



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2024-001818**  
**First-tier Tribunal Nos:**  
**HU/54594/2023**  
**L**

**H/06773/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 05 September 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**KJH**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Ms A Smith, instructed by Danielle Cohen Immigration Law Solicitors Ltd

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**Heard at Field House on 7 August 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant, a national of Namibia, appeals to the Upper Tribunal, with permission granted by Deputy Upper Tribunal Judge Metzger KC on 30 May 2024, against the decision of First-tier Tribunal Judge Jepson promulgated on 27 January 2024. The First-tier Tribunal Judge dismissed the Appellant's appeal against the decision of the Entry Clearance Officer dated 14 February 2023 to refuse her application for entry clearance to join her mother (the Sponsor), a naturalised British citizen, under paragraph 297 of the Immigration Rules.
2. The background to this decision is that the Sponsor came to the UK aged 17 on a work visa and remained as an overstayer on its expiry. The Appellant was born in the UK on 4 February 2005. The father of the child was not involved with the Sponsor or Appellant at that stage, or since. The Appellant left the UK with the Sponsor's mother in April 2005 as the Sponsor said that she would find it difficult to raise the Appellant in the UK as a single mother while working. The Sponsor remained in the UK and in 2011 met a British national who she married on 13 March 2018. The Sponsor returned to Namibia in 2018 in order to apply for entry clearance as a spouse and visited the Appellant whilst she was there. The Sponsor returned to the UK with a spouse visa on 24 July 2018. The Sponsor was subsequently granted further leave to remain and was subsequently naturalised as a British citizen. On 21 December 2022 the Appellant applied for entry clearance to join her mother in the UK. That application was refused on 14 February 2023.
3. The First-tier Tribunal Judge dismissed the Appellant's appeal against that decision not being satisfied that the requirements of paragraph 297 of the Immigration Rules were met. The judge was not satisfied that the Sponsor has had sole responsibility for the Appellant or that there are serious and compelling circumstances such as to make the Appellant's exclusion from the UK undesirable. The judge also dismissed the appeal under Article 8 outside of the Rules.
4. The Appellant made an application for permission to appeal to the First-tier Tribunal. In a decision dated 14 March 2024 First-tier Tribunal Judge Sills refused to grant permission to appeal. The application for permission to appeal was renewed to the Upper Tribunal and on 30 May 2024 Deputy Upper Tribunal Judge Metzger KC granted permission to appeal on all grounds.
5. There are six Grounds of Appeal as follows:

Ground 1 - The Judge made material errors of fact amounting to errors of law as per E [2004] EWCA Civ 49 and/or misunderstood the evidence and/or failed to take the evidence into account in particular in relation to the letter from the child's school and the report from the Ministry of Gender Equality which impacted the assessment of whether her mother has sole responsibility.

Ground 2 - The Judge made contradictory findings at paragraph 44 which are inconsistent with TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 about the length of time the Sponsor was required to demonstrate sole responsibility for A for the purposes of the Rules and which are irrational.

Ground 3 -The Judge made contradictory and/or irrational findings that there was no longer any risk from the male relative who had sexually assaulted A

notwithstanding that the family had previously been unable to protect her from this relative, that A was staying with another family member, that the family had chosen not to pursue criminal charges against the relative and the objective evidence confirms that the authorities are ineffectual against the widespread sexual abuse within the family in Namibia.

Ground 4 - In assessing whether there are serious and compelling family or other considerations the Judge failed to take into account the evidence that A “displayed severe symptoms of psychological trauma” as a result of being sexually assaulted by a male relative.

Ground 5 - Having accepted a number of material facts and evidence in the case the Judge nonetheless irrationally and unfairly found at paragraphs 55 and 62 that the Sponsor’s credibility was undermined by the failure of her representatives at the time to submit an updating witness statement for the appeal hearing.

Ground 6 - Furthermore in the assessment of Article 8 outside the Rules at paragraphs 66 and 67 the Judge failed to take material factors and evidence into account, including that A had been sexually assaulted by a male relative and “displayed severe symptoms of psychological trauma”.

