Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001340
On appeal from HU/07171/2020

THE IMMIGRATION ACTS

Heard at Field House
On the 6 September 2022

Decision & Reasons Promulgated
On the 31 October 2022

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

ALIYU SISI IBRAHIM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr N Garrod, of Counsel
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Procedural Background

1. In a decision promulgated on 14 October 2021, First-tier Tribunal Judge Howard (the judge) dismissed the appellant's appeal, under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act),

against a decision of the respondent, dated 13 August 2020, to refuse the appellant's application for entry clearance to the UK under paragraph 297 of the Immigration Rules, on the basis of his family life with his mother.

2. In a decision on error of law and directions dated 15 July 2022, Upper Tribunal Judge Owens found an error of law capable of affecting the outcome of the appeal and set aside the decision of the First-tier Tribunal, with certain findings preserved.

3. The matter came before this panel, pursuant to a transfer order given by the Principal Resident Judge of the Upper Tribunal, to be remade, under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007

Factual Background

4. The appellant is a citizen of Ghana, born on 5 July 2002. He applied to enter the UK, on 20 January 2020. He lives in Ghana and claims he receives day to day care from a family friend Mr E A Garbey. The appellant claims that his father, Ibrahim Aminu, died on 17 March 2018. The appellant's mother, Ms B A Ibrahim (the sponsor) lives and works in the UK, it not being in dispute that she holds indefinite leave to remain in the UK (the sponsor confirming to this Tribunal in oral evidence that she obtained confirmation of her permanent right of residence in the UK in 2015). The appellant applied for entry clearance when he was still a child.

Scope of Resumed Hearing

5. Upper Tribunal Judge Owens set aside the judge's decision, following a concession by the respondent's presenting officer, on the basis that the judge rejected the evidence that the appellant's father is deceased and then inferred that the father must have shared responsibility for the appellant, with no analysis of the evidence pointing to the mother having sole responsibility. The judge had failed to consider paragraph 297(i)(e) of the Immigration Rules adequately and failed to give adequate reasons why this provision was not met.

6. Judge Owens preserved the following findings:

   a. The appellant is the biological son of the sponsor.

   b. The appellant's father is not deceased.

   c. The appellant does not meet the requirements of paragraph 297(i)(d) of the Immigration Rules.

7. Judge Owens gave directions for the matter to be reheard in the Upper Tribunal, with the above findings of fact preserved and gave directions for the appellant to adduce any further evidence relied on and for both parties to file and serve skeleton arguments and position statements on the issue of sole responsibility. Both parties provided skeleton arguments and the appellant's representative provided additional evidence in relation to the sponsor's sickle cell disease.

8. Mr Clarke raised, as a preliminary issue, that he was in some difficulty in respect of the respondent's skeleton argument (at paragraph 18) where it was recorded that the appellant completed his education in July 2020, contrary to the July 2021 letter from Accra Academy which Mr Melvin (who drafted the skeleton argument) asserted appeared to suggest that the appellant was then aged 19 and still studying there. Mr Clarke referenced the oral evidence before the First-tier Tribunal that the appellant completed his education in July 2020. Mr Clarke did not pursue this point in cross-examination or in submissions. Mr Garrod addressed the issue in submissions, arguing that the reference in the letter from Accra Academy was 'just a general statement' and not evidence that the appellant was still studying aged 19.

9. We heard oral evidence from the sponsor Ms Ibrahim, who adopted her witness statement dated 23 July 2021 and gave evidence and was cross-examined on that evidence with the assistance of a Twi interpreter. We ensured that the sponsor and the interpreter understood one another. Both parties relied on the skeleton arguments before the Upper Tribunal and made additional submissions. At the end of the hearing we reserved our decision, which we now give.

The Law

10. This is an appeal brought on the grounds that the refusal of entry clearance would be unlawful under section 6 of the Human Rights Act 1998, on the basis that it would breach the UK's obligations under Article 8 of the European Convention on Human Rights (ECHR) to exclude the appellant from the UK. Since this is an entry clearance case, it is necessary to determine whether the appellant's exclusion from the UK is a proportionate interference with any family/private life enjoyed. The assessment is informed by the relevant provisions of the Immigration Rules, paragraph 297.

