



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal number: HU/01432/2020 (V)**

**THE IMMIGRATION ACTS**

**Heard Remotely at Manchester CJC**

**Decision & Reasons Promulgated**

**On 2 August 2021**

**On 14 September 2021**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**OEA**

**(ANONYMITY ORDER MADE)**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**DECISION AND REASONS (V)**

For the appellant: Mr N Khan of IIAS Solicitors

For the Respondent: Mr M Diwnycz, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote

hearing. At the conclusion of the hearing, I indicated that I found no error of law and briefly summarised my reasons, reserved full reasons to be provided in writing, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a Nigerian national with date of birth given as 13.7.05, now 16 years of age, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 18.3.21 (Judge Holt), dismissing on all grounds her appeal against the decision of the Entry Clearance Officer, dated 2.1.20, and upheld by the Entry Clearance Manager on 8.4.20, to refuse her application for entry clearance to the UK to join her sponsoring father, pursuant to 'sole responsibility' requirements under paragraph 297 of the Immigration Rules.
2. The grounds of application for permission to appeal submit that there were material errors of law in the decision of the First-tier Tribunal. It is argued that at [30] the judge dealt cursorily with the issue of exceptional circumstances. It is also argued that given the findings at [15] that the sponsor had kept contact with his daughter in Nigeria and sent her gifts of money and other things, visited her when he has travelled to Nigeria, and that there is an emotional bond between them, the appeal should have been allowed, following *NA (Bangladesh) [2007] EWCA Civ 128*, where the Court of Appeal endorsed factors relevant to the issue of 'sole responsibility' as including the source and degree of financial responsibility for the child, and whether there was cogent evidence of genuine interest in the sponsor's affection for the child.
3. It is also argued that the judge made findings in absence of objective evidence and speculated that the mother's new partner had not required the appellant to leave the household. It is said that some of the other reasons given by the judge were about peripheral matters to which no weight should have been attached.
4. Permission to appeal was granted by First-tier Tribunal Judge Page on 29.4.21, on the basis that the decision of the First-tier Tribunal "reads like a Home Office submission in places."
5. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
6. I must first observe that the grant of permission is inadequate and fails to identify any arguable error of law. Nevertheless, I have given anxious consideration to the grounds and the decision of the First-tier Tribunal.
7. For the reasons set out below, I am satisfied that a reading of the decision as a whole demonstrates that the judge made clear findings open to her on the evidence and applying the requirements of paragraph 297 of the Rules to the

facts, before going on to properly consider the article 8 ECHR claim outside the Rules.

8. Whilst at [15] the judge made the findings referred to above about the sponsor's continuing involvement with the appellant in Nigeria, the judge pointed out at [14] that there was no evidence from the appellant's mother than the sponsoring father had ever had sole responsibility for the appellant. As the judge summarised at [14] the nature of the evidence was rather to the effect that the mother was happy to simply hand over responsibility to the father. At [19] the judge noted that since the sponsor left Nigeria, the mother has continued to look after the appellant, finding "Prima facie, she is the one who has had sole responsibility for the appellant."
9. At [28] the judge summarised the claim that the mother had now rejected her daughter, that her continued presence was threatening her new relationship with her partner, and that she wanted to send the appellant to the UK on the "whim" of her partner. However, as the judge pointed out, this evidence missed the point that the appellant had to show that the sponsor has had sole responsibility for the appellant. That the mother now wished for the sponsor to take over responsibility, or that she considers her daughter an impediment to her new relationship with her partner, or even her partner's wishes for the daughter to leave the household, does not begin to demonstrate that the sponsor has had sole responsibility.
10. At [29] the judge concluded that the evidence pointed to the appellant's mother having had and continues to have sole responsibility for the appellant, meeting her needs, with the sponsoring father at the most sending occasional money and visiting her on holiday. The judge was "not remotely satisfied that he was making all of the key decisions regarding the appellant's life nor directing her life. I find that all of the evidence points to the appellant's mother having cared for her daughter, making all the key decisions in her daughter's life and being and having been in control of how the appellant's life has unfolded." The judge stated that she did not find it remotely credible that the mother would suddenly stop caring about her daughter, effectively abandoning her and stating that she had to leave the home because of her new partner. These were all findings open to the judge on the evidence. Whilst in his extensive submissions Mr Khan took me to the evidence that supports the sponsor's involvement with the appellant, he also appeared to miss the point that what had to be demonstrated was that he and not the mother had had sole responsibility.
11. Whilst the rather poorly-drafted grounds also purport to rely on "serious and compelling family or other considerations which make exclusion of the child undesirable..." under paragraph 297(f), I am satisfied that the First-tier Tribunal Judge gave consideration to the facts relied on to support this aspect

of the claim. Whether directly referring to 297(f) or not, I am satisfied that the judge considered the claim, made rather late in the appeal proceedings, that the mother's new partner required the appellant to leave the home and that he had been sexually abusing the appellant. The judge was satisfied that that the child continued to live with her mother, as the sponsor confirmed in evidence, and was, therefore, entitled to point out that the child had, thus far, not been expelled from the home. The judge assessed in some detail the sponsor's evidence as to the more recent assertions that the appellant had been harassed by her mother's new partner, inferring sexual harassment, explicitly stating in evidence that he touched her in sexual assault, which it was claimed had been reported to the police. There were some supporting documents for this in the appellant's supplementary bundle. However, at [30] the judge considered that the purported police report bore the hallmarks of a story simply concocted to bolster an otherwise weak case and considered the documentary evidence self-serving and unreliable, applying *Tanveer Ahmed* principles. The judge did not make a finding that the documents were forged or fraudulent, as suggested in submissions. In essence, this part of the the appellant's claim was found not credible.

12. Other than the matters addressed above, the grounds are in large part a mere disagreement with the decision and an attempt to reargue the appeal. *Lewison LJ in Fage UK Ltd. v Chobani UK Ltd. [2014] EWCA Civ 5 at [114]* explained the caution to be exercised by appellate courts in interfering with evaluative decisions of first instance judges. At [114] to [115], the Lord Justice said this:

"114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them."

13. I am satisfied that having had the opportunity to assess the oral and documentary evidence in the light of the claim and the submissions made, it was open to the judge to reject both limbs of the appellant's claim, both the issues of sole responsibility and "serious and compelling family or other considerations which make exclusion of the child undesirable...", were resolved against the appellant, with the judge providing cogent reasoning for the findings made and the conclusions leading to the dismissal of the appeal.
14. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal.

## Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on human rights grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 2 August 2021

### **Anonymity Direction**

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

*“Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.”*

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 2 August 2021