



IAC-AH-SC-V1

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

Appeal Number: HU/10487/2015

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Birmingham
On 20th July 2018**

**Decision & Reasons Promulgated
On 15 August 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**AMANDA [G]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellant: Ms L Mair of Counsel instructed by IAS (UK) Limited
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge S D Lloyd (the Judge) of the First-tier Tribunal (the FTT) promulgated on 8th March 2017 following a hearing on 12th January 2017.

2. The Appellant is a female South African citizen born 28th March 1999 who applied in July 2015, for entry clearance to join her mother [PG] (the Sponsor) in the UK.
3. The Sponsor left South Africa in 2002 and claimed asylum in the UK. This was granted in October 2003, and in March 2009 the Sponsor became a naturalised British citizen.
4. The application for entry clearance was refused on 22nd September 2015 with reference to paragraph 297 of the Immigration Rules. The Respondent did not accept that the Sponsor had had sole responsibility for the Appellant's upbringing. In addition, it was not accepted that there were any serious and compelling family or other considerations which would make exclusion of the Appellant undesirable, and it was not accepted that the Sponsor could adequately accommodate the Appellant.
5. The judge heard evidence from the Sponsor. No findings were made in relation to accommodation, but the judge found that the Sponsor had not proved sole responsibility, and made a finding that responsibility had been shared between the Sponsor and the Sponsor's parents, with whom the Appellant had been living since 2002. The judge found that there were no compelling or compassionate circumstances which would make exclusion of the Appellant undesirable.
6. The judge took into account his conclusion that paragraph 297 could not be satisfied, when considering his assessment with reference to Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention). The judge placed weight upon the failure to satisfy the Immigration Rules, and concluded that the maintenance of effective immigration control weighed against the Appellant, and the Respondent's decision to refuse entry clearance was proportionate and did not breach Article 8 of the 1950 Convention.
7. The Appellant applied for permission to appeal to the Upper Tribunal relying upon two grounds. In brief summary it was contended that the judge had failed to provide adequate reasoning for findings that had been made, and had made inconsistent findings, and had made assumptions not supported by evidence.
8. The second ground contended that the judge had made a procedural error and had acted unfairly. It was contended that the judge had made a finding that the Sponsor had been vague and unpersuasive in describing how she had come into possession of an affidavit from the Appellant's father, and it was submitted that she had not been given an opportunity to respond to an allegation that she was lying.
9. Permission to appeal was granted by Judge E M Simpson of the FTT on 31st October 2017 who founds the grounds arguable, and noted of her own volition that the Appellant had been a minor when she applied for entry clearance and was still a minor at the time of the appeal hearing "and thereby section 55 best interests of the child considerations arguably underlined the need for scrutiny of the permission application and the decision".

The Upper Tribunal Hearing

10. Ms Mair formally asked for permission to argue that the judge had not considered the best interests of the child, pointing out that this had been referred to by the judge granting permission. Mrs Aboni had no objection and therefore permission was granted.
11. I then heard oral submissions from Ms Mair which were lengthy and comprehensive and which I have recorded in my Record of Proceedings. I do not intend to reiterate the submissions in full but will very briefly summarise the points made.
12. It was accepted that the judge had referred to the correct test when considering sole responsibility, as set out in TD (Yemen) [2006] UKAIT 00049. However, it was argued that the judge had not considered the relevant matters when considering sole responsibility, and had not provided adequate reasons for conclusions made. The judge had made reference to a letter from the Appellant's school at paragraph 25, and it was submitted that this was not relevant to the issue of sole responsibility and should not be held against the Appellant.
13. It was submitted that there were three witness statements before the judge, and he had not specifically rejected the evidence contained therein, which indicated that the Sponsor had taken the major decisions in the Appellant's life and had had sole responsibility for her.
14. With reference to the second ground it was submitted that the judge had been unfair in failing to put to the Sponsor that her evidence in relation to the obtaining of the affidavit was not accepted.
15. Ms Mair put the best interests point as Ground 3. It was submitted that the judge should have made an assessment of the Appellant's best interests, separate and distinct from his consideration of whether there were compelling and compassionate circumstances which was a different test. It was submitted that a best interests consideration could have made a difference to the Article 8 assessment of proportionality.
16. It was submitted that the decision should be set aside, and remitted to the FTT to be heard again.
17. Mrs Aboni confirmed that there had been no rule 24 response on behalf of the Respondent but submitted that the judge had not erred in law and had directed himself appropriately.
18. Mrs Aboni submitted that the judge had made findings open to him on the evidence and given adequate reasons. It was submitted that the judge was entitled to find the Sponsor's evidence vague on certain issues. It was submitted that there had been no procedural unfairness and at paragraph 18 the judge was entitled to find the evidence given by the Sponsor, as to the obtaining of the affidavit from the Appellant's father, vague and unpersuasive.

