



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/22234/2016

THE IMMIGRATION ACTS

Heard at Field House
On 6th July 2018

Decision & Reasons Promulgated
On 29th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR. ANAS NAJEM
(NO ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr. C Mapara, Counsel by Reiss Edwards, Solicitors.

For the respondent: Ms A Fijiwala, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The appellant is a national of Morocco born on 1 November 1998. He applied for entry clearance to join his mother, Mrs Sanaa Barakat and his stepfather. His mother was divorced from the appellant's natural father and had remarried Mr Said Ismail-Jordan, a British citizen originally was from Jordan.

He is acting as the appellant's sponsor. She remarried on 29 May 2013 and came to the United Kingdom in February 2014.

2. His application was refused on the basis he had not demonstrated his mother had sole responsibility for his upbringing. He claimed not to have had contact with his father Mr Reda Najeem since he was 3 years old. However in a previous visit Visa application made on 10 July 2015 his father was named as his guardian and provided contact details. No serious or compelling circumstances were identified. The application had indicated that his mother had an income of £26,400 but all the documents specified in appendix FM SE not been provided. Regard was had to the appellant's article 8 rights, with the respondent concluding the refusal was proportionate to immigration control.
3. His appeal was heard on 29 August 2017 before First-tier Tribunal Judge PS Aujla and was dismissed. The appellant's appeal was restricted to article 8 arguments. There was no presenting officer in attendance and the appellant was unrepresented. His sponsor appeared and his mother was absent. It was said the appellant was being cared for by his grandmother but she was no longer able to look after him because of ill-health. There was no witness statement from her or the appellant's father or the sponsor or the appellant.
4. The judge referred to the decision of TD (paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049. The judge commented on the absence of evidence that the appellant's mother returning to Morocco and involving herself in the appellant's upbringing or of contact between them while she was in the United Kingdom. The appellant had visited from 18 August 2015 until 10 September 2015. In that application it was stated his biological father was his guardian.
5. The judge referred to the limited evidence provided and did not find it established that his mother had sole responsibility for his upbringing. The judge acknowledged she may have had some responsibility before she left Morocco in February 2014 but not since. The judge referred to the previous visit Visa application naming his biological father as his guardian. The judge concluded that taking matters at their highest it was the situation of shared responsibility between the appellant parents up until his mother came to the United Kingdom.
6. Regarding the financial requirements, documentation was produced but the judge found this did not identify the necessary income or savings and did not amount to the necessary proofs.
7. The judge concluded the appellant was living with his grandmother and his biological father he had not abandoned him as claimed. The judge saw no serious or compelling family or other circumstances which made the appellant's exclusion undesirable. Regard was had to section 55, with the judge pointing out the appellant had always lived in Morocco with his

grandmother and father after his mother left the country. The judge concluded it was in his best interests to continue so residing.

The Upper Tribunal

8. Permission to appeal was granted on the basis it was arguable that the judge applied the wrong point in time when considering the relevant facts. At paragraph 20 of the decision the judge stated they were considering the facts as at the date of decision, namely 17 August 2016, rather than the date of hearing.
9. Mr.C Mapara states that the financial documents were misplaced by the entry clearance officer. By the appeal stage the matter was listed in the float list and the sponsor and the appellant's mother attended. There were then advised due to lack of court time the case would not be heard. He then contends that the sponsor appeared before First-tier Tribunal Judge PS Aujla with the financial documents but the judge would not consider these because they were loose-leaf. He argues therefore there was procedural unfairness.
10. He also states that the application was made on 27 May 2015 not 27 May 2016 as stated. He said the decision was deferred because of a pending test case on the validity of the financial requirements in appendix FM. This meant that the decision was not issued until 17 August 2016. It was submitted that the appellant's mother had travelled to Morocco on numerous occasions between the date of decision and hearing, as evidenced by her passport. By incorrectly looking at matters only as at the date of decision, the judge excluded this important consideration. He stated that the reason the appellant's mother was not at the appeal was because she was in Morocco at the time as the appellant was taking examinations and she was helping him prepare. He states the judge was advised of this.
11. He referred me to the various stamps upon his mother's passport indicating since 2013 she has been a regular visitor to Morocco, staying several months at a time. He said that her frequent visits explained the limited evidence of money transfers as she was able to give money in person.
12. The appellant's bundle contains the earlier visa application where his father is named. His representative accepted that the appellant came to the United Kingdom in August 2015 to visit his mother. His natural father is named on the form as it is telephone number. However the representative submits that he was simply named as being his parent and that he did not have any responsibility towards him or in relation to the visit.
13. I was referred to financial documents in the bundle which showed earnings of just over £12,000 plus pension details which together exceeded the applicable amount.