11. Paragraph 297 provides as follows:

> **"Requirements for indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom**
>
> 297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:
>
> (i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:
>
> (a) both parents are present and settled in the United Kingdom; or
>
> (b) both parents are being admitted on the same occasion for settlement; or

(c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or

(d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or

(e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; or

(f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and

(ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and

(v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and

(vi) holds a valid United Kingdom entry clearance for entry in this capacity; and

(vii) does not fall for refusal under the general grounds for refusal."

12. Part 5A of the 2002 Act sets out the public interest considerations to which the Tribunal must have regard when considering the proportionality of the refusal of entry clearance.

Findings

13. Although the finding of the First-tier Tribunal, that the appellant's father is not deceased, is a preserved finding, the appellant and the sponsor continued to rely on her witness statement before the First-tier Tribunal (and the accompanying evidence including witness statements from the appellant and Mr Garbey and letters from a number of sources in Ghana) which asserts that the appellant's father is dead. The skeleton argument lodged on behalf of the appellant continued to assert that the appellant's father died in March 2018, as did the sponsor's oral evidence and the submissions of Mr Garrod. However, there was no evidence produced by or

on behalf of the appellant which might have challenged that preserved finding.

14. Those findings were made by the First-tier Tribunal (and found to be adequately reasoned by the Upper Tribunal) on the basis that the judge (at paragraphs 16 -22 of the First-tier Tribunal decision) found the sponsor's oral evidence, including in relation to birth certificate documents produced by the appellant, to be 'wholly unconvincing'. The appellant was born on 5 July 2002 and the sponsor told the First-tier Tribunal 'unequivocally' that a birth certificate was obtained close to that time, but damaged. As a result, the appellant's father obtained another birth certificate (or certified copy) in 2017 (which was when the appellant's passport was obtained). The judge referred to having two further certified copies, with both documents indicating that the birth was registered on 2 July 2019, which the judge could not reconcile with either of the (2002 and 2017) dates given by the sponsor. The judge found it troubling that the appellant's father's name appeared on the first of those two documents as the informant, as the certified copies asserted that the birth was registered on 2 July 2019, after the appellant's father's claimed death.

15. The judge noted that the later of the two certified copies purported to rectify the 'error' in the earlier copy, but noted that the registration date took no account of the sponsor's evidence. The judge found the sponsor's evidence to be further undermined by the content of the verification document (dated 25 June 2021) from the Ghana Births and Deaths Registry, which asserted that the 2 July 2019 registration was 'the only registration found'. Although the appellant relied on the death certificate produced for his father, the judge found that the veracity of the various documents relating to the appellant's birth was so undermined, that the judge was unable to view the death certificate with any confidence. The judge was not satisfied therefore, that it was more likely than not that the appellant's father was deceased.

16. Although we have reminded ourselves that corroboration is not required, it was open to the appellant and the sponsor to produce fresh evidence (with appropriate Rule 15(2A) notices) which might have challenged those findings and it was open to the sponsor to provide an updated witness statement addressing the preserved findings of the First-tier Tribunal. As indicated, the only evidence produced for the resumed hearing was evidence in relation to the sponsor's health in the UK. The appellant's representative continued to rely on the appellant's skeleton argument before the First-tier Tribunal, witness statements which were before the First-tier Tribunal, from the sponsor, the appellant and from Mr Garbey, together with letters from ZAK medical clinic, letters from Accra Academy and letters from the Central Mosque. All of that evidence is either predicated on/or relies on to some extent, the claimed fact of the appellant's father's death, whereas, it is a preserved finding that he is not in fact deceased.

17. We have considered the failure of the appellant to engage with those preserved findings in the round. If, as the appellant's case at the resumed hearing was put by the sponsor and his representative, it is his continued claim that the finding that his father is not deceased was incorrect, there was no explanation for his failure to produce evidence which might have contradicted that finding. In the absence of any such evidence the Tribunal has attached reduced weight to the evidence before the First-tier Tribunal (whilst setting out our specific findings on that evidence below) as it is founded on a fact found to be untrue. In such circumstances this casts significant doubt on the reliability of any of the evidence produced to the First-tier Tribunal (and relied on before this Tribunal).