### Decision on error of law

#### *Ground 1*

6. It is contended in Ground 1 that the judge erred in making material errors of fact amounting to errors of law in misunderstanding the evidence and/or failing to take proper account of the evidence in relation to the letter from the child’s school dated 21 December 2022 (page 160 of the Upper Tribunal bundle) and the report from the Minister of Gender Equality, Poverty Eradication and Social Welfare dated 3 May 2021 (page 163). It is contended that this impacted the assessment of whether the child’s mother has sole responsibility within paragraph 297 of the Immigration Rules.
7. At the hearing Ms Smith highlighted paragraphs 36 and 63 of the First-tier Tribunal Judge’s decision where the letter from the school was considered. In her submission the judge made an error of fact in relation to that letter in that the letter states that the Appellant’s mother contributes towards the school activities and also pays the Appellant’s fees. In her submission this contradicts the judge’s finding at paragraph 36 that the letter does not directly say that the Sponsor pays for tuition and board.
8. In his submissions, Mr Avery contended that it is clear from paragraph 36 that the judge had read the letter from the school, he contended that the judge was right to say that the letter from the school did not say that the Sponsor pays for tuition and board, it refers to fees but is not specific as to what these fees are. In his submission the judge was being precise as regards the interpretation of that letter and this was an interpretation open to the judge. In his submission the judge was right to conclude that the letter is nebulous in that it fails to specify the forms of communication platforms through which the Sponsor is said to discuss the Appellant’s progress with her teachers. He contended that the the judge was entitled to interpret this piece of evidence in that way.

9. In my view the judge made a mistake of fact in relation to the letter from the Appellant's school dated 21 December 2022. It is stated in the letter that the child has been at the school, in the boarding hostel, since 2019 and that the Sponsor monitors her daughter's academic performance monthly through discussions with her teachers, that the Appellant's mother is overwhelmingly involved and contributes towards the school activities "and also pays her fees".
10. In my view the judge's conclusion at paragraph 36 that the letter does not directly say that the Sponsor pays for the child's tuition and board is not consistent with the contents of the letter from the school which states that the Sponsor pays the fees.
11. It is further contended in Ground 1 that the judge made a mistake in his consideration of the letter from the Ministry of Gender Equality, Poverty Eradication and Social Welfare dated 3 May 2021. At paragraph 41 of the decision the judge said that guardianship was granted on the Appellant's return to Namibia which contradicts the Sponsor's evidence that such order was only sought after the Appellant was unable to obtain a passport more recently. The judge considered that this discrepancy has not been addressed.
12. However, that letter from the Minister of Gender Equality, Poverty Eradication and Social Welfare dated 3 May 2021 is stated to be "confirmation that the child has been in sole legal guardianship of her maternal grandmother ... since she was two months old...". It does not state that there was any legal proceedings or any legal documents to evidence that the child was in the guardianship of her maternal grandmother since she was 2 months old.
13. In his submissions Mr Avery contended that the judge was entitled to interpret the letter from the Ministry of Gender Equality in the way he did. In his submission the letter does say that the child's grandmother was acting as a legal guardian and the interpretation at paragraph 41 was open to the judge.
14. In my view the judge misinterpreted the letter from the Ministry of Gender Equality, Poverty Eradication and Social Welfare. Contrary to the finding at paragraph 41, the letter does not state that a guardianship order was granted on the Appellant's return to Namibia in 2005.
15. I find it established that the judge made material error of facts in relation to the letter from the child's school and misinterpreted the letter from the Ministry of Gender Equality, Poverty Eradication and Social Welfare. I consider that these two errors of fact are material to the judge's consideration of the evidence in the round as to whether the Sponsor has had sole responsibility for the Appellant and met the requirements of paragraph 297 of the Rules.

## *Ground 2*

16. It is contended in Ground 2 that the judge made contradictory and inconsistent findings at paragraph 44 about the length of time the Sponsor was required to demonstrate sole responsibility for the Appellant for the purposes of the Rules.
17. At paragraph 44 the judge said that the Rules are clear that sole responsibility must be established at the point of application rather than at a set point in the past. The judge went on, however, to find that the fact that the Sponsor had not

demonstrated that she had been sending financial help throughout the Sponsor's time in the UK undermined her account.

18. Mr Avery submitted that the judge recognised that the issue was sole responsibility at the date of the decision but considered that the lack of any previous evidence undermined the Appellant's account. I accept that this was a finding open to the judge in terms of the Sponsor's credibility.