14. Ms A Fijiwala relied upon the rule 24 response. She said there was no presenting officer in attendance at the First-tier Tribunal so there is no record of occurrences. However, the judge has not been approached to comment upon the claim that he refused to look at documents at the date of hearing. There is nothing in the decision to record that the judge was provided with further documents. In fact, the decision refers to the earlier documents with the application and no further documents being provided.
15. She submitted that the findings in respect of sole responsibility were well reasoned. The judge had referred to contact between the appellant and his mother when he was in the United Kingdom for his visit in August to September 2015 but no other evidence. It was accepted that his mother had visited Morocco but in terms of sole responsibility the judge accepted the refusal letter. I was referred to the earlier Visa application where his father was named as his guardian: which the judge accepted was the case. The judge found that the appellant was cared for by his father and grandmother with input from his mother. However this did not mean she had sole responsibility. The judge referred to the decision of TD (paragraph 297(i)(e):" sole responsibility") Yemen [2006] UKAIT 00049 and the relevant considerations.
16. In relation to maintenance the issue was not so much that the financial limits were not met but that they were not properly evidenced. At paragraph 32 the judge referred to the sponsor submitting numerous loose-leaf documents with the notice of appeal but they did not clearly identify the income or savings. The documents were not in order and did not explain how the requirements of appendix FM SE were met.
17. Consequently, the judge was entitled to conclude that the requirements of the rules were not met at the date of decision.
18. Regarding article 8, by the date of hearing the appellant was an adult so the question of sole responsibility was no longer an issue. Given the findings in relation to sole responsibility and the fact his father and grandmother were still involved there were no compelling or exceptional reasons to make the refusal unjustifiably harsh. The judge had regard to section 55.
19. Ms A Fijiwala pointed out that whilst the appellant's representative had set out the dates when his mother was in Morocco the date referred to did not include the date of the hearing. Consequently she submitted that the judge was correct in stating no explanation had been given for her non-attendance.

Consideration

20. Mr. Mapara has largely sought to reargue the appeal as if at 1st instance. He contended that the judge refused to look at documents produced and was given an explanation as to why the appellant's mother was not present whereas in fact he was told she was in Algeria. The judge has not been

approached to respond to these criticisms. He explained that his instructing solicitors were instructed at a late stage.

21. Although Mr. Mapara said the application was made on 27 May 2015 and was then put on hold by the respondent the presenting officer was able to provide me with a copy of the application which clearly shows it was made on 27 May 2016.
22. He contended initially that the appellant and his mother were unaware of any earlier Visa application where his father was named as his guardian. When the document identifying him was produced he suggested that his name had been inserted simply because he was the appellant's father.
23. He sought to re-argue the financial details. However the issue arising was not so much the sponsor's income but the proofs as required under appendix FM SE. In any event, this was not part of the basis upon which leave was granted.
24. Leave was granted because the judge incorrectly stated human rights had to be considered as at the date of the decision rather than the hearing. The presenting officer has pointed out that whilst this was an error which she submitted made no material difference. This was because at that stage the appellant was an adult.
25. The judge had correctly dealt with the issue of sole responsibility and had regard to the relevant case law. The judge concluded that the appellant was with his grandmother and there was input from his father. In the circumstances, proper consideration of the article 8 rights was in reality unaffected and I saw nothing which could have occurred in the interval that could lead to a different outcome.
26. Whilst the appellant was unrepresented at the original hearing this does not mean he should be placed in a more advantageous position than someone who is in terms of proofs and preparation. It was his and his sponsor's responsibility to pursue his appeal and to have made the arguments which Mr. Mapara has sought to make before me.

Decision.

No material error of law has been established in the decision of First-tier Tribunal Judge PS Aujla. Consequently, that decision dismissing the appellant's appeal shall stand.

Francis J Farrelly

Deputy Upper Tribunal Judge.

Date: 20th August 2018