18. It was argued before us, on behalf of the appellant, that his mother has had sole responsibility for her child's upbringing or in the alternative that there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care.

19. In making those arguments, as noted, the appellant, his sponsor and his representatives continued to rely, in large part, on the discredited claim that the appellant's father is dead.

20. We did not find the sponsor's oral evidence to be credible, when considered in the round. She was unable to provide any credible reason why (given that she had settled status in the UK from 2015) she had not made an application for her son to join her in 2018, when she claimed that his father died, claiming instead that she left her son with Mr Garbey, a family friend because: 'we're very close, so I decided for him to look after the child, that's why I didn't bring the child in 2018 because Eliasu agreed'.

21. However, in her witness statement dated 23 July 2021, the sponsor referred to difficulties not having her son 'here with me, like a normal mother and son' and stated that she was 'desperate to be reunited with my son in the UK as his absence is affecting our private and family life'. It is inconsistent in our findings, with that claimed desperation to be reunited with her son, that instead of making an application for him to join her in 2018, she would instead wait almost 2 years until February 2020 to make an application, simply because her close family friend, whom she claimed was looking after the appellant, had agreed (and we note the appellant's witness statement claimed there were no close family members who could provide care in Ghana, which makes the decision to leave the appellant with a friend, rather than immediately apply to bring him to the UK, all the more puzzling).

22. Equally, the sponsor in oral evidence was unable, in our findings, to provide a credible reason why the appellant's claimed carer, who claimed in his witness statement that he could no longer look after the appellant due to the nature of his work and difficulties with being a carer, had not had those difficulties in 2018. Although she told us that the job Mr Garbey

was doing in 2018 ‘wasn’t that difficult’ so he had time for the appellant, there was no up to date evidence from Mr Garbey that might support such an assertion of a change in his circumstances, where such ought to have been available.

23. We also take into account, in the round, that Mr Garbey’s witness statement refers to the sponsor suffering from sickle cell and living alone and that her son’s presence in the UK would help her when she in in crisis (and the appellant’s witness statement also refers to ‘exceptional reasons’ for him to be allowed to join his mother). If that were indeed the case, it makes the sponsor’s decision to leave her son with a family friend in Ghana for 2 years, rather than make an immediate application so that he could join and support her in the UK, even more difficult to understand.

24. We take into consideration that it was the sponsor’s oral evidence that the appellant lived with his father up until it is claimed his father died in March 2018 and she told the Tribunal that decisions in the appellant’s life were ‘made by both of us’, although she then contradicted this by stating that ‘I did send the child money – I took all the decisions for him’. When asked in cross-examination if she agreed that if the appellant’s father was still alive he would continue to share responsibility, the sponsor responded: ‘That’s right’. Although Mr Garrod objected to the question as hypothetical, we disagreed and allowed the question, as it relates to the preserved facts as found by the First-tier Tribunal. We found the sponsor’s failure to engage with the preserved findings of fact and her failure to provide any additional information in respect of the father’s claimed death, (the sponsor simply telling the Tribunal that she had provided his death certificate) to be lacking in credibility.

25. We reject Mr Garrod’s arguments that if there had been ‘the level of fraud suggested’ more effective steps could be taken to perpetrate it and that even if it was not accepted that the father was dead, there was no evidence of his presence in the appellant’s life. It was submitted that sole responsibility had passed to the sponsor. Those arguments fail to engage with the preserved findings, which mean that the credibility of the sponsor and all the claims she is making, have been significantly undermined, including that she is continuing to rely on a death certificate for the appellant’s father when there is a clear preserved finding that he is not deceased and has made no attempt to provide any additional information which might support her claims.

26. We are not satisfied therefore, that we can place any reliance on the witness statements and supporting evidence relied on by the appellant before the First-tier Tribunal and again before the Upper Tribunal; the credibility of the appellant and the sponsor’s claims in relation to his circumstances in Ghana have been so undermined that, applying the principles in **Tanveer Ahmed [2002] UKIAT 439** we are not satisfied that any of the documents can be relied on as claimed.

