



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/04126/2017

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 25 September 2018

Decision & Reasons Promulgated  
On 10 January 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

JOHAN MANUEL ESPINO CUEVAS  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

Respondent

**Representation:**

For the Appellant: Ms Mottershaw, instructed by Dicksons Solicitors

For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Johan Manuel Espino Cuevas was born on 26 January 1999 and is a male citizen of the Dominican Republic. By a decision dated 9 February 2017, the Entry Clearance Officer (ECO) refused the appellant's application to settle with his father (Alexandro Espino - hereafter the sponsor) in the United Kingdom. The appellant appealed to the First-tier Tribunal (Judge James) which, in a decision promulgated on 5 April 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Granting permission, Judge O'Callaghan wrote:

"In circumstances where the Tribunal has previously found that the father enjoyed sole responsibility for the appellant, though several years before, it is arguably be an error of law for the judge to have not considered who held responsibility for him at the time of the application and decision. That no one else had assumed responsibility may be an indicator that the sponsor continues to enjoy sole responsibility."

3. Judge James summarised the respondent's position as follows:

"The respondent relies on the [refusal decision]. The respondent asked me to note that there is evidence of the appellant having contact with his mother since he returned from the UK in 2010. The respondent submits there are issues relating to the appellant's educational needs. The sponsor does not appear to have any great knowledge of the appellant's situation. Further there are no documents to support the contention that the appellant has been a truant from school. The sponsor has no knowledge of the appellant's educational achievements which would be expected if they spoke each day as has been asserted by the sponsor."

4. The judge noted that at a previous Tribunal (in 2010, Judge Gurung-Thapa) had accepted the sponsor had sole responsibility for the appellant. However, at that time the appellant was only aged 11 years. The date of the application which is the subject of the appeal the appellant was aged 17 years and 2 months. The judge considered that he was not bound by the previous judge's finding given the lapse of time. I agree. The latest Tribunal was required to consider the circumstances of the appellant as at the date of the application under appeal.

5. The judge further noted [15] that the appellant's mother was alive but it had been accepted by Judge Gurung-Thapa that she had relinquished all responsibility for him. The judge accepted that "this remains unchanged." The judge found that the appellant had not had contact with his mother for a number of years.

6. At [16], the judge examined what evidence had been provided "to show the sponsor has sole responsibility for the appellant." The judge recorded that day-to-day care for the appellant in the Dominican Republic is provided by the appellant's aunt. The judge noted that "the sponsor asserts that he is able to make decisions for his son without providing any details of actual decisions made." The judge commented that the sponsor had produced a "small number of call logs which show frequent contact."

7. At [17], the judge found that the sponsor had

"... no knowledge of whether the appellant has obtained any educational qualifications beyond knowing that he had passed the exam to enter a secondary school. He was aware that the appellant had been truant from school because he had visited the school but he does not know how long it has been going on. There has been no challenge to the sponsor's claim that he has been financially supporting the appellant."

At [18], the judge wrote:

“The sponsor has not provided me with any examples of decisions he has made for the appellant in relation to his education, upbringing, religion and other important aspects of the appellant’s life. Indeed the sponsor appears to be remarkably unaware of the appellant’s education (or lack of it) and accomplishments.”

8. At [20], the judge concluded:

“Looking at the evidence in the round and bearing in mind that it is for the appellant to demonstrate that the sponsor has sole responsibility for him, I am not satisfied the appellant has met the burden of proof. I accept the appellant’s mother has no responsibility for him and that the sponsor supports him financially but that is not sufficient. A lack of any significant evidence that the sponsor has been making important decisions regarding the appellant’s upbringing cannot be overlooked.”

9. Ms Mottershaw, who appeared for the appellant, submitted that there was evidence of significant decisions taken by the father. These included the decision that the appellant should come to live in the United Kingdom, attend private school and where he was to live in the Dominican Republic. I note that the judge has used the expression “lack of any significant evidence” as opposed to “no evidence”. The significance of the various items of evidence was a matter for the judge. The judge was, of course, well aware that an application had been made for the appellant to come and live in the United Kingdom and that the appellant attended private school. However, it is equally clear that the judge was not impressed by the sponsor’s inability to give any substantive detail regarding the decisions made in respect of the appellant by the sponsor. He was particularly unimpressed by the sponsor’s inability to say anything about the appellant’s education and accomplishments. Findings made by the judge at [20] were, in my opinion, available to him on the evidence. Those findings cannot properly be described as perverse or irrational.
10. Ms Aboni, who appeared for the Secretary of State, submitted that the judge had not been required to find that, simply because the appellant’s mother was not involved in his upbringing, then, by default, sole responsibility must vest in the father. She rejected the argument on which Judge O’Callaghan appears to have granted permission. I find that she was right to do so. The burden of proof in the appeal rested on the appellant and the judge correctly found that that burden was not discharged in respect of a 17 year old child simply by proving that, because the appellant’s mother had no responsibility for him, then sole responsibility vested in the father. The appellant lives with his aunt in the Dominican Republic and he is himself of an age when, notwithstanding his minority, he may be de facto self-reliant. I find that it does not follow that the sponsor must have sole responsibility simply because no one else has been shown to possess it.
11. I find also that the judge was justified at [21] to conclude that there were no serious or compelling considerations which made the appellant’s exclusion from the United

Kingdom undesirable. It was open to the judge to find that there was no significant evidence to support such a contention.

12. This is a somewhat unusual case in which a previous finding of sole responsibility has been followed by the return of the appellant from the United Kingdom to live in his country of nationality. I accept that the circumstances at the date of the application, which is the subject of this appeal, are relevant and that the appellant's return from the United Kingdom to the Dominican Republic and out of the sponsor's day-to-day control here has rendered the previous findings of the Tribunal of very little relevance. I agree also with the judge that it was for the appellant to prove his case that his father had sole responsibility for him and I can find no error in the judge's approach to the evidence or his analysis of it. His findings are fully supported by cogent reasoning. In the circumstances, the appeal is dismissed.

**Notice of Decision**

13. This appeal is dismissed.
14. No anonymity direction is made.

Signed

Date 20 October 2018

Upper Tribunal Judge Lane

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 20 October 2018

Upper Tribunal Judge Lane