



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

Appeal Number: OA/00607/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Centre  
On 5 April 2016**

**Decision and  
Promulgated  
On 11 April 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY**

**Between**

**EMMANUEL JONATHAN JOHNSON  
(NO ANONYMITY DIRECTION)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER, KINGSTON**

Respondent

**Representation:**

For the Appellant: Mrs A Johnson (Appellant's mother and sponsor)  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant was born on 20 November 1999 and is a citizen of Jamaica. He applied to join his mother who is settled in the UK but his application for entry clearance was refused on 19 November 2014. His appeal against that decision was dismissed by First-tier Tribunal Judge Frankish on 14 July 2015. It is against that decision that he appeals with permission to the Upper Tribunal.
2. Judge Frankish found that the decision to refuse entry clearance was correct because the evidence was not sufficient to show that (i) it was more likely than not that the sponsor had sole responsibility for the

appellant, (ii) the appellant's exclusion from the UK was undesirable because of serious and compelling family or other considerations, (iii) the decision was contrary to the best interests of the appellant, or (iv) there was any reason to consider article 8 of the human rights convention separately as all relevant issues had been examined.

3. The appellant was legally represented before the First-tier Tribunal and the same solicitors completed the application for permission to appeal. The grounds allege that Judge Frankish had misapplied TD (Yemen) and Mundebe (DRC) because he had conflated the issues of responsibility for day to day care with sole responsibility and although he made findings on the former he made no clear findings on the latter. The alternative ground is that the judge suggested that the appellant could care for his grandmother which could not be in the child's best interest.
4. The sponsor attended the hearing and explained that she had been unable to continue paying for legal representation for the appellant. In such circumstances I explained the nature of the Upper Tribunal hearing and the factors I needed to consider. I was satisfied that sponsor understood these matters; it was evident that she had been advised about what to expect and she was able to take part effectively so as to be able to represent her own interests and those of her son.
5. Mr McVeety replied to the grounds of appeal and argued that it was evidence from the decision that Judge Frankish had had proper regard to the two cases. Not only had he quoted from them in paragraphs 13 and 14 but he had gone on to make relevant findings in paragraphs 16 to 20 applying their principles. In paragraph 16 the judge had found that he did not believe the evidence that the sponsor had been involved in the appellant's upbringing. He pointed to the fact that the sponsor's mother had been the effective mother of the appellant since he was young, the sponsor having had to abandon him for understandable reasons given her own personal history. The judge gave reasons for his findings, drawing on the age at which the child was left with his grandmother and the fact he was a teenager learning to take responsibility for himself. Mr McVeety submitted that these findings were sound and that they could only be read as meaning that the judge did not accept that the sponsor had sole responsibility.
6. Turning to the others issues, Mr McVeety argued that the judge had proper regard to the appellant's living circumstances in Jamaica. He did not accept that the appellant's grandmother was unable to continue caring for him. He argued that the author of the grounds of appeal had been misleading in suggesting that the judge had found that the appellant could care for his grandmother since what was actually said in paragraph 19 was that it was reasonable to expect the child to take some responsibility for his own care given his age and to help out. This is common in all cultures, that children are expected to look after themselves more and more as they grow up and to help around the home.
7. Mr McVeety disagreed with the grounds when they suggested that Judge Frankish had not had sufficient regard to the child's best interests. He

took me to paragraph 20 which indicated that the judge had regard to the child's interests beyond being reunited with his mother. The judge pointed out that to bring the child to the UK would be to uproot him from everything he knows.

8. The sponsor replied by reminding me that she had admitted to the Entry Clearance Officer and the First-tier Tribunal that she had been unable to care for her son when he was younger but that she was now in a position to look after him and she wanted a chance to parent him which was impossible to do when he was in Jamaica and she was living here. She said she had told the truth about her involvement in her son's upbringing. She accepted that she did not have day to day care of her son because of the distance but she refuted the notion that she had no involvement in his upbringing. For instance, she had been involved in decisions to change his school.
9. I reserved my decision and reasons which I now give.
10. My role is to decide whether or not the judge made an error in law. I do not have any power to reconsider the facts of the case and cannot take into consideration the sponsor's disagreement with the findings made.
11. I have considered the competing arguments and have considered the documents and law and have decided that there is no legal error in the decision and reasons statement.
12. I am satisfied the judge properly directed himself to the relevant legal issues. It is evident from paragraph 12 that he was aware of the relevant immigration rules and in the subsequent paragraphs he identifies the relevant case law that guides all judges on how to approach the requirements of the rules. In paragraph 15 he directed his mind to the issue of sole responsibility and in paragraphs 16 and 17 he found that the sponsor had abandoned the appellant when he was young albeit for good reasons.
13. My analysis of the judge's reasoning is as follows. He found the appellant had been abandoned. Where a child has been abandoned, the parental responsibility that might otherwise exist even at a distance must be regarded as having been broken. It was necessary, therefore, for the appellant to show that the sponsor had resumed responsibility at some point in his life thereafter and that responsibility was either when resumed or some time later solely held by the sponsor. It is on these issues that the judge found he had insufficient evidence. Responsibility for the appellant's upbringing had been transferred to the sponsor's mother and there was no evidence to show that it had ceased. The judge found that the grandmother had become the effective mother of the appellant. Although there was some evidence to show that the sponsor had some involvement in the child's upbringing it was insufficient to show that she had sole responsibility for him.
14. I cannot fault this reasoning. It is logical and the conclusions are drawn from the evidence that showed the grandmother had responsibility for the

appellant's upbringing and the lack of evidence that failed to show the sponsor had sole responsibility.

15. Turning to the alternative ground of appeal, I find that this is based on a misreading of the judge's findings. The judge did not find that the appellant could be expected to care for his grandmother but that it was reasonable to expect the appellant to take more responsibility for his own care as he grows up and to be more considerate to the needs of others. When I explained this at the hearing, the sponsor accepted that this was expected as children grow up in any culture because it is part of growing up. The judge said it was in the best interests of the child to remain where he was rather than being uprooted and that finding on the evidence was one he was entitled to make.
16. As the appellant is without legal representation I have considered on my own motion whether or not there might be a legal error elsewhere in the decision. It is clear from paragraph 20 that the judge took into consideration factors relevant to assessing the best interests of the appellant and analysed them appropriately. I am also satisfied that there were no additional factors to consider in relation to article 8 and therefore there was no need to make separate findings on that aspect.
17. As I find there is no legal error in the decision and reasons statement, I uphold Judge Frankish's decision.

## **Decision**

The appellant's appeal to the Upper Tribunal is dismissed.

There is no legal error in the decision and reasons statement of First-tier Tribunal Judge Frankish and I uphold his decision.

Signed

Date

Judge McCarthy  
Deputy Judge of the Upper Tribunal