27. Considering the documents themselves, in the context of the appellant's claims that paragraph 297(i)(e) and/or (f) are met , the letters from Accra Academy confirm the appellant's admission, with the July 2021 letter indicating awareness that the appellant's father died in 2018 with day to day care provided by Mr Garbey. However, in light of the finding that the appellant's father is not dead and in the absence of any up-to-date evidence from Accra Academy, where such ought to be available, for example, to explain on what basis they made those assertions, we can place no reliance on that evidence, which we note also states that 'as far as the school is aware; the sponsor remains the surviving parent'. We have considered that the school references the specific steps it claims were taken by the sponsor in relation to her son's education. However, in light of the concerns about the credibility of the sponsor we have treated all of the evidence produced, which we find, on balance, have been produced to support the appellant's application for entry clearance, with caution, and have attached no weight to these documents. Although the skeleton argument criticises the respondent for not contacting Accra Academy, the burden of proof is with the appellant, including in demonstrating that the documents produced can be relied on as claimed.

28. Similarly, we find the letters from Weija Central Mosque dated 6 July 2019 and 11 June 2021, to be unreliable. The letters claim that the appellant had been worshipping there since 2013, the decision for him to worship was taken 'by her mother' as they lived closer to the Mosque than his father. The letters also imply that the appellant has been attending with either his mother or Mr Garbey. There are a number of difficulties with this evidence, including that the sponsor confirmed in oral evidence that her son had lived with his father until his father's claimed death in 2018. It is not credible therefore, that the Mosque would indicate that this Mosque was chosen (in 2013) as 'her (sic) mother lived closer to the Mosque' than his father, given that it is the sponsor's case before us that the appellant was living with his father up until 2018. In addition, given that the sponsor claims her son has been cared for by Mr Garbey only since 2018, it is not credible that the letters, which advise worship by the appellant since 2013, refer to the appellant being 'normally accompanied by her mother or carer Mr Garbey'. The letters specifically indicate that the appellant's father did not attend the Mosque and indeed the author asserts he had never met him. On the sponsor's claimed facts, given that she has been living in the UK since 2010, it is unclear who would have taken the appellant to the Mosque from 2013 until 2018. We have attached no weight to this evidence which further undermines the appellant's claims that his mother has had sole responsibility for his upbringing and/or that there are serious and compelling family or other considerations making exclusion undesirable.

29. Although the skeleton relies on the reference in the Mosque letters to the sponsor visiting and indicates that her passport supports this, such is not specifically in dispute and we are not satisfied that this claimed consistency addresses the fundamental difficulties with the evidence produced.

30. The appellant also relies on letters from Zak Med Clinic dated 10 May 2019 and 15 July 2021 in which an unnamed author states that the appellant has been receiving medical care at the clinic with the sponsor being the main 'financier' and both parents being emergency contacts until the appellant's father was replaced by Mr Garbey in 2018. The May 2019 letter reports that the father 'sometimes paid for the medical bills directly'. Although we have considered that these letters purport to confirm that the sponsor has been the sole adult with responsibility for her son, we similarly find this evidence to be fundamentally undermined, both by the fact that it has been obtained and produced by the sponsor who we find to be lacking in credibility and not a reliable witness, and by the fact that the evidence relies heavily on claims that the appellant's father is dead, which is not the case.

31. Whilst we accept that there is evidence of financial transfers being made by the sponsor to Ghana, we are not satisfied that this takes the appellant's case any further, given the sponsor's damaged credibility and the finding that the appellant's father is not deceased. As the absent parent, it is understandable that she would send money to the family to help support her son, but is not determinative of the sponsor having sole responsibility. Similarly, whilst we take into account the What's App evidence showing contact between the appellant and the sponsor, we are not satisfied, considered in the round that this assists the appellant in demonstrating that either 276(i)(e) or (f) are met. The What's App chats date from 2018 onward and repeatedly mention the appellant wanting to join the sponsor in the UK as well as referencing his unhappiness, including about the 'harsh treatment' he is getting in Ghana (page 229, AB, 3 February 2019). They also reference the appellant wanting more money and how the appellant and sponsor miss each other. Whilst we have taken into account that the records provided cover a number of years (although there are some gaps), we found them to have the air of something prepared for an audience to read, particularly with the focus so heavily on the appellant wanting to join the sponsor in the UK and sending funds, with very limited detail about either party's day to day lives. Although such may not be fatal, in itself, to the appellant's case, considered in the round, in the context of the sponsor's damaged credibility and the finding that the appellant's father is in fact, not deceased, we find this evidence to also be fundamentally undermined and we attach no weight to it.

