Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02143/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 January 2022	**On 7 February 2022**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

S F
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Malik, instructed by Queen's Park Solicitors
For the Respondent: Ms Z Young, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Browne promulgated on 10 March 2021 refusing her human rights claim which was based on a refusal to grant her entry clearance to the United Kingdom as the child dependant of R F ("the sponsor").

The Appellant's Case

2. The appellant was born on 20 November 2001. She states that her mother abandoned the family unit in 2003 and that her father left the Philippines for the United Kingdom in 2013, leaving her in the care of her paternal grandparents. It is her case that her father has exercised sole responsibility for her and thus that she meets the requirements of paragraph 297(i)(e) of the Immigration Rules and/or in the alternative paragraph 297(i)(f).

3. The Secretary of State, acting through an Entry Clearance Officer, was not satisfied that the sponsor had exercised sole responsibility for her.

4. In her grounds of appeal to the First-tier Tribunal, the appellant avers the requirements of paragraph 297(i)(e) and/or (f) of the Immigration Rules and that a refusal to grant entry is an unjustified interference with her right to Article 8 family life.

5. Subsequent to the appeal being lodged, a prehearing review was held requiring the appellant to provide an appeal skeleton argument and for the respondent to provide a response thereto, the respondent's review was served only on 24 February 2021 and was then revised after a skeleton argument from the appellant had been received on 24 February 2021, it was out of time.

The Hearing

6. The hearing before the First-tier Tribunal took place remotely. The respondent was not represented; the appellant was represented by Mr Magsino of Queen's Park Solicitors.

7. The judge set out in detail the grounds of appeal and the reasons for refusal and directed herself as to the law. Her findings are set out from paragraphs 31 to 93. In summary, the judge found that:-

   (i) it was probable that the appellant's mother had been involved with her upbringing and was in contact with her daughter, exercising control over her life choices as a child [34] and that the mother was still living in the Philippines [36];

   (ii) there was little evidence of support and contact by the sponsor towards the appellant prior to 2018 [39] to [42];

   (iii) it was surprising that the listing of the father as an emergency contact despite being in the UK and the absence of the grandparents who were providing day-to-day care as a point of contact was surprising and not evidence of continuing responsibility and that there was a lack of historical, cogent evidence which could be expected if the father had been involved in his daughter's life as claimed [45];

   (iv) there was no evidence to support the sponsor's claim that he checked that the appellant came home every day and sleeps at home every day [48] and there was an inconsistency as to whether the appellant

lived initially with her mother's mother (her evidence), but the sponsor saying they had lived with his parents [48];

(v) there was no evidence of contact between the sponsor and the school prior to 2018/2019 [50]; that it was evident that the mother was involved in making important decisions for the appellant's life as she was under 18 [54] to [58];

(vi) that the sponsor's evidence in relation to his account of or lack of contact with the mother since the break-up in 2003 was inconsistent [60], undermining the credibility of the whole claim, there being no official court documents from the Philippines to confirm the appellant's father had sole responsibility and the mother had abandoned her;

(vii) there had been a delay in providing documents which if in existence in 2019 could have been submitted yet were not submitted until 2021, this going to credibility as regards parental responsibility and that the mother had been involved in the child's upbringing because the documents were inconsistent with the accounts of all the family members involved and with the appellant [61];

(viii) that the evidence of abandonment by the mother is inconsistent [63] to [66];

(ix) whilst there was no minimum period for contact to be demonstrated the fact that the sponsor had only provided recent corroborative evidence of contact with his daughter when weighing up the length of time, his evidence makes it less probable that he had had the degree of influence, control and direction as claimed whilst the appellant was a child [67];

(x) there was little evidence to show ongoing control and direction from the sponsor [77]; that there was an absence of information regarding visits from the father and to when contact began and how [78];

(xi) the evidence from the sponsor's mother was lacking and not capable of bearing weight [80] to [82];

(xii) it had not been shown that the sponsor went abroad to support the appellant's education as submitted [92].

