Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15791/2019 (V)

THE IMMIGRATION ACTS

Heard at : Field House	**Decision & Reasons Promulgated**
On : 22 March 2021	**On : 7 April 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

LOVE WLEHNEE LOGAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Tettey, Counsel
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Liberia, born on 21 May 2001. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her human rights appeal.

2. The appellant applied, on 1 May 2019, for entry clearance to the UK under Appendix FM of the immigration rules as the child of her father Preston Logan, the sponsor, a British citizen residing in the UK. The respondent refused the application on 19 August 2019 on the grounds that it was not accepted that the

appellant and sponsor were related as claimed and it was not accepted that the sponsor had sole responsibility for the appellant's upbringing, or that there were serious or compelling circumstances which made her exclusion from the UK undesirable. The respondent also considered that were no exceptional circumstances leading to unjustifiably harsh consequences for the appellant for the purposes of Article 8.

3. The appellant appealed against that decision and her appeal was heard by First-tier Tribunal Judge Gould on 5 October 2020. The sponsor gave oral evidence before the judge. His evidence was that he had initially entered the UK in 1999 and had been granted exceptional leave to remain in July 2000. He had returned to Liberia twice since the appellant's birth, in 2007 and 2017. The appellant had been living with his mother in Liberia and had been cared for by her since birth, but his mother had passed away in 2016 and he therefore wanted the appellant to join him in the UK. After his mother died, his sister and her six children moved into the family home, but his sister could not continue to look after the appellant as she had her own caring responsibilities. The appellant had since gone to stay with a family friend in Ghana whilst making her entry clearance application. The sponsor explained that it had taken him to 2019 to make the application as he had been badly affected by his mother's death and had been gathering the relevant documentation.

4. The judge accepted that the sponsor was the appellant's father, but he considered that the appellant's grandmother had exercised responsibility for her for most of her life and that the sponsor had exercised no degree of control over her welfare. The judge considered that the arrangement made for the sponsor's sister to move into the family house after his mother's death was further evidence of the appellant's care and welfare being met by persons other than the sponsor. The judge considered that the fact that the sponsor allowed almost three years to pass after his mother's death before making the entry clearance application further demonstrated that the appellant's care and welfare was met by others. The judge did not accept that the appellant's mother had disappeared, but in any event found that the sponsor's interest in his daughter's progress from time to time and his provision of financial support from time to time, and the fact that the sponsor had belatedly taken a limited interest in the appellant's life in advance of the entry clearance application lodged just before her 18th birthday, did not meet the threshold for 'sole responsibility'. The judge considered further that there were no serious or compelling circumstances which made the appellant's exclusion from the UK undesirable and that the respondent's decision was a proportionate one and was not in breach of the appellant's Article 8 rights. He accordingly dismissed the appeal.

5. The appellant sought permission to appeal the decision on the following basis: that the judge had failed to apply the proper test for 'sole responsibility' in TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049; that the judge had misdirected himself by implying that the sponsor needed to demonstrate a longer history of control over the appellant's life; that the judge had erred by failing to take into account relevant information such as the

sponsor's oral evidence in relation to his access to the appellant's school reports, his role in the appellant's medical treatment and his reasons for the delay in making the entry clearance application; that the judge failed to give adequate reasons for rejecting the sponsor's evidence about his daily communication with the appellant and the sponsor's sister's evidence that she was unable to care for the appellant in the long-term; that there was a lack of clarity in the judge's finding in regard to the appellant's mother; and that the judge failed to consider that the appellant was in Ghana, supported by the sponsor and awaiting the outcome of her entry clearance application.

6. Permission was granted in the First-tier Tribunal on 26 November 2020 and the matter then came before me for a remote hearing.

