



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal number: HU/15469/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC  
On 8 March 2021

Decision & Reason Promulgation  
On 12 March 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

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(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Ms E Rutherford, Instructed by Rodman Pearce Solicitors

For the Respondent: Mr M Diwnycz, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Pakistan with date of birth given as 21.10.02, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 6.4.20 (Judge French), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 20.8.19, to refuse his application made on 28.2.19 for entry clearance to the UK as a child of his parent MK and family life with MK's partner KH, a British citizen.
2. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal on 14.4.20. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Rintoul granted permission on 24.8.20, considering "*It is, just, arguable that, as the renewed grounds aver, the finding that the appellant's father does not have sole responsibility for him is unsafe, given what is averred at [3.b, d and e to g]. It is also difficult in places, given how the decision is set out, to separate findings from evidence and submissions.*"
3. However, Judge Rintoul added, "*That said, close attention will need to be paid to TD (Yemen) and this is a case in which both parents have contact with the appellant and it should not be assumed that the appeal will ultimately succeed.*"
4. In TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049, the Upper Tribunal held that:

*"Sole responsibility" is a factual matter to be decided upon all the evidence. Where one parent is not involved in the child's upbringing because he (or she) had abandoned or abdicated responsibility, the issue may arise between the remaining parent and others who have day-to-day care of the child abroad. The test is whether the parent has continuing control and direction over the child's upbringing, including making all the important decisions in the child's life. However, where both parents are involved in a child's upbringing, it will be exceptional that one of them will have "sole responsibility".*
5. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal. I note that the sponsor and the appellant were both present remotely from Pakistan, but made no active contribution as this hearing was a matter of legal submissions.
6. Complaint is first made that the judge relied on the absence of a court order confirming that the appellant has sole responsibility. At [8], the judge noted that although there was no such court order, it was submitted on behalf of the appellant that the father and sponsor had *de facto* 'sole parental responsibility'. The judge pointed out that was inconsistent with the evidence, which included that whilst he was living day-to-day with his grandmother, the appellant would visit his mother every few months. More significantly, the judge was told that if the appellant became upset, he would go to see her for emotional support. It is clear that the mother retained at least some involvement with the appellant.

7. I am more concerned with [10] of the impugned decision, where the judge returned again to the issue of a court order, stating that it was not accepted that the sponsor has sole parental responsibility. This was followed by the statement that, "*There is no legal order to that effect and the child's mother is still very much part of his life.*"
8. The judge also noted that the sponsor retained contact details for the appellant's mother, which is the subject of a further complaint that irrelevant matters were taken into account. The judge was also not satisfied that the sponsor had been making regular financial payments for the benefit of the appellant, pointing to the paucity of the evidence, there being only a few payment slips over a relatively short three-month period, and absence of evidence from any third party as to what the payments were for.
9. I remind myself that the decision has to be read as a whole and not reduced to an attack on isolated constituent parts. For example, the submission at [3d] that because the sponsor continues to have contact details for the appellant's mother is insufficient to demonstrate shared responsibility or that she plays any active role, does not address the overall reasoning.
10. The grounds assert that the mother played no *meaningful* role in the appellant's life, I am satisfied that it may well have been open to the judge to conclude to the contrary on the evidence summarised above, taken in the round, particularly when the burden is on the appellant to demonstrate that the sponsor has sole responsibility. However, the way in which the judge returned to reliance on the absence of a court order, the reliance on contact details being retained by the sponsor for the mother, and what might be regarded as scant account taken of the other supporting evidence, including visits of the sponsor to the appellant and the reasons for the absence of such visits over a certain period of time, when the sponsor was unable to travel because of his immigration status, is unsatisfactory. The judge does not address the issue of continuing control and direction over the appellant's life, and the impression created is that because there remains some limited involvement between the appellant and his mother, this is entirely undermining of the assertion of sole responsibility.
11. Taken as a whole, I conclude that the finding in respect of sole responsibility is unsafe, despite the paucity and inadequacy of evidence in the appellant's support. I cannot be satisfied that the judge did not take place heavy reliance on peripheral and possibly irrelevant matters in dismissing the appeal.
12. In the circumstances and for the reasons set out above, I find material error of law in the decision of the First-tier Tribunal so that it must be set aside.
13. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the

Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The error of law vitiates all findings of fact and the conclusions from those facts. In the premises the appropriate course is to remit this matter to be made again in the First-tier Tribunal.

## **Decision**

The appeal of the appellant to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside to be remade *de novo* with no findings of fact preserved.

The matter is remitted to the First-tier Tribunal sitting at Birmingham.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 8 March 2021

## **Anonymity Direction**

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

*“Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.”*

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 8 March 2021