



**Upper Tribunal
(Immigration and Asylum Chamber)**

OA/02458/2013

OA/02461/2013

OA/02464/2013

OA/02466/2013

Heard at Field House
Promulgated
On 29 July 2014

Appeal Numbers:

Determination

On 8 August 2014

Before

DESIGNATED TRIBUNAL JUDGE DIGNEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RUSTAM KHAN +3

Respondents

Representation:

For the respondent: Mr Nasim

For the appellant: Mr Nath, Home Office Presenting Officer

DETERMINATION

1. The respondents, citizens of Pakistan, siblings, applied for entry clearance to this country with a view to settlement with their father. The application was refused under the Immigration Rules because the appellant was not satisfied that the sponsor had sole responsibility for his children. An appeal was allowed against the decision after a hearing on 10 April 2014 when the judge concluded that the sponsor did have sole

responsibility for the children. The Secretary of State appeals against that decision.

2. The grounds of appeal rely on the head note of TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 which states:

"Sole responsibility" is a factual matter to be decided upon all the evidence. Where one parent is not involved in the child's upbringing because he (or she) had abandoned or abdicated responsibility, the issue may arise between the remaining parent and others who have day-to-day care of the child abroad. The test is whether the parent has continuing control and direction over the child's upbringing, including making all the important decisions in the child's life. However, where both parents are involved in a child's upbringing, it will be exceptional that one of them will have "sole responsibility".

3. The head note is based on paragraph 52 (iv) of the determination, which reads:

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

4. The grounds of appeal state that the judge did not engage with the exceptionality test; the oral evidence was that the appellants visit their mother once in six or seven months and these visits indicate frequent contact with their mother and such are good reason to suggest that the mother has been involved in their upbringing which suggests the exceptionality test detailed above is not satisfied.

5. Permission to appeal was granted on the basis of those grounds.

6. I would first say that there is no exceptionality test; it is a matter of common sense that if both parents are involved in upbringing it will be difficult for one of them to claim sole responsibility.

7. Insofar as there is a test it is to be found in paragraph 52 (i) which reads:

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.

8. The starting point is to ask if there is any evidence that both parents were involved in the upbringing. The children visited their mother about twice a year. That is not evidence of anything other than the children's desire to see their mother. The mother visited the children once or twice since the father came to this country, which he did in 2003. I do not see how two visits in about ten years (the application was made in November

2012) can be seen as evidence of an involvement in the upbringing of the children. The grounds of appeal state that this very modest involvement is good reason to suggest involvement in upbringing. I do not agree. There is quite simply no evidence that the mother had any involvement in the upbringing during those ten years and Mr Nath could point to no such evidence. It is then a simple question of fact as to whether the father had sole responsibility, to be decided "upon all the evidence". The judge considered all that evidence and reached the conclusion that the father did have sole responsibility; that was a conclusion that he was entitled to reach on the evidence and his reasoning is not vitiated by any error of law.

9. The original determination did not contain an error of law and shall stand.

The appeal is dismissed

Designated Judge Digney Judge of the Upper Tribunal 29 July 2014