



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: OA/07027/2014**

Appeal

THE IMMIGRATION ACTS

**Heard at Field House
On 16th February 2016**

**Decision & Reasons
Promulgated
On 2nd March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

UKVS SHEFFIELD

Appellant

And

JAF

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer
For the Respondent: Mr J Rene of Counsel

DECISION AND REASONS

Introduction and Background

1. The Appellant is the Entry Clearance Officer to whom I shall refer as the ECO, who appeals against the decision of Judge Munonyedi of the First-tier Tribunal (the FtT) promulgated on 13th July 2015.
2. The Respondent before the Upper Tribunal was the Appellant before the FtT and I will refer to him as the Claimant.
3. The Claimant is a male Nigerian citizen born 25th April 2008 and is therefore 7 years of age. The Claimant applied for entry clearance to join

his father, to whom I shall refer as the Sponsor, who is a British citizen settled in the United Kingdom.

4. The application was refused on 1st May 2014 with reference to paragraph 297(i)(e) and (f) of the Immigration Rules. The ECO did not accept that the Sponsor had sole responsibility for the Claimant, nor was it accepted that there were serious and compelling family or other considerations which made exclusion of the Claimant undesirable and suitable arrangements had been made for his care.
5. The appeal was heard on 19th June 2015. The FtT allowed the appeal finding that the Sponsor had sole responsibility for the Claimant, and there were serious and compelling family or other considerations making the Claimant's exclusion from the United Kingdom undesirable.
6. The ECO applied for permission to appeal to the Upper Tribunal and permission was granted by Upper Tribunal Judge Kekic in the following terms;

"The Respondent challenges the decision of First-tier Tribunal Judge Munoyedi (at Taylor House) allowing this appeal. The Appellant sought entry clearance to join his father whom he met for the first time in 2011 and once more thereafter. It was argued on his behalf that his mother had decided she no longer had the time nor inclination to care for him.

The grounds take issue with the conclusions of the judge and argue that there was no evidential basis for the positive sole responsibility findings and that core elements of the claim were wholly unsupported by documentary evidence on both limbs of the appeal.

Essentially the judge's decision appears to have been swayed by the Sponsor's oral evidence. It is arguable that this is not enough."

7. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

Oral Submissions

8. Mr Nath relied upon the grounds contained within the application for permission to appeal. It was submitted that there was a lack of documentary evidence. There was no adequate explanation as to why the Claimant's mother would be unable to look after him.
9. While it was claimed that the Claimant's mother had abdicated her parental responsibilities as confirmed in her letter, there was no independent evidence to confirm that the written information was from the Claimant's mother.
10. It was submitted that the Sponsor had only financially supported the Claimant, and there was no other evidence to show that he had sole responsibility in relation to education or medical care.
11. It was contended that there were no serious and compelling family or other considerations which made the Claimant's exclusion from the United

Kingdom undesirable. There were already safe and suitable arrangements in place for the Claimant's care in Nigeria. The Claimant and Sponsor could maintain their relationship and keep in regular contact by modern means of communication.

12. Mr Rene relied upon his rule 24 response. In summary he submitted that the decision of the FtT was well reasoned and the findings made were supported by adequate reasons. It was contended that the ECO was seeking to raise a new issue in the grounds, questioning the authenticity of the letter written by the Claimant's mother. This point had not been made before the FtT. Mr Rene submitted that the decision of the FtT should stand as no material error of law was disclosed.

My Conclusions and Reasons

13. The FtT did not materially err in law for the following reasons.
14. The FtT applied the correct burden and standard of proof, and assessed the circumstances appertaining at the date of the decision to refuse, as indicated in paragraph 4 of the decision.
15. The FtT considered the relevant case law that being TD Yemen [2006] UKAIT 00049, and noted the principle in that decision, in that sole responsibility is a factual matter to be decided upon all the evidence. The FtT appreciated that the issue to be decided is to ascertain who in fact is exercising responsibility for the child.
16. The FtT found the Sponsor to be a credible witness and noted evidence to indicate that he had been financially supporting the Claimant. The FtT concluded, having taken into account the Sponsor's evidence, and a letter from the Claimant's biological mother, that the mother had abandoned her responsibility towards the Claimant, and the Claimant had been looked after by the Sponsor's grandmother in Nigeria.
17. The FtT noted that the Sponsor had paid the Claimant's school fees, and that there was evidence from the school of the Sponsor's involvement when he visited Nigeria.
18. In my view the FtT was entitled to reach those conclusions, based upon the evidence before it, and gave adequate reasons for the findings made.
19. The FtT was also entitled, based upon the evidence before it, to conclude that the illness of the Sponsor's grandmother, of which there was medical evidence, indicated that she was no longer able to adequately look after the Claimant, and that the Claimant's mother wished to undertake no responsibility for him. In those circumstances the FtT was entitled to conclude that serious and compelling family and other considerations existed, which made the exclusion of the Claimant from the United Kingdom undesirable.
20. The FtT considered all material evidence, and did not take into account any immaterial considerations. The FtT made findings which were open to

it on the evidence, and gave adequate reasons for those findings. The grounds contained within the application for permission to appeal, disclose a disagreement with the conclusions of the FtT, but do not disclose a material error of law.

21. In considering the adequacy of reasoning, I have taken into account the principles in Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC) the head note of which I set out below;

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

22. In my view the FtT has discharged the duty set out above and provided adequate reasons. It is apparent why the FtT reached the conclusions in favour of the Claimant.

Notice of Decision

The making of the decision of the FtT did not involve the making of an error on a point of law such that the decision must be set aside. I do not set aside the decision and the appeal of the ECO is dismissed.

Anonymity

No anonymity direction was made by the FtT but I make an anonymity order pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings. This order is made because the Claimant is a minor.

Signed

Date 18th February 2016

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

Because the decision of the FtT stands so does the decision to make a fee award.

Signed

Date 18th February 2016

Deputy Upper Tribunal Judge M A Hall