8. Having concluded that the appellant did not meet the requirements of the Immigration Rule paragraph 297(i)(e) the judge went on to conclude that the human rights claim fell to be dismissed, there being no serious and compelling circumstances such that exclusion was undesirable under paragraph 297(i)(f) [100] of the Immigration Rules.

9. The appellant sought permission to appeal on the grounds that the judge had erred:-

(i) in failing to direct herself in line with ML (Nigeria) v SSHD [2013] EWCA Civ 844 it being averred that the appellant's evidence was not challenged as the respondent was not represented at the hearing [5] and it was not put to the appellant or sponsor that the appellant and mother might still be in contact [6];

(ii) that the Tribunal failed properly to apply paragraph 297(i)(e) in that contrary to Nmaju v SSHD [2001] INLR 2 in suggesting that a particular length of time of sole responsibility was required as the sponsor had been providing financial support and maintaining a close interest and affection for the appellant;

(iii) in failing to consider paragraph 297(i)(f) of the Immigration Rules;

(iv) in failing to put inconsistencies to the sponsor to enable him to address the points;

(v) in failing to give a proper consideration to proportionality pursuant to Article 8 in not considering exceptional circumstances.

The Hearing

10. I heard submissions from Mr Malik and from Ms Young. Mr Malik accepted that, in its review, the Secretary of State had queried a number of issues regarding the documentary evidence and the claim that the mother was still in contact. He submitted that insufficient opportunity had been given to address the points, in particular she had not been asked why an application had been made before. He submitted further that the findings of fact and the criticisms made were unfair and without regard to the fact that it was unnecessary to show that sole responsibility had existed for a long time. He submitted further that the judge had acted unfairly in not accepting the evidence of the ID card [69] and in rejecting the other documentary evidence.

11. Ms Young submitted that there was no material error in this case and that contrary to what was submitted, the evidence that the appellant relied upon had been challenged by the Secretary of State as set out in the review. It was for the appellant to put her case and the judge had given adequate and sustainable reasons for rejecting it.

The Law

12. The issue in this appeal was whether the sponsor "has had sole responsibility for the appellant's upbringing" or, whether there are serious and compelling family or other considerations which make exclusion of the appellant undesirable and suitable arrangements are made for the child's care.

13. It is evident from TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 that the issue of sole responsibility is fact-specific and

requires a detailed analysis of all the evidence. It is evident also that the responsibility may have been for a short duration as present arrangements may have begun quite recently and it may be that responsibility is shared between different people. It is of course for the appellant to show that sole responsibility has been exercised by, in this case, the sponsor.

14. In Nmaju, the issue considered was slightly different given that the wording of the Rule at that point was "one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has the sole responsibility for the child's upbringing". The difference with the current formulation is the addition of the word "had" after "has". The Court of Appeal made it clear at [15] to [23] that there was no requirement in the immigration rules that sole responsibility needed to have been exercised for a minimum duration, but it did not conclude that the length of time spent exercising sole responsibility was irrelevant [24].

Ground (i)

15. Contrary to what is averred at [5] the appellants account and the evidence relied upon was challenged to a significant degree in a detailed review produced and served by the respondent and which sets out concerns regarding the account given and pointing out inconsistencies in the account. Whilst it is correct that the respondent was not represented at the hearing, nonetheless it is sufficiently clear that substantial doubts as to the consistency of the evidence and weight that could be attached to the evidence were clearly raised

16. Whilst the Surendran guidelines are expressed in terms applicable to an asylum claim, nonetheless they are equally applicable to other immigration cases. It is not the role of a judge to adopt an inquisitorial role, nor could it be said that in this appeal, the judge improperly took points which were not adequately raised in the review, and thus by the respondent. . It is of course for the appellant to prove her case. It is not for a judge to point out evident difficulties that there may be.

