Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/11550/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 July 2019	**On 03 September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

RASEL AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Z Ashaz, Solicitor, Blackrock Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is a national of Bangladesh born on 10 July 2000. On 24 January 2018 he applied for entry clearance as a child to join his father, who is a British citizen, in the UK. His application was refused on the basis that it had not been demonstrated that his father has had sole responsibility for him within the meaning of paragraph 297(i)(e) of the Immigration Rules ("the Rules") and that there were not serious or compelling circumstances under paragraph 297(i)(f) thereof. The appellant

appealed to the First-tier Tribunal where his appeal was heard by Judge Wilding ("the judge"). In a decision promulgated on 30 April 2019 the judge dismissed the appeal. The appellant is now appealing against that decision.

Decision of the First-tier Tribunal

2. At paragraphs [6] to [12] of the decision the judge summarised the evidence given by the appellant's father. Amongst other things, the appellant's father claimed that his mother (the appellant's grandmother) was currently looking after his son but she was "very old" and it was difficult for her to continue to look after him. The appellant's father further stated that he financially supported the appellant and remitted monies to Bangladesh and ensured through his mother that the funds were spent appropriately.

3. The judge accepted the relationship between the appellant and his father was as claimed, and that, the appellant would be adequately maintained in the UK. However, at [19] the judge gave several reasons for concluding that the appellant had failed to establish sole responsibility. While the judge acknowledged that there was evidence of financial remittances to the appellant by his father, the judge noted that the appellant's father was unable to demonstrate any knowledge of how the remitted monies was being spent, what the monies was spent on and what direction he was giving to his son and his mother. Fundamental to the judge's decision was his conclusion that there was no evidence of regular contact, or of the important decisions the appellant's father had made or evidence of involvement with his school or doctor or anyone else in Bangladesh.

4. Accordingly, the judge found at [21] that responsibility for the appellant was shared between his father and grandmother.

5. The judge also observed that no evidence was forthcoming of any compelling reasons as to why the appellant's exclusion was undesirable at [22]. In light of these conclusions the judge found that the refusal of entry clearance was proportionate.

Grounds of Appeal and Submissions

6. The grounds of appeal are discursive. It is difficult to identify from this pleading the specific nature of the alleged error(s), but I shall nevertheless attempt to summarise them as follows. First, it is argued that there was sufficient evidence of sole responsibility before the judge and of the grandmother's inability to carry out the father's instructions. This it is said was set out in the affidavits of the grandmother. Second, it is argued that in view of the grandmother's inability to look after the appellant that there were serious and compelling family and other considerations making the appellant's exclusion undesirable. It is argued that it was in the best interests of the appellant, whose mother had remarried and moved away, to live with his father.

7. Permission to appeal was granted by the First-tier Tribunal on the basis that there was arguably insufficient analysis in relation to factors relating to the issue of serious and compelling circumstances in the light of the evidence of the grandmother which in turn infected his conclusion on the issue of proportionality.

8. The respondent opposed the appeal in a Rule 24 response dated 17 July 2019.

9. At the error of law hearing Mr Ashaz relied on his skeleton argument. He accepted that the appellant's father was unable to provide evidence on the issues identified by the judge at [19] but submitted that the judge had failed to take into account the evidence of the grandmother which was further evidence of serious and compelling circumstances. Mr Ashaz further submitted that the judge mis-directed himself in concluding that day-to day care equated to shared responsibility.

10. Mr Kotas submitted that the judge did not misdirect himself in law. He pointed out that there was no challenge to the judge's findings at [19]. He further pointed out by reference to the appellant's skeleton argument before the judge that it was unclear whether paragraph 297(f)(i) of the Rules was pursued before him. The judge had nevertheless dealt with this issue. Mr Kotas referred to the written evidence of the appellant's father and grandmother and submitted that the circumstances did not meet the threshold for entry under paragraph 297(i)(f) by reference to the Tribunal's decision in Mundeba (s 55 and para 297 (i)(f) [2013] UKUT 00088 (IAC). Mr Kotas submitted that there was no evidence of abuse or neglect in this case or that the appellant was living in substandard conditions.

11. In reply Mr Ashaz submitted that the judge had failed to consider the appellant's circumstances and his best interests. The appellant's circumstances were similar to that of the appellant in Mundeba in that there were no other family members to care for him in Bangladesh.

