



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: **UI-2023-002122**
First-tier Tribunal Nos:
HU/55893/2022
IA/08482/2022

THE IMMIGRATION ACTS

**Decision and Reasons Issued:
On the 18 October 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

ENTRY CLEARANCE OFFICER

and

**HZ (PAKISTAN)
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation

For the Appellant: Mr Yasin Din, Counsel, instructed by GLS Solicitors
For the Respondent: Ms Arifa Ahmed, Senior Presenting Officer

Heard at Field House on 11 September 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the Entry Clearance Officer from the decision of First-tier Tribunal Judge Doyle (“the Judge”) promulgated on 20 April 2023. By that decision, the Judge allowed HZ’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. HZ is a citizen of Pakistan and was born on 14 December 2006.
3. HZ's father is a British citizen, present and settled in the United Kingdom. Her mother is a citizen of Pakistan and resides in that country. The parents, who married in 2001, separated in 2019. HZ made an application for entry clearance to join her father on 28 January 2022. The Entry Clearance Officer refused that application on 8 August 2022 on the basis that the requirements in Paragraph 297(i) (e) of the Immigration Rules was not met. The Entry Clearance Officer was not satisfied that the father has had sole responsibility for HZ's upbringing. The Judge heard HZ's appeal from the Entry Clearance Officer's decision on 12 April 2023. The Judge found that the father in fact has had sole responsibility for her upbringing. The Judge held that the requirements in the Immigration Rules were met and the Entry Clearance Officer's decision was incompatible with Article 8 of the European Convention on Human Rights.
4. The Entry Clearance Officer was granted permission to appeal from the Judge's decision on 14 June 2023.

Grounds of appeal

5. The pleaded grounds of appeal make two connected points. First, it is contended that the Judge failed to take into account all the evidence and made his findings on supposition and conjecture. Second, it is contended that the Judge failed to conduct a proper assessment as to the role of the mother in HZ's life.

Submissions

6. I am grateful to Ms Ahmed, who appeared for the Entry Clearance Officer, and Mr Din, who appeared for HZ, for their assistance and able submissions. Ms Ahmed developed the pleaded grounds of appeal in her oral submissions. She invited me to allow the appeal and set aside the Judge's decision. Mr Din resisted the appeal and submitted that the Judge's findings of fact were open to him and disclosed no error of law. He invited me to dismiss the appeal and uphold the Judge's decision.

Discussion

7. The key issue of fact before the Judge was whether the father has had sole responsibility for the HZ's upbringing. 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].

8. The Judge, as he noted at [6], heard oral evidence from the father and considered various documents in five separate bundles. The Judge made findings of fact at [10]. The mother, following the separation in 2019, moved to live elsewhere and HZ, along with her two sisters, remained in the family home own by the father. The father continued to reside in the United Kingdom and his aunt moved into the family home to look after the children. The father obtained a guardianship order from the local court in 2019 in respect of the children. The mother had withdrawn her opposition to the petition one week after it was lodged. The father sent money to Pakistan for the maintenance of HZ and her sisters. He returned to Pakistan in June 2022 because the aunt who looked after the children was unwell and he needed to care for them personally. The aunt died in October 2022. The father stayed in Pakistan with the children and returned to the United Kingdom in April 2023 for the appeal hearing. He was able to make temporary arrangements for care of the children in his absence.
9. The Judge, at [11], considered the position under the Immigration Rules. He identified the key issue and the relevant legal principles by reference to *TD*. The Judge found that the father has been responsible for HZ's maintenance and accommodation and involved in the arrangements as to her education. The Judge then considered two pieces of evidence that were capable of undermining HZ's case. The first document was an amendment to the father's application for guardianship. It stated that the mother resided with HZ and her sisters in the home owned by the father. The second document was the application for British citizenship made on behalf of HZ. It was signed by the mother who acted as the responsible person and accompanied HZ to her biometrics appointment. These two documents, the Judge acknowledged, were capable of indicating that the mother played some role in HZ's life at the end of 2019 and the start of 2020. The Judge took a holistic view of all the evidence and noted that the separation in 2019 did not necessarily mean that the mother had to immediately leave the matrimonial home and turn her back on the children. The Judge then considered the circumstances relating to the aunt moving in with the children to look after them, the father's return to Pakistan when the aunt became unwell and his residence with the children from June 2022 to April 2023. The Judge found that the evidence as to these matters was reliable and held that the mother has surrendered parental responsibility in favour of the father. The Judge held that the father has had sole responsibility for HZ's upbringing since early 2020.

10. These are careful findings of facts. The Judge kept an open mind when considering the evidence. He acknowledged and addressed the evidence that was capable of undermining HZ's case. He conducted a holistic view of the all the evidence and made findings of fact that were open to him on the evidence. In my judgement, there is no legal flaw in his approach and reasoning. His observation that the separation did not necessarily mean that the mother had to leave the home and turn her back on the children is not an impermissible conjecture. It was only a tentative observation which, in the end, was of no material significance. This is because, as I note above, the Judge ultimately held that the father has had sole responsibility for HZ's upbringing since 2020. Accordingly, even if the two documents showed that the mother played a role HZ's life at the end of 2019 and the start of 2020, it was the father who had sole responsibility thereafter. The Judge found particular strength in the efforts made by the father since June 2022.
11. The Judge was entitled to accept the father's evidence as to his role in HZ's upbringing. It was for the Judge to balance and weigh different considerations and items of documentary evidence. The Judge's conclusions are neither perverse or inadequately reasoned. There is no misdirection in the Judge's decision. I do not accept that the Judge ignored evidence as to the mother. It is well-settled that where a particular point is not expressly mentioned by the First-tier Tribunal, the Upper Tribunal should be slow to infer that it has not been taken into account: see *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49 [2011] 2 All ER 65, at [45]. When it comes to the reasons given by the First-tier Tribunal, the Upper Tribunal should exercise judicial restraint and should not assume that the First-tier Tribunal misdirected itself just because not every step in its reasoning is fully set out: see *Jones v First Tier Tribunal and Criminal Injuries Compensation Authority* [2013] UKSC 19 [2013] 2 All ER 625, at [25]. An appeal to the Upper Tribunal is available only on a point of law and the Upper Tribunal should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49 [2008] 1 AC 678, at [30]. It is the nature of the fact-finding exercise that different tribunals, without illegality or irrationality, may reach different conclusions on the same case and the mere fact that one tribunal has reached what may seem an unusually generous view of the facts of a particular case does not mean that it has made an error of law: see *MM (Lebanon) v Secretary of State for the Home Department* [2017] UKSC 10 [2017] WLR 1260, at [107].
12. In my judgement, on these principles, there is no proper basis to interfere with the Judge's findings of fact and his conclusion that the father, for the purpose of Paragraph 297(i)(e) of the Immigration Rules, has had sole responsibility for HZ's upbringing.

Conclusion

13. For all these reasons, I find that the Judge made no error on a point of law in allowing HZ's appeal. I uphold that the Judge's decision and dismiss the Entry Clearance Officer's appeal.

Decision

14. The First-tier Tribunal's decision did not involve the making of an error on point of law and it shall stand.

Anonymity

15. 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, HZ is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to 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: 17 October 2023**