Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/10115/2014**
OA/10116/2014

THE IMMIGRATION ACTS

Heard at Field House
On 9th October 2015

Decision Promulgated
On 19th October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

Mr OTEDOLA ADEDEJI ODUSANYA

First Appellant

Ms ADEJOKE ABIODUN ODUNSANYA

Second Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Olajuwon, of Bloomfield Solicitors
For the Respondent: Ms E Savage, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of these Appellants. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. These are appeals by the Appellants against the decision of First-tier Tribunal Judge Cockrill promulgated on 30 April 2015, which dismissed the Appellants appeals both under the Immigration Rules and on article 8 ECHR grounds.

Background

3. The first Appellant was born on 6 June 1996. The second appellant was born on 27 December 1998. The appellants are Nigerian nationals.

4. On 8 May 2014 the Appellants applied for entry clearance to join their father in the UK. The appellants' father is a British Citizen. He works as a nurse in London, and lives in Essex.

5. On 28 July 2014 the Secretary of State refused the Appellants' applications.

The Judge's Decision

6. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge Cockrill ("the Judge") dismissed the appeals against the Respondent's decision.

7. Grounds of appeal were lodged and on 29 July 2015 Judge Simpson gave permission to appeal stating inter alia

> "The issue was whether the sponsor has exercised "sole responsibility" for those children for a significant period, or whether there were compelling family reasons why their exclusion was undesirable. However, it is arguable that the judge has conflated consideration of 297(i)(e) and 297(i)(f), which address separate issues, and his reasoning as to those issues lacks focus. Moreover, the decision is entirely silent as to the leading case of TD (paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049."

The Hearing

8. (a) For the appellants. Mr Olajuwon adopted the terms of the skeleton argument. He reminded me that there are five grounds of appeal, and told me that he will be relying on the cases of TD Yemen [2006] UKAIT 00049 and QZ (China) [2002] UKIAT 07463. He argued that at [83] of the decision the Judge had erred in his approach to determining "*sole responsibility*". He argued that the Judge should have looked at the history of the case and accepted that with the death of the sponsor's brother in 2013, the sponsor became the parent with sole responsibility for the appellants. He told me that that should be the starting point, and from there the evidence could only be interpreted as indicating that the requirements of paragraph 297(i)(e) were satisfied.

(b) He argued that (in the alternative) proper consideration should be given to paragraph 297 (i)(f), and that the evidence in this case must lead to the conclusion that there are compelling considerations which make the exclusion of the appellants undesirable. He argued that the judge had conflated consideration of those paragraphs of the immigration rules, and that, together with the absence of reference to the cases of TD Yemen [2006] UKAIT 00049

and QZ (China) [2002] UKIAT 07463, indicates that the wrong test was applied. He urged me to allow the appeals & set aside the decisions.

9. In reply, Ms Savage, for the respondent, relied on the respondent's rule 24 response dated 29 September 2015. She argued that the decision does not contain any material errors of law. She argued that the judge had clearly taken account of each of the sub-paragraphs of paragraph 297 of the immigration rules and had neither conflated two sub-sections nor merged the boundaries between each of the disjunctive requirements of paragraph 297(i) of the rules. She conceded that there is no reference to case law but argued that the decision makes it clear that the test set out in the cases of TD Yemen [2006] UKAIT 00049 was the test that the judge applied. She referred me to the case of R (Iran), and urged me to dismiss the appeal and allow the decisions to stand.

Analysis

10. In TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 the Tribunal said that "*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*".

11. The judge sets out his reasons and his findings of fact in detail between [62] and [100] of the decision. At [67] the judge focuses on paragraph 297(i)(e) of the rules. Between [68] and [83] the judge carefully weighs the evidence against the test of sole responsibility.

12. It is true that the judge does not refer to the case of TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049, but a careful and impartial reading of the Judge's decision indicates that between [68] and [83] the judge manifestly follows the guidance given in the case of TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049.

13. At [87] the judge considers paragraph 297(i) (f) of the rules. He takes account of the findings of fact made between [62] and [86], before finding that the appellants cannot fulfil the requirements of the immigration rules because of the paucity of evidence produced. It is clear from an holistic reading of the decision that the Judge correctly considered the immigration rules and found that, because of an insufficiency of evidence, the appellants did not discharge the burden of proving that they fulfil the requirements of the immigration rules.

14. There is no merit in the appellant's argument that the Judge has conflated consideration of paragraphs 297 (i)(e) & paragraphs 297 (i)(f). He clearly considers each of those disjunctive subsections separately and comes to the

sustainable conclusion that neither of the appellants can fulfil the requirements of those subsections of paragraph 297 of the rules.

15. From [92] onwards the judge correctly considered the appellant's article 8 ECHR rights out-with the immigration rules. He correctly takes guidance from the case of Razgar [2004] UKHL 27, and succinctly addresses the question of proportionality. At [94] he makes clear and unambiguous finding that the respondent's decision is a proportionate interference with the right to respect for family life in these cases.

16. The decision made by the Judge is one that the appellants do not like; but in these cases the Judge has not misdirected himself in law and has quite clearly considered the facts and circumstances particular to the appellants' cases on the basis of the evidence lead before him.

17. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

18. It is not an arguable error of law for a Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for a Judge to fail to deal with every factual issue under argument. Disagreement with a Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. I find that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

19. I therefore find that no errors of law have been established and that the Judge's determination should stand.

DECISION

20. The appeals are dismissed.

Signed Date 19 October 2015

Deputy Upper Tribunal Judge Doyle