32. We also note, in passing, that the sponsor in oral evidence appeared to suggest that there was, in effect, no urgency in the appellant coming to the UK prior to the 2020 application, given that Mr Garbey was a close family friend and agreed to look after him, with the only reason for the application in 2020, claimed to be the nature of Mr Garbey's work and difficulties with him being a carer. This is inconsistent with the tenor of many of the What's App chats contained in the appellant's bundle, where the appellant claims to be unhappy including at being 'left' in Ghana, as far back as 2018 (AB 225) indicating that 'since dad left me I don't think you realise the pain I feel when I am all alone… No single parent at my side even'. The sponsor is also recorded, again in 2018, as referring to

intending to come and pick the appellant up but that it is ‘process and am on it ok’ (sic). This further undermines the sponsor’s evidence before us, that she had decided in 2018 that the appellant would stay with Mr Garbey in Ghana and that the 2020 application was only precipitated by the change in Mr Garbey’s circumstances.

33. In conclusion therefore, considering paragraph 297(i)(e), although we accept that one parent is present and settled in the UK, we are not satisfied that the appellant has demonstrated on balance, that his mother has had sole responsibility for the appellant’s upbringing. In so finding we have considered **TD (Paragraph 297(i)(e): “sole responsibility” Yemen [2006] UKAIT 00049**.

34. We have reminded ourselves of the questions to be asked in considering sole responsibility (at paragraph 52 of the decision):

    i Who has "responsibility" for a child's upbringing and whether that responsibility is "sole" is a factual matter to be decided upon all the evidence.

    ii. The term "responsibility" in the immigration rules should not to be understood as a theoretical or legal obligation but rather as a practical one which, in each case, looks to who in fact is exercising responsibility for the child. That responsibility may have been for a short duration in that the present arrangements may have begun quite recently.

    iii. "Responsibility" for a child's upbringing may be undertaken by individuals other than a child's parents and may be shared between different individuals: which may particularly arise where the child remains in its own country whilst the only parent involved in its life travels to and lives in the UK.

    iv. Wherever the parents are, if both parents are involved in the upbringing of the child, it will be exceptional that one of them will have sole responsibility.

    v. If it is said that both are not involved in the child's upbringing, one of the indicators for that will be that the other has abandoned or abdicated his responsibility. In such cases, it may well be justified to find that that parent no longer has responsibility for the child.

    vi. However, the issue of sole responsibility is not just a matter between the parents. So even if there is only one parent involved in the child's upbringing, that parent may not have sole responsibility.

    vii. In the circumstances likely to arise, day-to-day responsibility (or decision-making) for the child's welfare may necessarily be shared with others (such as relatives or friends) because of the geographical separation between the parent and child.

viii. That, however, does not prevent the parent having sole responsibility within the meaning of the Rules.

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

35. Applying that guidance to our findings of fact, including the preserved finding that the appellant's father is not deceased, given that the documents provided cannot be relied on as claimed and that we found the sponsor to be an unreliable witness, we are not satisfied that it has been established, on the balance of probabilities, that responsibility for the child at the relevant date was anything other than shared with the appellant's father, as we find it was in 2018. Although we take into account that the matter of sole responsibility can change, given the credibility issues in this case, we are not satisfied that this is a case where it has been demonstrated that the sponsor assumed sole responsibility in 2018, for whatever reason might be claimed.

37. We are supported in our findings by the sponsor's own oral evidence, where she admitted the appellant's father was involved with the appellant's upbringing prior to March 2018, when she claims he died, and that he would have continued to share responsibility had he been alive.