Analysis

12. The grounds of appeal mostly set out a narrative seeking to re-argue the appellant's case. Whilst it is said therein, understandably, that the appellant and his father are "very upset" by the judge's decision and feel that is it "unfair", in order for this Tribunal to find that the judge's decision should be set aside, the appellant must establish that the judge erred in law. I am not satisfied that he did err for the following reasons.

13. The judge referred at [17] to the leading authority of TD (Paragraph 297(i)(e) e): "sole responsibility") Yemen [2006] UKAIT 00049. He cited the headnote therein and at [18] to the guidance given and noted, in particular, that the guidance made it *"plain that the test, is not whether anyone else has day to day responsibility, but whether the parent has continuing control and direction of the child's upbringing making all the*

important decisions in the child's life. If not, responsibility is shared and so not sole."

14. The judge proceeded to apply that test against the factual background from [19] onwards.

15. There is plainly no misdirection in law, and I agree with Mr Kotas that the challenge on this ground is without merit.

16. Next, it is argued that the judge failed to take into account the evidence of the grandmother. Mr Ashaz in his skeleton argument invites the Tribunal to take judicial notice of the fact that it would fall on the grandmother to care for the appellant in the absence of his mother. As I observed at the hearing, that is not a matter that has been authoritatively attested and does not assist the Tribunal in establishing whether the judge erred in law.

17. The evidence of the appellant's grandmother is contained in two affidavits dated 25 January 2018 and 20 March 2019 respectively. The latter contains slightly more detail than the first, but neither is particularly detailed. Essentially, she states that she has cared for the appellant since his parents divorced and believed that this would be a temporary arrangement. She said that she had high blood pressure and constant backaches and was unable to care for the appellant. She further refers to the fact that her home has no running tap water and is not in a good condition. At the hearing before me Mr Ashaz confirmed that there was no medical evidence supportive of these claims.

18. While the judge did not make specific reference to the evidence of the grandmother he was clearly aware of the father's evidence about the inability of his mother to continue to look after the appellant at [9]. While perhaps for the sake of completeness reference to the affidavits would have been helpful, I am not satisfied in light of the father's evidence that the judge reached his conclusions without having regard to the stated position.

19. Even if it could be said that the judge did not have regard to the position of the grandmother, which I do not accept, the fundamental difficulty with the appellant's case is that there is no challenge to the judge's findings at [19]. Therein the judge gave several reasons for rejecting the claim that the appellant's father did not have sole responsibility for the appellant. In particular, the judge noted *"that there was no evidence of regular contact, no evidence of any decisions he has made, no evidence of involvement with his school or doctor in fact anyone in Bangladesh."* (sic) It was as a direct consequence of these failings that the judge concluded at [21] that responsibility for the appellant was shared between his father and grandmother. That is a finding that was entirely open to him on the evidence. In the circumstances, the evidence of the appellant's grandmother in light of the lacuna in the appellant's father's

own evidence would not have made a material difference to the outcome.

20. Given the judge's unassailable finding that responsibility was shared between the father and grandmother I agree with Mr Kotas that the threshold for establishing a claim under paragraph 297(i)(f) was plainly not met. There is further force in the submission of Mr Kotas that a case under this limb of the Rules was not pursued at all before the judge. The skeleton argument before the judge is in general terms. Most of it refers to Article 8 and case law relevant to the issue of sole responsibility. It makes no reference to paragraph 297(i)(f) of the Rules. The judge cannot be criticised for failing to deal with an issue that was not raised before him. In any event, the judge considered the issue and noted in particular that no evidence had been provided to establish a case under this limb of the Rules. The evidence of the appellant's grandmother, unsupported by corroborative evidence, taken together with the judge's findings was not capable of demonstrating that the threshold in paragraph 297(i)(f) was met. Any failure by the judge to make specific reference to the grandmother's position would again in my judgement have made no material difference to the outcome.

21. In the circumstances, I am satisfied that the judge, for the reasons he gave, was entitled to find that the appellant had not discharged the burden of showing that on the balance of probabilities that he met the requirements of the Rules. Accordingly, the judge was entitled to find that the refusal of entry clearance was proportionate. The appeal is therefore dismissed.

Signed

Deputy Upper Tribunal Judge Bagral Dated: 20 August 2019