#### *Grounds 3 and 5*

19. It is contended in Ground 5 that the judge irrationally and unfairly found at paragraphs 55 and 62 that the Sponsor's credibility was undermined by the failure of her representatives to submit an updating witness statement for the appeal hearing. I consider this along with Ground 3 which takes issue with the judge's consideration of the recent evidence about the Appellant's living circumstances and the risk from the male relative who had assaulted the Appellant in the past.
20. In her submissions Ms Smith contended that the witness statements were uploaded onto the First-tier Tribunal case management system in July 2023 in accordance with directions and that the hearing was in January 2024. In her submission therefore the Sponsor was entitled in her oral evidence to provide further information as to the Appellant's circumstances as at January 2024. She submitted that it was unfair for the judge to make adverse credibility findings on the basis that no statement had been submitted in relation to intervening events. In her submission this was a matter for the representative rather than for the Appellant or Sponsor.
21. In his submissions Mr Avery submitted that the decision must be considered as a whole, and the judge took a balanced view of the evidence. In his submission the late evidence as regards the Appellant moving out were issues of concern to the judge but not the only concerns. He contended that the judge's conclusions in relation to credibility at paragraphs 62 and 63 were reached on the evidence overall and the judge took a careful approach to the evidence.
22. At paragraph 50 the judge noted that the Sponsor had not made an updated statement referring to her representative in her oral evidence when asked about this. The judge acknowledged that someone might not know to provide a supplemental statement without being advised to do so. However, the judge referred to the new evidence at paragraph 54, going on at paragraph 55 to say that the late raising of events from some months ago caused him some concern. He said he was wary of the lack of a further statement and the absence of any real explanation for that and considered that this undermined the Sponsor's credibility.
23. As noted above the Appellant's bundle was lodged, in compliance with First-tier Tribunal directions, in July 2023. In the note of the oral evidence, set out at paragraph 21, it is stated that the Sponsor said in examination-in-chief that the Appellant is now without accommodation. At paragraph 22 it states that the Appellant became homeless in December and was living all over the place because the person she had previously accused of assaulting her had returned to her grandmother's address.

24. It is therefore apparent that the judge held against the Sponsor, in terms of assessing her credibility, the fact that she had not submitted a witness statement in relation to matters which had occurred during the month before the hearing.
25. I accept that it would have been open to the judge to draw adverse credibility conclusions from the failure to mention something which could have been covered in a witness statement or something which could have been evidenced in advance of the hearing. However, the conclusion at paragraph 55 that a lack of a further statement undermines the Sponsor's credibility on that matter is not a fair or adequate reason for an adverse credibility finding on this matter. There may be other reasons why the Sponsor's credibility is undermined but the lack of a statement on a very recent event in itself in my view is not adequate.

#### *Ground 4*

26. Contrary to the contention in Ground 4, the judge was aware of the evidence relating to the trauma suffered by the Appellant following the sexual assault. The judge referred to this at paragraph 14, and again at paragraph 46 where he acknowledged ongoing social services engagement. In my view this is enough to show that the judge was aware of the social services report dated 30 December 2022, at page 161 of the Upper Tribunal bundle.

#### *Ground 6*

27. I accept Mr Avery's submission that the judge was not required to rehearse all of the factors to be considered again in his consideration of Article 8. Although brief, the judge gave consideration to Article 8 outside the Rules at paragraph 67 taking into account the relevant factors.

#### Conclusion

28. I consider that the errors established under Grounds 1,3 and 5 for the reasons set out above are material errors going to the heart of the judge's conclusions in relation to paragraph 297 of the Immigration Rules.
29. Accordingly, I consider it appropriate to set the decision of the First-tier Tribunal aside in its entirety with no findings preserved. I remit the appeal to the First-tier Tribunal (Hatton Cross hearing centre) for re-hearing before a Judge other than Judge Jepson.

#### **NOTICE OF DECISION**

**The decision of Judge Jepson dated 27 January 2024 contains errors of law which are material. I set that decision aside in its entirety and remit the appeal to the First-tier Tribunal (Hatton Cross hearing centre) for re-hearing before a Judge other than First-tier Tribunal Judge Jepson.**

A Grimes

Deputy Judge of the Upper Tribunal

Appeal Number: UI-2024-001818/2023  
First-tier Tribunal Numbers: HU/54594/2023  
LH/06773/2023

Immigration and Asylum Chamber

**13 August 2024**