



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

Appeal Number: HU/10924/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15 November 2019**

**Decision & Reasons Promulgated
On 6 January 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**MOHAMMED BOYE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Morjaria of Counsel instructed by Stuart & Co Solicitors

For the Respondent: Ms I Vijiwala, Home Officer Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Beach promulgated on 4 June 2019, in which the Appellant's appeal against the decision to refuse his application for entry clearance as a child of a parent in the United Kingdom dated 16 April 2018 was dismissed.
2. The Appellant is a national of Gambia, born on 29 May 2003, who applied for entry clearance to join his mother in the United Kingdom. The Entry

Clearance Officer refused the claim under paragraph 297 of the Immigration Rules and on human rights grounds on the basis that there was a lack of evidence that the Appellant's mother had sole responsibility for him - the evidence of money transfers were not linked to the Appellant, there was a lack of evidence of contact between the Appellant and his mother and a lack of evidence as to when there was last face-to-face contact between them. There was also a lack of evidence of care arrangements in Gambia and no reason why the Appellant could not continue to live with his aunt there, such that there were no serious compelling family considerations to satisfy the requirements of the rules for a grant of leave to remain.

3. An Entry Clearance Manager reviewed the decision and maintained it on 19 December 2018 on the basis that there was insufficient evidence to address the reasons for the original refusal. The best interests of the Appellant as a child were considered, as was Article 8 of the European Convention on Human Rights but there were not found to be any unjustifiably harsh consequences on either the Appellant or his family members.
4. Judge Beach dismissed the appeal in a decision promulgated on 4 June 2019 on the basis that it was not accepted that the Appellant's mother had sole responsibility for him, but that his mother, father and aunt were involved in his upbringing and that the Appellant lived in a stable and secure circumstances in Gambia. It was found that there would not be a disproportionate interference with the Appellant's right to respect for private and family life contrary to Article 8 of the European Convention on Human Rights.

The appeal

5. The Appellant appeals on eight grounds as follows. First, that the First-tier Tribunal failed to make credibility findings in relation to the Appellant's mother or his aunt. Secondly, that the First-tier Tribunal made inadequate findings on the issue of sole responsibility, failing to take into account the evidence that the Appellant's mother was responsible for his education and permission for school trips. Thirdly, that the First-tier Tribunal had not properly considered the affidavits in relation to financial support and responsibility for the Appellant's education, and that the wrong standard of proof had been applied. Fourthly, that the First-tier Tribunal had failed to consider the written statement from the Appellant's aunt as to why she could no longer look after the Appellant. Fifthly, that there was a lack of reasons in paragraphs 35 and 36 of the First-tier Tribunal's decision in relation to the issue of whether the Appellant was entitled to be registered as a British citizen under section 1(3) of the British Nationality Act 1981. Sixthly, that the First-tier Tribunal had failed to appreciate that the Appellant's father had only been involved since January 2019. Seventhly, that the First-tier Tribunal failed to give adequate reasons for the findings in relation to the best interests of the Appellant and Article 8 of the

European Convention on Human Rights. Finally, that overall the First-tier Tribunal's decision was perverse.

6. At the oral hearing, it was submitted on behalf of the Appellant that the First-tier Tribunal had failed to take into account all of the circumstances and evidence in relation to the Appellant. The primary issue was whether the Appellant's mother had sole responsibility and there was evidence before the First-tier Tribunal of the Appellant's mother being financially responsible for him, being in contact with his school and reasons why the Appellant's aunt could no longer care for him in Gambia. This evidence was not considered by the First-tier Tribunal in its totality and instead the reasons for dismissing the appeal focused on the Appellant's father. The best interests of the Appellant were not taken into account. It was submitted that the best interests of the Appellant were to be looked after by his mother in the United Kingdom given the strong bond between mother and child and that there was no one else to look after the Appellant in Gambia now that his aunt was unable to do so.
7. In relation to the Appellant's father, this issue only arose in cross-examination before the First-tier Tribunal. The Appellant's mother's evidence was that she was the sole parent and the father was not involved, in fact there was no contact with him between 2003 and early 2019.
8. On behalf of the Respondent it was submitted that the grounds of appeal amounted only to disagreement with the decision reached. In paragraph 27 of the decision, the First-tier Tribunal confirmed that all of the oral and documentary evidence was considered, and an appropriate self-direction was given in accordance with TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049. Express consideration was given within the decision to the financial support given by the Appellant's mother and the school receipts in paragraph 31; the oral evidence about contact between mother and child with a lack of supporting documentary evidence also in paragraph 31; and reference to the Appellant's mothers educational decisions about the Appellant in paragraph 33.
9. The First-tier Tribunal set out the witness evidence in paragraphs 9 to 11 of the decision, which included that the Appellant and his father have contact once a month and the parents have occasional contact having made a joint decision as to where the Appellant was going to live in 2003. In paragraph 32, the First-tier Tribunal found that there was conflicting evidence in relation to the Appellant's father and his relationship with him and that the Appellant's mother had not been entirely open about his role. It was found not to be credible that she did not know the whereabouts of the Appellant's father for a period of 16 years and a clear finding was made that the Appellant's father remained involved in his life and had not abdicated responsibility for the Appellant. By reference back to TD (Yemen), sole responsibility was a factual question to be determined and in cases where both parents were involved, it would be rare for one parent

to have sole responsibility. Overall it was submitted that the First-tier Tribunal judge appropriately considered all of the evidence.

