship with her mother and did not seek to persuade me that the appellant has not established a family life with her mother for the purposes of Article 8. Mrs Aboni submits the appellant and her mother have been able to maintain their relationship despite the fact that they have now lived apart for a number of years. Mrs Aboni submits the appellant is now 19 old and although she is separated from her step-siblings in the UK, she has a younger brother who remains in Bangladesh. Mrs Aboni submits that in all the circumstances the relationships can continue as they are at present, and the refusal of leave to enter is not disproportionate.

Decision

37. The findings by Judge Lodge that the appellant cannot meet the requirements for indefinite leave to enter under paragraph 297 of the immigration rules are preserved. The appellant is now 19 years old.
38. I am however prepared to accept that it is reasonably likely that there is regular contact between the appellant and the sponsor and that the sponsor continues to provide some financial support to the appellant, although it is impossible to identify the extent of that financial support. I find that the appellant enjoys family life with her mother. I also find that the decision to refuse the appellant leave to enter, may have consequences of such gravity as to engage the operation of Article 8, and I accept that the interference is in accordance with the law, and that the interference is necessary to protect the economic well-being of the country.
39. The issue in this appeal, as is often the case, is whether the interference is proportionate to the legitimate public end sought to be achieved. The ability to satisfy the immigration rules is not the question to be determined by the Tribunal, but is capable of being a weighty, though not determinative factor, when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control.
40. I remind myself that section 117A of the Nationality, Immigration and Asylum Act 2002 requires that in considering the public interest question, I must (in particular) have regard to the considerations listed in section 117B of the 2002 Act. I acknowledge that the maintenance of effective immigration controls is in the public interest.
41. In balancing the competing interests I have had regard to the evidence before the Tribunal and the submissions made by Mr Shah. Beyond submitting that the sponsor would find it difficult to travel to Bangladesh to maintain her relationship with her daughter because of her marriage to a British citizen, her partner's work commitments, and the prohibitive costs of travel to Bangladesh, Mr Shah was unable

to point to the evidence to support the claim that there are exceptional circumstances such that the refusal of entry clearance would be disproportionate.

42. The finding that the appellant has failed to establish that there are serious and compelling family circumstances or other considerations which make exclusion of the appellant undesirable and that suitable arrangements have been made for the appellant's care, has been preserved. In my search for the exceptional circumstances here, I have had regard to the relationship between the appellant and her sponsor and the impact of the refusal of entry clearance, upon the appellant's ability to establish a meaningful relationship with her young step-siblings in the UK.
43. I have carefully considered the matters referred to in the witness statements of the appellant's sponsor, and [HK], and others whose statements appear in the appellant's bundle. There is no up to date evidence before the Tribunal regarding the appellant's living arrangements or the impact of the refusal of entry clearance upon the appellant's relationship with her mother, stepfather and stepsiblings.
44. It is clear from the evidence that is before the Tribunal, and I find, that the appellant maintains family and personal connections with Bangladesh. She has lived in Bangladesh with her extended family for all of her formative years.
45. Although entry to the UK would promote the appellant's ability to establish a meaningful relationship with her stepsiblings, that must be weighed against the loss of the appellant's ability to maintain a meaningful relationship with her brother, who would remain in Bangladesh, albeit I acknowledge, that he appears to attend a Boarding School.
46. I have had regard to the fact that the appellant's mother left Bangladesh in 2011 leaving the appellant in the care of [HK]. I acknowledge that the appellant was only 10 at the time. I have had regard to the social and cultural connections that the appellant has with Bangladesh, and the contact that she has with her mother. I have no doubt the appellant misses her mother, and ideally, would like to be living in the UK with her, but that does not equate to a right to do so in law. There is a lack of

evidence before me to establish that the sponsor is, as Mr Shah submits, unable to travel to Bangladesh to visit the appellant.

47. On the evidence before me, in my judgment there are no exceptional circumstances capable of establishing that the refusal of entry clearance amounts to a disproportionate interference with the appellant's right to enjoyment of family life with her mother, stepfather or stepsiblings. Having carefully considered the evidence before me, I find that the decision to refuse the application for leave to enter is not disproportionate to the legitimate aim of immigration control. Accordingly, I dismiss the appeal on Article 8 grounds.
48. Having set aside the decision of the First-tier Tribunal, I remake the decision, dismissing the appellant's appeal on Article 8 grounds.

DECISION

49. I set aside the decision of First-tier Tribunal Judge Lodge promulgated on 11th July 2019.
50. I remake the decision, dismissing the appellant's appeal on Article 8 grounds.

Signed *V. Mandalia*
Upper Tribunal Judge Mandalia

Date; 3rd February 2021