



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

Appeal Number: HU/06601/2017

THE IMMIGRATION ACTS

Heard at Birmingham CJC

**Decision & Reasons
Promulgated**

On 25 October 2019

On 22 November 2019

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**MMATLALA [P]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: The sponsor (the appellant's mother - [MJP])

For the Respondent: Ms H Aboni, Senior Presenting Officer

DECISION AND REASONS

Decision given orally on 25 October 2019

1. The appellant is national of South Africa, born on 10 July 1999. She is, therefore, now aged 20. Shortly prior to her 18th birthday the appellant applied for entry clearance to the United Kingdom as the child of a person present and settled in the UK (the sponsor), pursuant to paragraph 297 of the Immigration Rules. This application was refused by an Entry Clearance Officer on 2 May 2017, a decision which the appellant subsequently appealed to the First-tier Tribunal.
2. The matter came before the First-tier Tribunal on 5 June 2018 and was dismissed in a decision authored by First-tier Tribunal Judge Garbett on 19 June 2018. At that hearing the appellant was represented by counsel and the sponsor provided oral evidence to the Tribunal.

3. Although the appellant was only entitled to appeal on human rights grounds, a central issue before the First-tier Tribunal was whether the requirements of paragraph 297 of the Immigration Rules had been satisfied. Paragraph 297(e) provides that one requirement of the rule is that *“one parent is present and settled in the United Kingdom ... and has had sole responsibility for the child’s upbringing”*.
4. There is no dispute that the appellant is seeking to join her mother and that the appellant’s mother is present and settled in the UK. The core issue in dispute before the First-tier Tribunal was whether the appellant’s mother has had sole responsibility for the appellant’s upbringing.
5. The term “sole responsibility” in the instant context was considered in TD (Paragraph 297(i)(e): “sole responsibility”) Yemen [2006] UKAIT 00049, a decision the First-tier Tribunal took cognisance of. The headnote to TD reads:

“‘Sole responsibility’ is a factual matter to be decided upon all the evidence. Where one parent is not involved in the child’s upbringing because he (or she) had abandoned or abdicated responsibility, the issue may arise between the remaining parent and others who have day-to-day care of the child abroad. The test is whether the parent has continuing control and direction over the child’s upbringing, including making all the important decisions in the child’s life. However, where both parents are involved in a child’s upbringing, it will be exceptional that one of them will have ‘sole responsibility’.”

6. The First-tier Tribunal records the appellant’s case on this issue as follows:

“[24] Ms Phahlamohlaka’s evidence is that she has had daily contact with her daughter by telephone since her departure from South Africa in 2001; that she has always made the important decisions in her daughter’s life, for example schooling and has financially supported her daughter either by money transfers or by cash when visiting. She stated she has visited South Africa 24 times since departure and during those visits has spent time taking her daughter on holiday, on day trips and discussing current issues. On occasion she has also taken her sons with her.”
7. The ECO accepted that the sponsor had visited the appellant in South Africa 24 times since 2002, which were for periods of between 10 days and 138 days. The First-tier Tribunal did not go behind this concession. It, nevertheless, concluded that it had not been demonstrated to the relevant standard that the sponsor had sole responsibility for the appellant’s upbringing. In doing so, the First-tier Tribunal found the sponsor’s evidence to be vague and confused [26], with specific examples being detailed therein. It was further observed [26] that there was an absence of evidence that the sponsor had made important decisions in the appellant’s life. As to the documents produced by the appellant, the First-tier Tribunal found the money remittance receipts to be of little value, given the limited nature of the documentation that had been provided [27] and, in any event, it was found that little weight could be attached to such documents when considering the issue of sole responsibility. The First-tier

Tribunal further observed the absence of evidence (i) supporting the contention that there had been daily phone calls between the appellant and sponsor (having checked the file I can find no such evidence other than the sponsor's own assertions in this regard); (ii) of school invoices being addressed to and paid by the sponsor; or, (iii) of school reports addressed to the sponsor.

8. At [28] the First-tier Tribunal further observed that although the appellant had provided evidence by way of a written statement, this did not contain detail regarding the issue of responsibility for her upbringing.
9. At [29] to [31] the First-tier Tribunal considered affidavits from the appellant's aunt and appellant's father (found at pages 92 and 93 of the bundle), identifying the confusing and contradictory nature of the evidence.
10. The First-tier Tribunal ultimately concluded as follows at [32]:

"Having considered all of the evidence in the round, I am not satisfied that the sponsor has had sole responsibility for the appellant's upbringing. The appellant has lived without the sponsor in South Africa since 2001. Although I accept they have kept in touch through telephone calls and visits and some financial support has been given I do not accept that the sponsor has had continuing control and direction over the appellant's upbringing including making all the important decisions in her life. Indeed the only decision cited by the sponsor related to her choosing schools. I also find the appellant's father has until recently had some involvement in the appellant's life and it follows that the sponsor cannot be said to face sole responsibility during the period."

11. What one can deduce from paragraph 32 is that the First-tier Tribunal, despite having reservations, accepted evidence of the visits, accepted evidence of the payment of some sums of money by the sponsor and accepted evidence of contact but, nevertheless, concluded that on the available evidence it had not been demonstrated to the balance of probabilities that the sponsor had sole responsibility for the appellant's upbringing.
12. I am required to determine whether the First-tier Tribunal erred in law in its decision, not to determine whether I agree or disagree with the conclusion reached. I find that the First-tier Tribunal properly directed itself in law and applied such self-direction. It took account of all relevant evidence and did not take account of anything irrelevant. It cannot be said that the First-tier Tribunal unlawfully discounted any of the evidence before it, indeed on occasion the Tribunal drew inferences, even in the absence of supporting documentation, in favour of the appellant.
13. The difficulty for the appellant, as highlighted by the First-tier Tribunal, is that there was a lack of evidence supporting the core requirement of sole responsibility i.e. that the appellant's mother had continuing control and direction over the child's upbringing including making all important

decisions in the child's life. The reasoning provided by the First-tier Tribunal at [26] onwards amply supports the conclusion reached and, consequently, in my conclusion the finding at [32] is a finding that was open to the First-tier Tribunal on the available evidence. That being so, in my conclusion the First-tier Tribunal did not err in law in reaching the conclusions that the requirements of the Immigration Rules had not been met, which feeds in to the ultimate, and lawful, conclusion that the ECO's decision does not lead to a breach of Article 8 ECHR - the reasoning for which is found in [33] to [36] of its decision.

14. For these reasons the appeal before the Upper Tribunal must be dismissed.

Decision

The appeal is dismissed

Signed

Mark O'Connor

Upper Tribunal Judge O'Connor

21 November 2019