Hearing and submissions

7. The parties made submissions before me. Mr Tettey relied and expanded upon the grounds of appeal and submitted that the judge's decision was unsustainable owing to numerous errors of law and ought to be set aside and the case remitted to the First-tier Tribunal. Mr Tan submitted that the judge's decision was sustainable and that he had applied the correct test for 'sole responsibility' and had undertaken a holistic assessment of 'sole responsibility'. It was open to the judge to conclude that the sponsor had taken a belated interest in the appellant which was not sufficient to demonstrate sole responsibility and that the evidence before the judge in support of the appellant's case was scant. Mr Tettey, in response, reiterated the points previously made, emphasising that the sponsor had completed the same process as he had done for his son for whom he had previously successfully applied for entry clearance.

Discussion and conclusions

8. The first two grounds of challenge to Judge Gould's decision are a failure to apply the appropriate test for 'sole responsibility' as set out in TD (Yemen) by referring instead to "parental responsibility" and the requirements for a history of control by the sponsor over the appellant rather than a consideration of the position at the time of the application. Indeed, it was on the basis of those two grounds in particular that permission was granted. However, I do not consider either ground to be made out.

9. At [18(d)] and [18(g)], the judge referred to 'parental responsibility' but that was in the context of the various findings he made on the evidence at [18] which in turn formed part of his assessment of whether 'sole responsibility' had been demonstrated. There is nothing to suggest that he considered the relevant test to be that of 'parental responsibility' and it is clear that he was well aware of the correct test. Neither is it correct that the judge required there to be a continuous history of responsibility by the sponsor. On the contrary the judge was clearly aware of the claim that the circumstances changed when the sponsor's mother died and her care for the appellant ceased and the claim that it was after that time that the sponsor took sole responsibility for his daughter.

However, that did not mean that he had to ignore the situation prior to the sponsor's mother's death. An assessment of the sponsor's role prior to his mother's death was plainly of relevance to, albeit not determinative of, his role thereafter. Indeed, at [18(l)] and [18(m)] the judge specifically addressed the situation after the death of the appellant's grandmother and found that the appellant's care and welfare was met by other family members. The judge found it relevant that, rather than seeking to have the appellant join him in the UK after her grandmother died, the appellant was left in the care of another family member for almost three years and he was perfectly entitled to consider that as an indication of the sponsor's limited role in her life. I note that the sponsor's sister's evidence in her written statement before the judge was, in fact, that she and her children had been living with the appellant in her mother's house prior to her mother's death, as is the indication in the sponsor's written statement, albeit that was not the situation described to the judge. It seems to me that that serves further to fortify the judge's view of the limited nature of the sponsor's role in the appellant's life.

10. The appellant's grounds go on to make various assertions of failings by the judge in regard to his consideration of the sponsor's oral evidence, in relation to his awareness of the appellant's academic performance, his involvement in the appellant's medical treatment, his communication with the appellant, his explanation for the delay in making the application and his claim that his sister could no longer look after the appellant. However, those were all matters which the judge clearly considered and referred to in his decision. What concerned the judge was the lack of relevant supporting evidence, the sponsor's limited knowledge about his daughter's education, the fact that the sponsor had only seen his daughter twice in her life and the fact that the limited evidence that was available was only for the purposes of the entry clearance application. Indeed, as Mr Tan submitted, the evidence of communication was very recent and I note that the WhatsApp communications at pages 34 to 54 of the appeal bundle commenced shortly after the entry clearance application was refused and relate largely to the preparation of the appeal. Whilst the appellant's grounds properly assert, as previously mentioned, that it was the sponsor's role at the time of the application rather than historically that was relevant, that did not mean that the judge was not entitled to draw the adverse conclusions that he did at [18(p)] from the evident belated interest taken by the sponsor.

11. In all of the circumstances, and given the very limited nature of the evidence produced, the judge was perfectly entitled to find that there was insufficient evidence to demonstrate that the sponsor was solely responsible for the appellant's upbringing and to come to the adverse conclusion that he did. He directed himself properly in law and made appropriate findings based on the evidence before him. The grounds do not identify errors of law in his decision.

DECISION

12. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 25 March 2021