17. It is sufficiently clear from the review at paragraph 13 that, given the inconsistencies in the accounts given, that there were doubts as to whether the appellant's mother was not involved in her life as was claimed. It was expressly submitted [15] that there are inconsistencies in the accounts and documents provided which suggest the sponsor does not have sole responsibility for the appellant and [17] that an affidavit from the mother suggests that she is actually involved in the appellant's life and upbringing. Further, the challenges where points on credibility are taken are directed to a limited number of the paragraphs in the decision, specifically [37], [39], [42], [67], and [74]. Whilst in addition further points were made in submissions with regard to paragraphs [39], [41], [43] and [45], this overlooks the point that, as Ms Young submitted, the discussion of credibility stretches over a considerable amount of detail set out in paragraphs [31] to [93] in which a significant number of cogent reasons

for doubting the account put forward are given by the judge and to which there is in effect no real challenge.

18. Further, what is averred at paragraphs [7] and [8] of the grounds is simply argument as to properly sustainable findings of fact as a result of the judge weighing evidence. It is not correct to say that the judge improperly looked at the untranslated Facebook chat. What the judge did, fairly, was to observe that although the documents had not been translated there was no evidence of contact prior to 2018 despite in this case being put that the father had maintained sole responsibility since he came to the United Kingdom in 2013. That is not arguably contrary to Nmaju. It was for the appellant to show the truth of the assertion that sole responsibility had been exercised for the period claimed, that is a period of over 7 years. That is distinguishable on its facts from Nmaju. The judge did not improperly require evidence of sole responsibility for a specific period, but she was entitled to expect the appellant to show the truth of her claims.

19. It was open to the judge to note [42] that there was limited documentary evidence of contact prior to 2019.

20. It is not arguable that the judge had attacked government documents as is averred. It was open to the judge to note that it was unclear why the solo parent card had been issued [74] or why it was issued. This is not an attack on its authenticity. It is merely an observation of its limited use as evidence.

21. As regards the challenges to paragraphs [36] to [45] of the decision, it is sufficiently clear that the judge considered carefully the evidence before reaching the conclusion that, as had been asserted by the respondent, there were inconsistencies in what had been said. She fairly reached conclusions open to her and it was open to her on that evidence and indeed the other findings of fact which are not attacked that it had not been shown that the father shared sole responsibility and it was open to the judge to conclude on the reasons given that the mother still exercised a degree of control.

Ground (ii)

22. Contrary to what is asserted the judge did properly apply Nmaju and TD (Yemen). As noted above, Nmaju can be distinguished easily on its facts. Thus, while it is correct that the judge considered the evidence from 2018 onwards and it would have been an error for the judge to consider that that was not a sufficient period, that was not the case. The case put was that there had been sole responsibility exercised since 2013. This is not a case where the judge improperly said that the period shown was not long enough, it was open to the judge to point out that the evidence was all recent which was contrary to the case which was put.

Ground (iii)

23. This ground is hopeless. It is manifestly clear that the judge did consider paragraph 297(i)(f) of the Immigration Rules and it is unclear at all that any submissions were made on this point. Indeed, whilst it is raised in the grounds to the First-tier Tribunal in aa limited way, it does not form any part of the skeleton argument put to the judge. If the point was not put to the judge it cannot be said that the judge erred in not properly considering it. In any event, the judge did consider it at paragraph [100] which appears to have escaped the notice of the drafter of the grounds.

Ground (iv)

24. It is not for the judge to ask an appellant or sponsor to answer points about inconsistencies which had clearly been raised by the respondent. It was the responsibility of the appellant and her representatives to address those. Contrary to what is asserted in a clear and detailed decision the judge gave a significant number of reasons for doubting the account of sole responsibility and her findings on this issue are sustainable.

Ground (v)

25. Given the sustainable finding that the appellant did not meet the requirements of the Immigration Rules it cannot be argued that there is any material error in respect of the assessment of Article 8.

26. Accordingly, for these reasons I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

(1) The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

(2) The anonymity decision is maintained.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed Date 25 January 2022

Jeremy K H Rintoul

Upper Tribunal Judge Rintoul