19. I was asked to find no material error of law in the FTT decision, which Mrs Aboni submitted should stand.

My Conclusions and Reasons

20. I set out below the headnote to Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) which provides guidance on adequacy of reasoning;

“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.”

21. The judge considered the issue of sole responsibility, and as conceded on behalf of the Appellant, referred to the correct test as set out in TD (Yemen). This is summarised at paragraph 24 of the FTT decision.
22. In my view, the judge has demonstrated that he considered all the evidence placed before him. He found that the Sponsor had provided some financial support to the Appellant and her family in South Africa and that there was evidence of contact, although he described at paragraph 25, “those issues are not decisive.” The judge went on in that paragraph to refer to the assertions made by the Sponsor that she had maintained responsibility, but comments “there are very few examples of this.”
23. In the same paragraph the judge considers the Sponsor’s claim that she chose the Appellant’s school and then considers a letter from the school at page 32 of the Appellant’s bundle. The judge is heavily criticised in the Grounds of Appeal for his consideration of this letter. In my view the criticism is not justified. The judge makes a relevant point in relation to that letter, in that it:

“is silent on any interaction between the Sponsor and the school. It does not confirm that there is any contact with the school at all or that the Sponsor has been involved in decision making regarding the Appellant’s education. Therefore, in deciding the issue of sole responsibility that letter is of no assistance. Indeed, it could even be said that it goes against the Appellant due to the matters that it is silent on.”

24. The judge was entitled to take into account evidence from the Appellant’s school or lack of evidence. The Appellant must prove her case. If it is said that the school has been chosen by the Sponsor, it might be thought appropriate to provide a letter from the school confirming that, and confirming what contact the Sponsor has with the school in relation to the Appellant’s education. The fact that there was no such evidence, was a point upon which the judge was entitled to comment.
25. At paragraph 26 the judge notes that the Appellant has been resident with her material grandparents between 2002 and 2017 and that they had day-to-day responsibility for her. That point was not in issue, and the judge recognises that it is not determinative. The judge has already set out, earlier in the decision, at paragraph 24 the correct legal

test, that being whether the parent has continuing control and direction over important decisions in the child's life.

26. The judge finds in paragraph 26 that because of the length of time that the Appellant had been in the care of her grandparents, and, for example, the lack of any evidence from the school to confirm the Sponsor's involvement, that responsibility for the child's upbringing was shared between the grandparents and the Sponsor. That in my view was a finding open to the judge to make on the evidence before him. I find no material error of law on this point.
27. I find no material error of law in the consideration by the judge of whether there are compelling and compassionate circumstances. This is considered in paragraph 27. The judge notes the Appellant is in good health, there are no indications of any welfare or educational problems, and the Appellant, in her addition to her grandparents has other relatives in South Africa involved in her life. She is described by the school as a dedicated learner and her conduct is very good. The judge makes no error in deciding that there are no compelling and compassionate circumstances that would make exclusion of the Appellant from the UK undesirable.
28. I find no merit whatsoever in the contention that the judge acted unfairly in considering the Sponsor's explanation as to how she obtained an affidavit from the father of the Appellant, who the judge accepted had no role in the Appellant's upbringing. The judge set out at paragraph 18 the Sponsor's evidence on that point, and committed no material error of law in deciding that her evidence in explanation was "vague and unpersuasive." In my view that finding in any event has no material bearing on the ultimate conclusion in the appeal.
29. The judge does not specifically refer to the best interests of the Appellant, but I find no material error of law on this point. In my view, reading the decision as a whole, the judge was satisfied that the best interests of the Appellant would be to maintain the status quo and to remain living in the home, with her grandparents, where she had lived since 2002. The judge gave adequate reasons for concluding that he was not satisfied that the health of the grandparents had deteriorated to such an extent that the Appellant would no longer be able to reside with them.

Notice of Decision

The decision of the FTT does not disclose a material error of law. I do not set aside the decision. The appeal is dismissed.

There has been no request for anonymity and I see no need to make an anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

29th July 2018

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

29th July 2018