



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

**Appeal Number:
OA/06023/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 20 May 2014 On 12 August 2014
Determination promulgated**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Entry Clearance Officer, Istanbul

Appellant

and

**Ilyas Taskiran
(Anonymity direction not made)**

Respondents

Representation

For the Appellant: Mr. G. Saunders, Home Office Presenting Officer.

For the Respondent: Ms. S. Pangiotogoulou of Counsel instructed by Trott & Gentry Solicitors.

DETERMINATION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Herbert promulgated on 11 February 2014, allowing the appeal of Master Taskiran against the decision of the Entry Clearance Officer ('ECO') dated 2 January 2013 refusing entry clearance for settlement as the child of his British citizen mother, Ms Sevda Yaman ('the sponsor').

2. Although before me the ECO is the appellant and Master Taskiran is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Master Taskiran as the Appellant and the ECO as the Respondent.

Background

3. The Appellant is a national of Turkey born on 21 May 1995. On 2 November 2012 he applied for entry clearance to join his mother, the sponsor, in the UK. The Respondent refused the Appellant's application for reasons set out in a Notice of Immigration Decision dated 2 January 2013, with particular reference to paragraph 297(i), (iv) and (v) of the Immigration Rules.

4. The Appellant appealed to the IAC. His appeal was allowed for reasons set out in the First-tier Tribunal Judge's determination.

5. The Respondent sought permission to appeal to the Upper Tribunal which was granted on 7 April 2014 by First-tier Tribunal Judge Lambert.

Consideration

6. The Judge made findings favourable to the Appellant in respect of the requirements of paragraphs 297(iv) and (v): see determination at paragraphs 26, 27, and 31. These findings are not the subject of the challenge before me. The Respondent seeks to challenge the conclusion in respect of paragraph 297(i).

7. The Judge made favourable findings both in respect of paragraph 297(i)(e) - 'sole responsibility' - and 297(i)(f) - 'serious and compelling family or other considerations which make exclusion undesirable etc'. It is, of course, only necessary for the Appellant to satisfy 297(i) by one of these two 'routes'.

8. The Respondent's challenge in respect of the issue of sole responsibility is pleaded in the grounds in support of the application for permission to appeal on the basis of there being "*a lack of evidence to substantiate the sponsor's claim of sole responsibility*". Necessarily this is essentially a question of fact for the First-tier Tribunal Judge - as indeed is recognised in the body of the Respondent's grounds.

9. The background to the application includes a history of a marital dispute between the Appellant's parents, and a deterioration in the relationship between the Appellant and his father. In this latter context, it is acknowledged in the Respondent's Notice of Immigration Decision that the Appellant quit his father's house about two years prior to the application. It is also acknowledged that the Appellant's mother had had the benefit since 2012 of a custody order in respect of the Appellant from a Turkish court.

10. The Judge correctly directed himself as to the burden and standard of proof, and that the relevant date for assessment was at the date of the Respondent's decision: paragraph 16.

11. The Judge also makes it clear in his determination that he had regard to all of the oral and documentary evidence that was before him.

12. Included in the documentary evidence was the custody document from Turkey, together with a translation (Appellant's bundle pages 18-19). This document refers to the Appellants father "*not want[ing] the Guardianship role*", and not resisting the transfer of guardianship to the sponsor; it also refers to the Appellant's view that his father and his wife "*did not want him with them anyway*"; it also confirms that the Appellant was not living with his father at that time but with his paternal grandmother (although this subsequently changed following her death in January 2013).

13. Mr Saunders essential line of challenge is that the supporting materials and the sponsor's witness statement speak as to the *contact* between mother and son, rather than the notion of *responsibility*, and that otherwise over much emphasis was placed on the Guardianship document.

14. The Judge stated that he took this document as "*the starting point*", and made, in my judgement entirely sustainably, a finding that this was evidence that parental responsibility had been transferred to the sponsor: see paragraph 18. I consider that, in turn, the Judge's finding that since the date of the transfer of guardianship overall responsibility rested with the sponsor, and not the 84-year-old grandmother with whom the Appellant was then residing (see paragraph 22), was a conclusion open to the Judge on the evidence - both as a reasonable inference from the primary

finding of fact and on the basis of all of the available evidence including the testimony of the sponsor.

15. In my judgement the Respondent's challenge is really one based on a disagreement with the Judge's conclusion, and does not identify an error of approach, or a deficiency of reasoning. Accordingly I find no error of law in respect of the conclusion with regard to paragraph 297(i)(e). This is sufficient to support the Judge's conclusion under the Immigration Rules.

16. Accordingly in the circumstances it is unnecessary to give consideration to paragraph 297(i)(f) or Article 8 of the ECHR - which are also the subject of essentially generalised challenges by the Respondent.

17. I dismiss the Respondent's challenge to the decision of the First-tier Tribunal, and the Appellant's appeal remains allowed.

Decision

18. The decision of the First-tier Tribunal contained no material error of law and stands.

19. The appeal of Master Taskiran remains allowed.

Deputy Judge of the Upper Tribunal I. A. Lewis 11 August 2014