



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/01704/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 4 August 2014**

**Determination
Promulgated
On 07th Aug 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SALMAAN MIAH

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Ms M Dogra, Counsel instructed by Bukhari Chambers

DETERMINATION AND REASONS

1. The respondent, whom I shall refer to as the appellant as he was before the First-tier Tribunal, is a citizen of Pakistan and his date of birth is 30 December 1994. The appellant made an application for entry clearance to join his mother in the UK. His mother is a British citizen, Suriya Begum. The application was refused by the Entry Clearance Officer in Islamabad in a decision of 27 November 2012.

2. The application was refused because it was not clear to the Entry Clearance Officer what the appellant's father's circumstances were and the appellant had not satisfied that the sponsor had sole responsibility for him or that the appellant was not leading an independent life.
3. The appellant appealed against the decision of the ECO and his appeal was allowed by Judge of the First-tier Tribunal Scott in a determination which was promulgated on 9 May 2014 following a hearing on 3 April 2014. The appeal was allowed under the Immigration Rules. Permission to appeal was granted to the Secretary of State by Designated Judge of the First-tier Tribunal Coates in a decision of 19 June 2014.
4. The Judge heard oral evidence from the sponsor Ms Begum. Her evidence was that she had left Pakistan in 2006. She fled her husband as a result of domestic violence. She fled taking her two youngest sons with her but leaving the appellant because at the time she fled from the family home he was sleeping in a room with his father and she did not wish to alert her husband to her departure.
5. Between 2006 and 2012 the sponsor had no contact with the appellant. In 2012 friends of Ms Begum told her that the appellant was affected by his father's drug taking and that he was not being properly looked after. He was not attending school and he was mistreated and neglected.
6. Ms Begum made contact with the appellant through a third party, a friend, Mr Mehmood. She decided that she would bring the appellant to the UK. Mr Mehmood has been looking after the appellant since 2012 and during that time the sponsor has had sole responsibility for him and the appellant has had no contact with his father.
7. The sponsor takes all decisions relating to the appellant's welfare. She sends money to him and arranges his education and medical appointments. They have contact with each other through Skype and the telephone. The First-tier Tribunal had an affidavit before it from Mr Mehmood and evidence of money transfers.
8. The Judge of the First-tier Tribunal found that the sponsor had had sole responsibility for the appellant since August 2012. The findings of the First-tier Tribunal are contained in paragraphs 15 - 19 of the determination:

“15. I am satisfied that the sponsor was an honest and credible witness. I accept her evidence, together with the documents submitted, all of which I find to be consistent and reliable.

16. On the evidence before me, I find on a balance of probabilities that the sponsor has had sole responsibility for the appellant's upbringing since August 2012. Since then the appellant has been looked after on a day to day basis by an old family friend,

Mr Khalid Mehmood, but I am satisfied that all major decisions in relation to the appellant's life, education and well-being have been taken by the sponsor. Mr Mehmood has at all times been acting under her direction. The sponsor has also been financially responsible for the appellant, sending him regular remittances to cover his food, clothing, school fees and daily living expenses. In addition, I am satisfied that the appellant's father has played no part in his life since the appellant stopped living with him in August 2012. Indeed, it appears that he took little interest in the appellant even before then.

17. I find also that the appellant is not leading an independent life and has not formed an independent family unit. He is still at school, his education having been delayed somewhat by his father's failures in parental responsibility. The appellant is currently living with Mr Mehmood and his family and remains under the direction of the sponsor who speaks to him daily and exercises control over him through Mr Mehmood, even telling him when to come home.
 18. I find therefore that the appellant meets the requirements of paragraph 297(i)(e) and (iii) of the Immigration Rules.
 19. No other issues are raised in the refusal notice. I find that the appellant satisfies the requirements of paragraph 297 and that he is entitled to the entry clearance sought."
9. The grounds seeking leave to appeal argue that the Judge failed to consider whether the three month period of claimed sole responsibility was sufficient to satisfy the Rules and refer to the cases of **TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049** and **Nmaju [2000] EWCA Civ 505**.
 10. It is also argued in the grounds seeking leave to appeal that the Judge had not addressed the fact that the appellant's father had not made any attempts to locate him or seek contact with him and it was not open to the Judge to find that the sponsor was a credible witness in the light of her previous immigration history.
 11. Both parties made oral submissions. Mr Tufan argued that the Judge should not have found that the sponsor was credible because her asylum appeal had been dismissed on appeal. It was the duty of the Judge to make enquiries about the sponsor's previous immigration history and it was incumbent on the sponsor to make this clear to the Tribunal and to explain the grounds on which she was granted British citizenship.
 12. The Judge took into account postdecision evidence and did not follow the guidance in **DC (Morocco)**. There was no evidence from the Social

Services in Pakistan and the whole chronology of the case was in Mr Tufan's submission suspect.

13. Ms Dogra made submissions in the context of her detailed skeleton argument. She submitted that the Secretary of State had not raised credibility issues in the reasons for refusal decision. The sponsor was cross-examined by the Presenting Officer but not about her status here, rather about conflicts in the evidence. The Secretary of State did not adduce evidence relating to the sponsor's immigration history.
14. In my view this is a generous decision and another Judge may not have allowed this appeal but the grounds do not disclose a material error of law and on this basis the decision of the First-tier Tribunal is lawful and sustainable. The Secretary of State did not raise credibility issues in the Reasons for Refusal Letter. It was entirely open to them to do so or to amend the original refusal letter but they did not do so.
15. There was no suggestion that the appellant did not submit a bundle in accordance with the directions of the Tribunal and again the Secretary of State missed the opportunity to raise issues of credibility or to submit evidence relating to the sponsor's immigration history. It is not incumbent on the Judge to raise issues of credibility on his own initiative and this could result in a procedural irregularity and unfairness and the Judge being seen to enter the arena.
16. It was open to the Judge who heard evidence to find that the sponsor was credible. He gave reasons for doing so finding that the sponsor's evidence was consistent and reliable.
17. In relation to the duration of sole responsibility this is a factor, however, it is in no way a conclusive matter and it was not raised by the Secretary of State at the hearing or in the Reasons for Refusal Letter. The Secretary of State's case that there was no sole responsibility. It is a fact that the Judge found that the sponsor had sole responsibility for the appellant from August onwards.
18. The application was made in October 2012 and refused on 27 November 2012. It is a fact that the appellant turned 18 on 30 December 2012.
19. Time in this case was a relevant factor but the Judge did not make a material error of law by not referring to it in his determination. In my view he was mindful of the short duration of sole responsibility and the appellant's age. On the facts as accepted by the Judge the appellant is able to establish sole responsibility in the context of paragraph 297 of the Immigration Rules. He was still at school at the date of the application and indeed the hearing and he was not leading an independent life.
20. The Judge found that the evidence established that the sponsor had contact with the school and that there were Skype records and that money

transfers had taken place. Some of this evidence was post the date of the decision but it is clear that it casts light on the circumstances at the date of the decision and the Judge was entitled to take it into account.

21. The grounds are an attempt to reargue the case and a disagreement with the findings of the First-tier Tribunal and do not disclose a material error of law and the decision to allow the appeal under the Immigration Rules is maintained.
22. Paragraph 297 contains the requirements for indefinite leave to enter the United Kingdom as the child of a parent settled in the United Kingdom. The relevant limbs at paragraph 297 in issue in this case are (iii) is not leading an independent life, is unmarried (and is not a civil partner), and has not formed an independent family unit; and (i)(e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing.

Signed

Date

Deputy Upper Tribunal Judge McWilliam