IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003834
First-tier Tribunal No: HU/05137/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 April 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

VANESSA DANKWA BOAKYE
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, SHEFFIELD

Respondent

Representation:
For the Appellant: Ms A Seehra, Counsel, instructed by Ernst Law
For the Respondent: Mr A Basra, Senior Presenting Officer

Heard at Field House on 13 April 2023

DECISION AND REASONS

Introduction

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal O'Keefe ('the Judge'), sent to the parties on 21 June 2022, dismissing her human rights (article 8 ECHR) appeal.

2. The appellant, a minor at the date of application, seeks entry clearance to join her father in the United Kingdom.

Brief Facts

3. The appellant is a national of Ghana and is presently aged 18. She was aged 17 when she applied for entry clearance.

4. Her parents were not married to each other. Their short relationship had concluded by the time her father, Mr. Ernest Boakye, entered the United Kingdom as a visitor in 2003, several months before her birth. Her father subsequently overstayed in this country before securing leave to remain in this country in 2014. He presently enjoys indefinite leave to remain.

5. Her father, who is the appellant's sponsor, asserts that he shared parental responsibility for his daughter with her mother for a time and then for some years has enjoyed sole responsibility for her.

6. The respondent refused the entry clearance application by a decision dated 27 October 2021. The respondent was not satisfied, *inter alia*, that the appellant's father has sole responsibility for the appellant's upbringing.

Grounds of Appeal

7. The appellant relies upon grounds of appeal drafted by Ms Seehra, Counsel, who did not represent her before the First-tier Tribunal. Two grounds are advanced, which can properly be identified as:

   (i) When making adverse findings of fact the Judge failed to consider relevant evidence. This ground is also advanced in the alternative: if the evidence was considered, no reasons were provided for discounting it.

   (ii) When making adverse findings of fact the Judge required a level of specific detail that went beyond the issues raised within the respondent's decision letter.

Discussion

8. At the outset I detail my gratitude to both Ms. Seehra and Mr. Basra for their succinct and helpful submissions. I am particularly grateful to Ms. Seehra for addressing me with considerable skill in respect of failings by her instructing solicitors and the late service of documents.

9. I allowed the appellant's appeal at the hearing to the extent that the decision of the Judge was to be set aside with no findings of fact preserved, and the appeal was to be remitted to the First-tier Tribunal sitting at Hatton Cross. I detail my reasons below.

10. When considering whether the appellant's father possessed sole responsibility, the Judge turned her attention to whether he was paying the appellant's school fees, at [38]-[40] of her decision:

> '38. Mr Boakye said he was responsible for payment of the appellant's school fees. The receipts provided from the appellant's schools

> do not name Mr Boakye and show that the payments were received from the appellant. Mr Boakye said that the student's name was always written on receipts. I was provided with a letter from St Monica's Senior High School dated 6th May 2022. That states, 'As the sole parent with parental responsibility who gave consent and authority for all decisions regarding Vanessa's enrolment and admission process. The school rightly deems his as being responsible for enrolling his daughter at the school'.
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> 39. There is no evidence in that letter to support Mr Boakye's claim that he is responsible for payment of the appellant's school fees. It states that he is the sole parent with parental responsibility but gives no examples of how that responsibility has been exercised. If Mr Boakye was in a position of sole responsibility, it is reasonable to assume he would have been sent the appellant's school reports or at least been in a position to obtain copies. There is no evidence from Mr Boakye's brother to support any assertion that the monies sent to him by Mr Boakye were used for the payment of the appellant's school fees or for her benefit. Mr Marfo simply states in his letter that Mr Boakye had provided the appellant with all of the financial support that she required.
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> 40. The appellant provided a letter from John William Montessori School which states that the appellant was a pupil at the school from 12th September 2013 until 2020. Whilst it states that Mr Boakye was responsible for the appellant's school fees, it does not state the mechanism for payment of those fees. I was not directed to any evidence to show that Mr Boakye made any payment directly to the school. Whilst both schools say that Mr Boakye kept in touch regarding the appellant's progress, it is surprising therefore that he was unable to provide any reports or school work after 2013. His oral evidence that school reports went to the appellant's mother was inconsistent with the claim that the appellant's mother had no involvement in her life.'

11. The appellant observes that at [38] and [39] of her decision the Judge relied upon the letter from the appellant's senior school, St Monica's Senior High School, dated 6 May 2022, not detailing evidence as to her father paying her school fees. Ultimately, an adverse conclusion is reached on this issue which informed the conclusion that the appellant's father does not have sole responsibility for his daughter. However, the appellant contends that the Judge entirely failed to consider a letter from the same school dated 18 June 2021:

> 'Vanessa Dankwa Boakye was admitted to St Monica's Senior High School, Mampong-Ashanti, in March 2020/2021 academic year to pursue a three-year programme in Home Economics.
>
> Mr. Ernest Boakye, her father, saw her through the admission process. He constantly kept in contact with the teachers and the school administration to inquire about Vanessa's progress in her studies.

