



IAC-FH-NL-V1

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

Appeal Number: OA/05794/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 21 July 2015**

**Decision & Reasons Promulgated
On 23 July 2015**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**SARRA BOUTINA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Anifowoshe, Counsel instructed by Elkettas & Associates

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Algeria. Her date of birth is 01 August 1996. She appealed against the respondent's decision dated 02 April 2014 to refuse her entry clearance as the dependent child of a person who is present and settled in the United Kingdom. First-tier Tribunal Judge Wellesley-Cole dismissed the appeal in a decision promulgated on 19 January 2015. On 17 June 2015 the Upper Tribunal found that the First-tier Tribunal decision involved the making of an error of law and set aside the

decision. The appeal now comes before the Upper Tribunal to re-make the decision.

2. I have had the opportunity of hearing evidence from the appellant's mother and sponsor Ms Kheira Meftah. I have also heard submissions from both parties. The relevant details will be incorporated into my findings.

Decision and reasons

3. The remaining issue for determination in this appeal is whether the sponsor has sole responsibility for the appellant within the meaning of the immigration rules. Since Ms Meftah came to the UK in 2011 the appellant has been living with her grandparents.
4. After having heard evidence from Ms Meftah I find that she is a credible witness. She gave her evidence in an open and unhesitating way and her evidence was broadly consistent with the documentary evidence before the Tribunal. Ms Meftah's said that she has always had responsibility for her daughter's upbringing. She separated from the appellant's father in 1997 and was given custody of their two children. She has produced a copy of the original divorce certificate which shows that the divorce became final in 2000. She said that when she began to prepare for the entry clearance application she applied to the court in Algeria for confirmation that she had custody of the child. Pursuant to that application a court in Oran issued a further judgment dated 03 October 2013. The judgment confirms that the marriage was dissolved on 20 April 1997 and that the sponsor was given custody of their two children, Sarra and Mohammed. This is a legal document issued by a court in Algeria. There is nothing on the face of the document that gives me any cause to doubt the reliability of the evidence and the respondent put forward no arguments to undermine the validity of this document. As such I am satisfied that the court judgment can be given weight as evidence to show that the sponsor has had custody of the appellant since she divorced from the appellant's father in 1997. The fact that she was granted custody was confirmed by the Algerian courts in October 2013.
5. The respondent relies on other evidence produced by the sponsor in support of the application. This included a document which was translated into English. The document states that it is a "Solemn Declaration" signed by the sponsor's mother (the appellant's grandmother). Elsewhere in the document it is described as an "affidavit". The declaration is dated 26 January 2014. In the declaration Mrs Fatima Hachemaoui confirmed that the appellant was her granddaughter and that she had been under her "guardianship since her birth until the present day". The declaration goes on to state that she now assigned the guardianship of her granddaughter back to her mother due to her old age and sickness. When the sponsor was questioned about this document she explained that there may have been some slight differences when the declaration was translated into English. In all likelihood her mother was just trying to say that she was now passing the care of her granddaughter back to her mother.

6. After having considered this document in detail I am satisfied that the wording is not intended to mean that the appellant's grandmother had guardianship in the legal sense of the word and that it was being used in the general sense of the word. The solemn declaration amounts to little more than a witness statement and although it states that it could be used for "legal purposes" the document is not of the same legal nature as a court order formally assigning guardianship to the grandmother. For these reasons I am satisfied that the order made by the Algerian court confirming custody to the appellant's mother is a document that should be given greater weight than the solemn declaration made by the appellant's grandmother.
7. In *TD (Paragraph 297(i)(e): "sole responsibility") Yemen* [2006] UKAIT 00049 the Tribunal summarised its findings as follows:

"Sole responsibility" is a factual matter to be decided upon all the evidence. Where one parent is not involved in the child's upbringing because he (or she) had abandoned or abdicated responsibility, the issue may arise between the remaining parent and others who have day-to-day care of the child abroad. The test is whether the parent has continuing control and direction over the child's upbringing, including making all the important decisions in the child's life. However, where both parents are involved in a child's upbringing, it will be exceptional that one of them will have "sole responsibility"."
8. I heard evidence from the sponsor who said that she is the one who has always taken the major decisions relating to her daughter's life. Unfortunately the appellant's father has not been present since she was a baby. Although the appellant has lived in a joint family household with her grandparents throughout her life I am satisfied that it is her mother who has always taken the major decisions. She keeps in contact with her daughter on a regular basis by telephone and provides her with emotional and financial support. The sponsor also provides some financial support to her own parents. She is the person who takes responsibility for paying for the appellant's school fees and takes all the major decisions. Although the respondent asserts that there are some gaps in the documentary evidence I am satisfied that the sponsor is a credible witness. I am satisfied that I can accept her evidence in terms of the support that she provides to the appellant.
9. For the reasons given above I am satisfied on the balance of probabilities that the sponsor has sole responsibility for the appellant within the meaning given in paragraph 297(i)(e) of the immigration rules albeit that as a matter of practicality the appellant remained in the joint family household with her grandparents when her mother came to the UK in 2011.
10. Because I am satisfied that the appellant meets the requirements of paragraph 297(i)(e) I do not consider it necessary to go on to make any separate findings relating to paragraph 297(i)(f) or in relation to Article 8 outside the Rules.

11. I conclude that the appellant met the requirements of paragraph 297 of the immigration rules at the date of the decision and as such the appeal should be allowed.

DECISION

I re-make the decision and ALLOW the appeal

Signed 

Date 23 July 2015

Upper Tribunal Judge Canavan