



**Upper Tribunal
(Immigration and Asylum Chamber)**
OA/08988/2013

Appeal No:

THE IMMIGRATION ACTS

**Heard at Field House
Promulgated
On 1 September 2014
2014**

**Determination
On 9 September**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL DIGNEY

Between

JUNJIE LIN

Appellant

and

ENTRY CLEARANCE OFFICER - BEIJING

Respondent

Representation:

For the respondent: Mr Duffy, Home Office Presenting Officer
For the appellant: Mr Lam

DETERMINATION AND REASONS

1. The appellant, a citizen of China, born on 5 January 1997, applied for settlement to join his mother. The application was considered under paragraph 297 of the Immigration Rules. The application was refused because the respondent was not satisfied that the sponsor had sole responsibility for her son. The appeal was dismissed because the First-tier judge reached the same conclusion on sole responsibility.

2. The first ground of appeal states that the judge's conclusion that he could not be satisfied that the appellant's father had no responsibility for the appellant was perverse. The second ground states that adequate reasons were not given for the conclusion that the appellant's mother did not have sole responsibility for her son. It is then said that the conclusion that the appellant is self-sufficient in China with other family members is based on speculation rather than evidence and the conclusion is at odds with paragraph 16 [it is actually paragraph 15] of the determination, where the judge accepts that the sponsor has transferred money to the appellant. It is finally said that the decision on article 8 is inadequately explained.
3. Permission to appeal was granted by Judge Cruthers. After summarising the grounds he concluded:

Given, amongst other things, the history of the appellant's mother, I suspect that in the last analysis it is unlikely that the appellant will be able to establish sole responsibility here. However, it is arguable that the appellant and the sponsor are entitled to a less brief treatment of such case as the appellant does have as regards sole responsibility. Overall, there is sufficient in the grounds to make a grant of permission appropriate.

As already intimated, the appellant and sponsor should not take this grant of permission as any indication that the appeal will ultimately succeed.

4. This is a case where various relations and acquaintances of the appellant were interviewed by or on behalf of the respondent in China and their evidence was before the trial judge. There are interviews with two uncles, the appellant's sister and someone from the appellant's school. The appellant was also interviewed.
5. The first ground states that the judge was wrong to conclude that he could not rule out that the appellant's father had some involvement with the appellant. In the light of the interviews I have to conclude that the judge's conclusion was so strongly against the weight of the evidence that it must amount to a factual error. However, it seems to me that even if this is an error of law, it is not material. That is because, on the facts of this case, the absence or otherwise of the father is irrelevant to whether the mother had sole responsibility. There is nothing in any of the interviews that suggest that the mother had any responsibility for the appellant other than occasionally sending money. The responsibility appears to have been shared at various times between the grandparents, one of the uncles and the sister. The appellant says in his statement that his mother made the major decisions in his life, and the mother says the same in her statement. She also said at the hearing that she made all the decisions for her son. Unfortunately these are mere statements and the

evidence of the relations in China gives no factual support for these statements. It is for the appellant to prove that his mother had sole responsibility for him and there is no evidence to that effect. The judge was certainly entitled to reach the decision he did on this point and I find it difficult to see how he could have reached any other conclusion on the evidence before him. It follows that there is no error of law in the judge's conclusion that the appellant's mother did not have sole responsibility for him. The evidence, points overwhelmingly to the appellant's various relations in China having responsibility at various times.

6. I am not sure what the relevance of the third ground is and Mr Lam did not refer to it at the hearing. The evidence does in fact show that the appellant is now self-sufficient in China, in the sense that he is living on his own with no day to day help. It is accepted that his mother sends money but the judge was describing the life that the appellant was leading, which it must be admitted does not appear to be a very happy one, living as he does on his own. The third ground does not identify any error either of law or fact.
7. It is finally said that article 8 is not properly treated. Having concluded that the appellant could not succeed under the rules there would have had to be something compelling before an article 8 claim could be successful and there is nothing of that sort. Mr Lam did not in fact mention article 8 in his submissions.
8. It follows that the original judge made no error of law. The original decision stands.

The appeal is dismissed

Designated Judge Digney
Judge of the Upper Tribunal
September 2014

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