38. In relation to paragraph 297(i)(f), we rely on our findings that the credibility of both the sponsor, and the appellant's application in general, has been fundamentally undermined. Although we accept that there is evidence indicating that sponsor has Sickle Cell disease, we note that she is continuing to work which undermines the claim made (including by Mr Garbey in his witness statement) that she needs her son's presence in the UK to help her. The appellant's skeleton argument relies on evidence, including from Dr Gardiner, that Sickle Cell is an unpredictable disorder because of acute painful episodes that can occur at any time and that it is recommended that such patients have a support network. Although the sponsor's medical diagnosis is not in dispute, we are not satisfied that the appellant's health conditions considered in the round (including in light of her continued employment, earning in excess of £18,600) are such that they would constitute compelling circumstances either considered in themselves or cumulatively with all the circumstances, including the appellant remaining in Ghana. We also take into account that the sponsor's own evidence in the form of her passport pages confirms that she has been in a position to visit her son in Ghana.

39. In reaching these findings, we take into account that the sponsor made no reference to her health conditions, either in her witness statement or in oral evidence. Whilst we do not dispute her condition, we are not satisfied that it assists the appellant in establishing compelling family or other considerations which make his exclusion undesirable.

40. In considering paragraph 297(i)(f), we have taken into account that the appellant at the relevant date was still a minor. In considering his best interests, whilst in an ideal world it would be beneficial for a minor to live with both parents, we take into account that the sponsor left him with his father in Ghana in 2010. The appellant was only a few months away from his 18th birthday and on the sponsor's own evidence, it had been her choice that he stayed with a close family friend in Ghana rather than join her earlier, suggesting that she was content with the arrangement. There was no information to support her and Mr Garbey's vague claims as to why that arrangement could not continue.

41. In any event, overriding all these issues is the preserved finding that the appellant's father is not deceased. Although we note Mr Garrod's submission that there was no evidence to suggest any involvement by the father since 2018, neither would we expect such documentary evidence, given that the credibility of both the sponsor and the application are completely undermined by that finding. Therefore, we are satisfied, including given what we find to be the availability of his father in Ghana, with no reliable evidence that he can't continue to provide the support (including accommodation) which the sponsor acknowledged he was providing the appellant until 2018, that there are no serious and compelling family or other considerations which make exclusion undesirable. We are further satisfied that the appellant's best interests as a child did not require a grant of entry clearance.

42. It is a preserved finding before us that the sponsor is the appellant's mother. We accept on balance, as the judge in the First-tier Tribunal did, that the refusal of entry clearance interferes with the appellant's right to respect for his private and family life and that such interference is of sufficient gravity to potentially engage Article 8. We accept that the interference is in accordance with the law and necessary for the maintenance of effective immigration control.

43. In considering the Article 8 proportionality test, we factor into that test our findings the appellant does not meet the requirements of the relevant Immigration Rules, paragraph 297.

44. Factors mitigating against the appellant being granted entry clearance include the public interest in the maintenance of effective immigration controls. The appellant's application did not succeed under the Immigration Rules. We also take into account, in considering Article 8 outside the Immigration Rules, that the appellant is now aged 20 and is a young man (who has completed some studies in Ghana) who in our preserved findings has a parent also living in Ghana, whose mother chose to leave him in Ghana. As a young adult it has not been demonstrated that the appellant now needs the care of either parent.

45. Factors in favour of a grant of entry clearance to the appellant include that the appellant meets all of the other requirements under the Immigration Rules. However, whilst the appellant's sponsor meets the financial

requirements and the appellant would be financially independent, that is a neutral factor under section 117B(3) of the 2002 Act.

46. We are satisfied that the factors in favour of allowing the appeal are outweighed by the factors against and we have taken into account that the UK is not subject to a positive obligation under Article 8, ECHR to admit the appellant to the UK.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law such that it is set aside. We substitute our decision re-making the decision dismissing the appellant's appeal on all grounds.

No anonymity direction was sought or is made.

Signed
Date: 15 September 2022

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

As the appeal has been dismissed no fee award is made.

Signed
Date: 15 September 2022

Deputy Upper Tribunal Judge Hutchinson