10. The Appellant's claim that the decision of the First-tier Tribunal was perverse does not reflect the very high threshold for such a ground. The best interests of the Appellant were considered in paragraph 35, including that the Appellant has spent the majority of his life in Gambia, was in education there, was in regular contact with extended family in Gambia, was living a stable life and had a continuing relationship with his mother. On the basis that the Appellant had a strong relationship with his aunt, it was not considered likely that he would be evicted from her care just because she was having a baby. Although there was no express reference to the Appellant's aunt's affidavit, the facts relied on therein were referred to and taken into account in the decision. Overall, there were no serious and compelling family circumstances to warrant a grant of leave to remain under the Immigration Rules and it was open to the First-tier Tribunal to separately consider and dismiss the claim on Article 8 grounds.

Findings and reasons

11. Although the Appellant has broken down the grounds of appeal into eight separate headings, as in the oral submissions on his behalf, the grounds are in essence a challenge to the findings of the First-tier Tribunal that the Appellant's mother did not have sole responsibility for him and in doing so did not properly take into account all the evidence before it. The only separate ground is in relation to the lack of reasons as to whether the Appellant was entitled to be registered as a British citizen, but this ground was not pursued orally, save for Ms Morjaria confirming that no such application for citizenship had been made by or on behalf of the Appellant. That is the same factual situation as was before the First-tier Tribunal and is irrelevant to the issues in this human rights appeal.
12. The remaining grounds of appeal are in essence, only disagreement with the findings made by the First-tier Tribunal and do not identify any errors of law, individually or cumulatively. There is nothing in the decision to suggest that the wrong burden of proof or standard of proof has been applied, with the First-tier Tribunal making an appropriate self-direction in paragraphs 3, 29 and 30, which is on the face of the decision, properly applied in the findings made.
13. Although there are no express credible findings in relation to the Appellant's aunt, her evidence that the Appellant's relationship with her is expressly considered in paragraph 35 of the decision, where it is recorded that the Appellant has lived most of his childhood as part of his aunt's family, but that there was no evidence of his aunt's pregnancy or of her living arrangements in Gambia (other than the Appellant's mother's statement as to the size of the accommodation) or why the arrival of a new baby would mean that the Appellant could no longer be cared for. The First-tier Tribunal found that given the strong relationship between the Appellant and his aunt, it would be unlikely that he would be evicted from

the property. It is clear therefore that the evidence of the Appellant's aunt was not accepted in full.

14. In relation to the Appellant's mother, although not expressly stated as an issue of credibility, the First-tier Tribunal made findings about the lack of evidence from her as to her relationship with the Appellant, in particular the lack of detail about contact with the school, financial support, the lack of *what's app* records and specifically the contradictory evidence in relation to the Appellant's father. These matters do not all go to the issue of credibility, but are relevant to whether the Appellant has established on the balance of probabilities that his mother has sole responsibility for him. The First-tier Tribunal's clear findings are that there is insufficient evidence to establish this, such that the Appellant cannot meet the requirements of the Immigration Rules.
15. The evidence of the Appellant's mother's financial support for him and involvement in his education, is expressly referred to in paragraphs 31 and 33 of the decision, as is the lack of detail about involvement in any other aspects of the Appellant's life and lack of specific detail about involvement with the school. Reasons are clearly given as to why these matters alone do not establish that the Appellant's mother has sole responsibility for him.
16. In relation to the Appellant's father, the First-tier Tribunal finds that there is contradictory evidence about his whereabouts and his involvement with and contact with both the Appellant and his mother. There was no failure to appreciate that the claim that he had only been involved since January 2019, to the contrary, the First-tier Tribunal expressly rejected this part of the Appellant's mother's evidence which on the whole was not found to be consistent in relation to the Appellant's father. The First-tier Tribunal's reasons for finding that the evidence does not show that the Appellant's father had abdicated responsibility for him are expressly set out with adequate reasons within the decision.
17. The Appellant's best interests are assessed in paragraph 35 of the decision, which balances the interests of the Appellant to be with his mother and half-sister in the United Kingdom but also his interests in continuing his settled and stable life in Gambia, where he has spent the majority of his life, where he is in education and where he has contact with extended family. The First-tier Tribunal did not, and on the evidence could not, find that it was solely in the Appellant's best interests to relocate to the United Kingdom with his mother. There was no failure to give adequate reasons for these findings, which are contained in paragraph 35 of the decision and were open to the First-tier Tribunal on the evidence.
18. Article 8 of the European Convention on Human rights is expressly dealt with in paragraph 36 of the decision, which reiterates earlier findings in relation to best interests and whether there are any very compelling family or other considerations which make the exclusion of the Appellant from the United Kingdom undesirable; together with consideration of the

submission that the Appellant is entitled to registration as a British citizen. Aside from the latter point which is immaterial given that no such application had been made, in reality any assessment under Article 8 outside of the Immigration Rules requires a consideration only of the factors already taken into account within the context of paragraph 297 of the Immigration Rules. In these circumstances, the earlier findings of the First-tier Tribunal are relevant and together with the reasons given in paragraph 36 are adequate and rational reasons for dismissing the appeal on human rights grounds, which were open to the First-tier Tribunal.

19. The appellant has not established that the decision of the First-tier Tribunal is perverse. To the contrary, adequate reasons are provided to explain why the appeal was dismissed, on the basis of findings which were open to the First-tier Tribunal on the limited evidence available to it in support of the appeal. For these reasons there is no material error of law on any of the grounds identified by the Appellant and the decision of the First-tier Tribunal is therefore confirmed.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed
2019



Date 31st December

Upper Tribunal Judge Jackson