



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

Appeal Number: OA/06500/2013

THE IMMIGRATION ACTS

**Heard at Sheldon Court, Birmingham
On 9th June 2014**

**Determination Promulgated
On 28th July 2014**

Before

**UPPER TRIBUNAL JUDGE COKER
DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

Between

ROMEISH TE SHAWN SMITH

Appellant

And

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr I Ali, Counsel instructed by Guildhall solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals a decision of the First-tier Tribunal, which dismissed his appeal against a decision of an Entry Clearance Officer refusing entry clearance as a dependant of his father under paragraph 297 of the Immigration Rules. The application had been refused on the grounds that he did not meet the requirements of the Immigration Rules in force at the date of the decision namely that his father had not shown he had sole responsibility for his

upbringing; that he could be adequately accommodated and/or maintained without recourse to public funds.

Background

2. The appellant had first applied for entry clearance to join his father as his dependant in 2006. That application had been refused, the ECO relying on the appellant's residence with his mother for the previous five years and his temporary living arrangements with a maternal aunt. The appellant's mother had been interviewed and from that interview it was concluded that she had not given consent to the appellant moving permanently to the UK or that the sponsor father had sole responsibility for the appellant.
3. The appellant's case was that he had no further contact with his mother; that his father had arranged for him to stay with a teacher at the school he attended; his father had sole responsibility for him and his father took all relevant decisions with regard to his upbringing and paid all his expenses.

Error of law

4. Permission to appeal was granted, in essence, on the grounds that it was arguable that:
 - (a) The finding that the mother and aunt remained involved in the appellant's upbringing was arguably flawed in that it relied heavily upon an interview several years old, that there was no evidence that the mother or aunt were involved in the child's upbringing, that the judge had speculated as to their involvement and had unjustifiably relied heavily upon an interview with the appellant's mother that was several years old and had failed to give adequate reasons for his rejection of the father's oral evidence.
 - (b) That having found that the father met his financial responsibilities in maintaining the appellant, visiting him and providing support and guidance and the lack of evidence as to the mother's involvement, it was incumbent upon him to find that the father had sole responsibility.
 - (c) Failed to adequately consider the financial evidence before him and failed to give adequate reasons for finding the appellant would not be adequately maintained.
 - (d) Failed to consider the appellant's Article 8 rights and his best interests.

Discussion

5. It was agreed before us that the finding by the judge that the appellant would be adequately accommodated without recourse to public funds was not subject to challenge. It was further agreed that the challenge on Article 8 grounds "stood or fell" with the issue of sole responsibility.
6. The judge notes the remittance of funds evidence and the visits by the father to Jamaica to see his son. He notes the correspondence from Mr Rattigan (the person with whom the appellant is living) and the father's oral evidence. The judge refers specifically to the father's account that the mother had "stepped away" from parental involvement when the appellant went to live with his aunt

and that this is at odds with the account given by the mother in her interview at that time. The First-tier Tribunal judge's findings in [24] and [25] that the father was not truthful in his account were by reference to information and evidence *at that time* ie the first entry clearance application. The judge was clearly comparing evidence from the father given at the hearing as to his view on circumstances when the first application for entry clearance was made and the record of the mother's interview at that time. The judge was entitled to reach a decision on which evidence he preferred as to the circumstances at that time. He has given adequate reasons for such findings and it is in that context that he views the other more up to date evidence.

7. The decision the subject of the appeal and the ECM review makes clear reference to the lack of evidence of the alleged change in circumstances. Despite the minor living with Mr Rattigan and despite Mr Rattigan providing two letters setting out his implementation of the father's instructions and guidance, Mr Rattigan makes absolutely no reference to the lack of involvement of the child's mother. There is no evidence other than the father's of the lack of involvement by the mother, despite this having been clearly flagged as a matter at issue. This is not to say that the father and appellant are having to prove a negative: given the child has been living with Mr Rattigan for some time evidence from him could have been produced; the father has had contact with the mother in the not too distant past given his ability to obtain a consent to travel to the UK (although this consent does not confirm consent to the child emigrating from Jamaica) and his knowledge that she lives with her partner and his consent to the child seeing her; there is no evidence from the school as to the mother's knowledge or lack of knowledge or involvement with the child's schooling. The judge in reaching his findings has properly referred to these issues and given sustainable reasons for his findings.
8. Merely because an individual provides financial and emotional and other support does not inevitably result in a finding that this equates with sole responsibility. The judge properly directed himself as to the relevant case law; his finding was reasonable and sustainable on the basis of the evidence before him. Although another judge may have been satisfied on the evidence produced that the father had sole responsibility for the appellant, the findings reached by the judge that the father does not have sole responsibility are sustainable on the evidence before him. There is no identifiable error of law in those findings.
9. The decision and the ECM review make reference to the lack of documentary evidence as to the father's self-employment. Although some additional evidence was submitted, no explanation was provided for the failure to provide accounts or tax returns. Although a sponsorship declaration was provided and some evidence of income produced, the judge was entitled to have regard to the lack of evidence that could have been produced but was not. The decision to reject the submission that the appellant would be adequately maintained without recourse to public funds was a decision that the judge could reasonably reach on the basis of the evidence before him. There is no error of law in that finding.
10. Although the judge makes no specific reference to the best interests of the minor, it was agreed by Mr Ali that in the event that the father did not have sole

responsibility for the child, he could not succeed on Article 8 grounds. Although not totally subsumed within Article 8 it is plain, on the evidence before the judge and on the basis of his findings as to sole responsibility, that it is simply not possible to make a finding that it is in the best interests of this appellant to relocate to the UK as a dependant of his father. Merely because one parent wishes to bring a child up and remove that child from the possible involvement of the other parent is not sufficient evidence upon which to found a conclusion that it is in the best interests of a child to relocate. The appellant's father left this child in Jamaica many years ago; there is inadequate evidence to show that the child does not have contact with his mother and there is little evidence of any extended family involvement.

Conclusion

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

We do not set aside the decision.

The appeal by the appellant is dismissed; the determination of the First-tier Tribunal to stand.

Date 28th July 2014

Judge of the Upper Tribunal Coker