



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

Appeal Number: OA/01766/2013

THE IMMIGRATION ACTS

Heard at Field House

On 14 July 2014

Determination

Promulgated

On 7 August 2014

Before

UPPER TRIBUNAL JUDGE COKER

Between

JUNHUI LIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Carrington, Counsel instructed by Martin Burr Chambers

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appeal of Junhui Lin who sought entry clearance to join his mother who is settled in the UK. The application was refused on 21 November 2012 at which time he was aged 15. His appeal was heard in

the First-tier Tribunal on 10 February 2014 and dismissed under the Immigration Rules and on human rights grounds. Permission to appeal was granted on all grounds. Five grounds were put forward although the fifth ground is in effect a summary of the previous ones.

2. Ground 1 is that the judge has failed to determine the case to the correct standard of proof, failed to give sufficient weight to the appellant's birth certificate and has given insufficient reasons for rejecting that evidence.
3. Ground 2 is that the judge failed to deal with whether the sponsor had sole responsibility in determining there was a conflict of evidence. The Immigration Judge found that this was material and it was unclear why it was material as to whether the father had abandoned the appellant at or before his birth, whether that was material.
4. Ground 3 says that the judge's findings in relation to the Civil Court judgment are unclear, and ground 4 that the issues around the household register do not negate the fact that the sponsor has sole responsibility as of the date of decision which is the main issue to be decided.
5. Judge Devittie sets out paragraph 297 of the Immigration Rules and although the initial decision taken by the Entry Clearance Officer referred to maintenance this was a matter that was conceded on review by the Entry Clearance Officer so the only issue before the First-tier Tribunal was the issue of sole responsibility.
6. The judge in paragraph 3 set out the terms of the refusal in full and then in paragraph 4 set out the appellant's mother's evidence. In that evidence she refers to the production of a notarial certificate of birth, that the original birth certificate is retained when that is applied for, that she had not intended to hide the identity of her son's father, she had applied for a replacement birth certificate which had been produced which clearly stated that she was the biological mother and that Lin was the appellant's father. She said that the father had disappeared and that he had maintained the appellant through her family members. She also gave oral evidence about the production of the notarial certificate. She said she had last seen him when he was expecting a baby and she had had no contact with him. She produced a document from the police indicating that he was wanted for murder. She had applied for custody which she eventually received and that it was only after she had got the custody order on 17 March 2011 that she was able to change the appellant's household registration from the father's parents' home to her parents' home.
7. The judge correctly identifies the tests that he has got to consider. In paragraph 8 of the judgment he sets out the findings that he reaches on the basis of the documentary and oral evidence. He refers to the birth certificate and although in paragraph 8(i) he refers to a birth certificate it is clear that he is referring to the replacement birth certificate that has been produced because that is the evidence that he has recorded earlier

in the determination. He sets out in that paragraph his concerns about the birth certificate and refers to the comprehensive document verification report produced by the respondent. He says that the statement of practice in China has not been challenged by the appellant's legal representatives (there is an error - he says the respondent's legal rep but clearly he means the appellant's legal representatives) and he makes findings that in the light of the various unsatisfactory features regarding the failure to produce the birth certificate in the first instance, he is not able to attach weight to the document that has now been presented. It has to be remembered that the document has been presented as a replacement birth certificate produced from the hospital and not the original birth certificate which, according to the DVR, is and was available to the appellant and the sponsor.

8. The next issue is the evidence in connection with the child being abandoned whether before he was born or after he was born. There is a conflict in evidence in terms of the statement by the appellant's aunt and the Civil Court judgment. The appellant's representative says that this is in fact immaterial whether or not they broke up before the baby was born or after. In terms of sole responsibility per se it may well be irrelevant but it is a material matter because it goes to the credibility of the sponsor's account which is a matter that the judge has to assess in determining whether there is sole responsibility.
9. The First-tier Tribunal Judge then goes on in paragraph 8(iii) to consider the Civil Court judgment. He has difficulties giving weight to the translation first of all, he says, because he is not sure what efforts were made to serve notice of the proceedings and secondly, what documentary evidence the court relied on in finding that the father had gone missing. The Civil Court judgment from China does not, so far as I can see, actually say that the father went missing, it just says that he did not attend court. There could be a whole manner of reasons why he does not attend court, it does not mean that he has actually gone missing or has not existed in the child's life.
10. Paragraph 89 in fact refers to the appellant having lived with the sponsor for a long time and again on page 90 of the document says that the appellant has lived with the claimant for a long time. In fact this is March 2011. She left the child when he was aged 2. He is now 15. At that time he was about 11 or 12. She had made three visits and by any stretch of the imagination two years out of a 12 year old's life is not a long time.
11. The judge then in paragraph 8(iv) looks at the household register which shows that until 2012 the appellant was registered at the same address as his father. The sponsor gives an explanation for that which the judge records but the judge also says that that is not supported by any independent expert opinion.

12. These are all matters that the judge was entitled to take into account in deciding whether or not he accepted the appellant's account that she now had sole responsibility. Although since March 2011 the child may well have been living at her parent's address, that does not of itself mean that she has had either before that or more to the point since then, had sole responsibility.

13. In paragraph 9 of the First-tier Tribunal judgment the judge summarises the evidence before him. The burden of proof is upon the appellant. Although each individual element that the judge has referred to in paragraph 8 is not of itself directly relevant to the issue of sole responsibility it is directly relevant in terms of the extent to which the judge is prepared to find on a balance of probabilities that the sponsor has had sole responsibility for this appellant.

14. In paragraph 9 the judge sets out the factors in favour of this child. He accepts that the appellant has been brought up by his grandmother and he accepts that the sponsor has visited him, that she contributes to his maintenance and that she maintains regular contact with him. As against that, the judge finds that her evidence is tainted quite significantly because of the conflicts in her earlier evidence. He makes the sustainable finding that she has deliberately not produced his original birth certificate and, as a result of those issues, in the round the judge makes a finding that he does not accept the evidence of the sponsor and of the appellant's aunt and grandmother regarding the father's role in the upbringing. He accepts that the aunt and grandmother have played a role and that he may have lived with his grandmother but he is not satisfied that the evidence shows the sponsor has had sole responsibility for the appellant's upbringing. On the basis of the evidence that was produced to the judge that was a finding that he was entitled to reach. It may well be that there is other evidence available, it may well be that another judge might have reached a different decision but my role is not to reach a different decision, it is to find whether or not the judge has erred in law in reaching the decision that he has. On the basis of the evidence before the judge the findings that he reached and the manner in which he applied those findings to reach his conclusion there is no error of law such that the decision should be set aside to be remade so on that basis I dismiss the appellant's appeal.

Signed

Date

Upper Tribunal Judge Coker