IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000654

First-tier Tribunal No: HU/51738/2021

THE IMMIGRATION ACTS

Decision and Reasons Issued:

31 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

KJ (SIERRA LEONE)
(ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation

For the Appellant: Mr L Youssefian, Counsel, instructed by East London Solicitors
For the Respondent: Ms S McKenzie, Senior Presenting Officer

Heard at Field House on 13 September 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge SJ Clarke ("the Judge") promulgated on 30 December 2022. By that decision, the Judge dismissed the Appellant's appeal from the Entry Clearance Officer's

decision to refuse her human right claim made in her application for entry clearance to the United Kingdom.

Factual background

2. The Appellant is a citizen of Sierra Leone and was born on 19 October 2010.

3. The Appellant's mother is a British citizen, present and settled in the United Kingdom. The Appellant made an application to join her on 23 December 2020. The Entry Clearance Officer refused that application on 7 April 2021. The Entry Clearance Officer was not satisfied that the Appellant and the mother were related as claimed or that the Appellant's father has died. The Entry Clearance Officer was also not satisfied that the mother has had sole responsibility for the Appellant's upbringing. The Entry Clearance Officer, accordingly, held that the Appellant was unable to meet the requirements in Paragraph 297 of the Immigration Rules and that the refusal of her application for entry clearance was compatible with Article 8 of the European Convention on Human Rights.

4. The Judge heard the Appellant's appeal from the Entry Clerance Officer's decision on 23 December 2022. The Entry Clearance Officer conceded before the Judge that the Appellant was related to the mother as claimed. The Judge found that the Appellant was not able to prove that her father is dead or that the mother has had sole responsibility for her upbringing. The Judge found that the requirements in Paragraph 297 of the Immigration Rules were not met and there was no breach of Article 8. The Judge, accordingly, dismissed the appeal in a decision promulgated on 30 December 2022.

5. The Appellant was granted permission to appeal from the Judge's decision on 19 August 2023.

Grounds of appeal

6. The pleaded grounds of appeal make four connected points. First, the Judge erred in giving limited weight to the evidence of the mother's partner. Second, the Judge took into account immaterial factors as to a letter from the Appellant's school. Third, the Judge failed to place adequate weight on the letter from the police as to an allegation of rape. Fourth, the Judge's overall approach to the evidence was flawed.

Submissions

7. I am grateful to Mr Youssefian, who appeared for the Appellant, and Ms McKenzie, who appeared for the Entry Clearance Officer, for their assistance and able submissions. Mr Youssefian developed the pleaded grounds of appeal in his oral submissions and focused on points relating to the letters from the school and the police. He invited me to allow the appeal and set aside the Judge's decision. Ms McKenzie relied on her Rule 24 response. She resisted the appeal and submitted that the Judge's findings of fact were open to her and

disclosed no error of law. She invited me to dismiss the appeal and uphold the Judge's decision.

Discussion

8. In *TD (Paragraph 297(i)(e): sole responsibility) Yemen* [2006] UKAIT 00049, the Asylum and Immigration Tribunal, as it then was, gave guidance as to the meaning of the phrase sole responsibility. 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. This guidance was adopted by the Court of Appeal, with minor elucidation, in *Buydov v Entry Clearance Officer* [2012] EWCA Civ 1739 at [18]-[19].

9. The Appellant relied on a letter from her school to argue that the mother was making all the important decisions in her life. The letter, issued by Mohanad Jondy Islamic Secondary School, stated as follows (quoted as written):

> "I write to confirm that Jadijatu Jalloh is a bonafide student of the above mentioned school. She has enrolled in this school since Spetember 2013 till date, and that her mother Mrs. Isatu Jalloh is solely responsible for Kadijatu Jalloh. Since Kadijatu Jaloh registered in this school, I have been communicating with the mother Mrs. Isatu Jalloh in the U.K. concerning her daughter's school fees, books, uniforms and all other essential needs concerning education. I have never had any involvement with any other relatives (Father) concerning Kadijatu Jalloh's welfare or needs. The school has always consulted Mrs. Isatu Jalloh from U.K for any major decision concerning Kadijatu Jalloh school affairs, for instance field trips, expedition and she has always giving her consent …"

10. The Judge, at [17], attached limited weight to this letter on the basis that there was a "lack of regularity". The Judge noted that there was no reference on the letter and it did not identify the Appellant's date of birth and year group. The Judge also noted that the letter omitted to mention that the Appellant was previously enrolled in the primary school. The immediate difficulty with the Judge's approach is that it is not clear as to what she meant by a "lack of regularity" as to the format of the letter. If the Judge was seeking to compare the letter with the letters that she may have seen from the schools in the United Kingdom, she was wrong in law. The letter was written by a school in Sierra Leone. It is not comparable with the letters written by the schools in the United Kingdom. The letter should be judged by reference to the writing style and format in Sierra Leone. If the Judge was seeking to compare the letter with the

letters written in Sierra Leone, she has not identified a comparator. It is not possible to impugn a letter on the basis of a "lack of regularity" without identifying the regular standard. The Judge was no bound to accept the substance of the letter. She was, nevertheless, required to engage with it properly. In my judgement, she erred in law in attaching limited weight to the letter, which provided support to the Appellant's case that the mother has had sole responsibility for her upbringing, on the basis of a "lack of regularity".

11. I am also satisfied that the Judge's approach to the letter from the police was flawed. The letter, issued by Kissi Town police station, stated the Appellant was raped by an individual on 21 January 2020 and that individual was in jail. The rape, according to the mother, took place on 21 January 2021 and there was a typographical error as to the date in the letter. The Judge placed little weight on the letter stating that the letter from the school, which I have discussed above, made no reference to the alleged rape and the impact of it on the Appellant. Rape of a child, for obvious reasons, is a deeply sensitive matter. It is not clear as to why the Judge expected the Appellant and her family to have informed the school the she had been raped. The purpose of the letter from the school, in any event, was not to discuss the rape and its impact on the child but to demonstrate that it is the mother who makes all the important decisions in her life. The Judge was not bound to accept that the Appellant was raped as contended but, in my judgement, she erred in law in attaching little weight to the letter from the police for the reasons given by her.

12. The mother's partner gave evidence before the Judge as to his visits to the Appellant in 2017 and 2022. The Judge, at [8], said this about his evidence:

> "… At best, I find that he is only able to give limited evidence because he only sees what is presented to him when he visited and he said he stayed in the hut of the grandfather, but he would only accept that the man he was staying with is who he was told he is, and would not be checking identity documents. The witness would not know who other family members were if he was not introduced to them …"

13. There is no dispute that the Appellant and his partner are in a genuine relationship. It is unrealistic to expect an individual to ask his partner's father, on a family visit, to provide identity documents. The partner, of course, simply accepted that the person who he met during the family visits was the mother's father and the Appellant's grandfather. This is what any reasonable person would do in the circumstances. The partner's evidence supported the Appellant's account and the evidence given by the mother. The Judge was not bound to accept the partner's evidence but, in my judgement, is not open to her to reject it for the reasons given by her.

14. I entirely accept that I should not rush to find an error of law in the Judge's decision merely because I might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly

mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. In this instance, for the reason set out above, I am satisfied that the Judge's decision is materially wrong in law.

Conclusion

15. For all these reasons, I find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. I set aside the Judge's decision and preserve no findings of fact.

16. Having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge SJ Clarke.

Decision

17. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity

18. In my judgement, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective, an anonymity order is justified in the circumstances of this case. I make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 18 October 2023