> Her academic report and general performance were sent to him, and he was consulted for any extra-curricular activities that involved her. He is also responsible for all expenses on his daughter.'

12. On its face, the 2021 letter confirms not only that her father was responsible for her admission and that he remained in contact with the school regarding her progress, but also that he was responsible for all of her expenses. It is the appellant's case that the Judge acted unreasonably by reaching findings in the absence of considering relevant evidence placed before her.

13. The appellant also relies upon a letter from the John William Montessori School, which she attended between 2013 and 2020, that details her father was responsible for paying tuition fees during such time.

14. Before me Mr Basra accepted that the Judge erred by not considering two relevant documents relied upon by the appellant but submitted that the error was not material. He relied upon several paragraphs of the Judge's decision including [13] where the Judge set out in detail the guidance offered by the Upper Tribunal in *TD (paragraph 297(i)(e): "sole responsibility") Yemen* [2006] UKAIT 00049. He also directed my attention to [47] and [48] of the decision.

> '47. Ms Appiah says in her statement that she plays no part in her daughter's life. Mr Boakye's evidence was that school reports went to her. Ms Appiah also says that the appellant was under her father's sole responsibility. What she describes however, is the appellant going to live with her uncle and continuing to live with her uncle. When Ms Appiah checked on the appellant, she checked with the appellant's uncle rather than the appellant. It is clear from the letter written by Ms Appiah in June 2021 that she does have some contact with the appellant. She said, 'anytime I have contact with Vanessa, I see great transformation and happiness. She always talks about her father'. I have no evidence from the appellant or her uncle as to the appellant's current circumstances or any contact that she has with her mother.
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> 48. It is for the appellant to prove her case. The appellant was on notice that the respondent did not accept that she met the requirements of the Immigration Rules and specifically that it was not accepted that Mr Boakye had sole responsibility for her. It is reasonable to assume that if her circumstances were as claimed, she would be in a position to provide rather more cogent evidence to show Mr Boakye had sole responsibility rather than relying merely on oral assertions. There is very little to show how Mr Boakye has exercised any responsibility for the appellant beyond asking her school mistress to take her for a DNA test. On the evidence before me considered as a whole, I find that the appellant has not demonstrated that her sponsor in the UK has had sole responsibility for her upbringing.'

15. I have considered the Judge's decision in the round and note that in the main it is a very good example of clear and cogent decision writing. However, I am satisfied that the last sentence of [48] is self-identification by the Judge that she had considered the 'whole' of the evidence before her when finding that the appellant had not demonstrated that her father had sole responsibility for her upbringing. This is clearly not the case, as the two letters relied upon by the appellant before this Tribunal provide, on their face, clear evidence as to her father's engagement with her schooling, contrary to the finding at [39]. The Judge was required to address these documents. Whilst it would have been open to her not to accept their content, she would be required to provide reasons explaining why that was the case.

16. I am satisfied that the related questions of whether the father is paying school fees and his engagement with school authorities go to the core of his assertion that he enjoys sole responsibility. Such assertions should properly be considered and weighed in the assessment of fact. I conclude that the failure to adequately consider core evidence fatally undermines the conclusions reached by the Judge as they impermissibly infected the conclusion reached. In such circumstances the only proper course of action is to set aside the decision of the First-tier Tribunal for material error of law. It is appropriate that no findings of fact are preserved.

17. Having found a material error of law in respect of ground 1, there is no requirement for this Tribunal to proceed to consider ground 2.

Resumed Hearing

18. Both representatives indicated that it would be appropriate for this matter to be remitted back to the First-tier Tribunal.

19. At the hearing I was mindful that upon a decision of the First-tier Tribunal being set aside by this Tribunal, the presumption is that a resumed hearing will take place in this Tribunal. However, I am satisfied that to date the appellant has not received a fair hearing consequent to the failure to consider the core evidence she relies upon. Being mindful that the appellant's father would again be required to give evidence, and further noting Mr Basra's observation that observations made by the Judge are likely to be put to the appellant's father at the resumed hearing, I have decided that it is proper that this appeal be remitted back to the First-tier Tribunal.

Notice of Decision

20. The decision of the First-tier Tribunal sent to the parties on 21 June 2022 is subject to material error of law, and is set aside, with no findings of fact preserved.

21. The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross, to be listed before any judge other than Judge of the First-tier Tribunal O'Keefe.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
19 April 2023