



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/23746/2012

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 3<sup>rd</sup> November 2014

Determination Promulgated  
On 24<sup>th</sup> November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

P D  
(ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

**Representation:**

For the Appellant: Mr Wood of Rochdale Legal Enterprise

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant, PD, is a citizen of Zimbabwe. The appellant is a minor. The appellant is applying for entry clearance to the UK as the child of a person settled in the UK under paragraph 297 of the Immigration Rules.

2. I have considered whether or not it is appropriate to make an anonymity direction. The case concerns the status and rights of a minor. Having considered all of the circumstances I consider it necessary to make an anonymity direction.
3. This is an appeal against the determination of Designated First-tier Tribunal Judge Baird promulgated on 21<sup>st</sup> July 2014. Leave to appeal was granted on 29<sup>th</sup> August 2014. The leave raises the issue of whether the judge has approached the issue of sole responsibility in accordance with the case of TD (paragraph 297 (i)(e) sole responsibility) Yemen [2006] UKAIT 00049. The leave thereafter grants permission to appeal. There was no limitation on the grounds that can be raised before me.
4. Thus the case appeared before me as an appeal in the Upper Tribunal to determine in the first instance whether there is a material error of law within the determination.
5. The date of the ECO's decision is the 5<sup>th</sup> November 2012. By Section 85 and 85 A of the 2002 Act as amend the appeal has to be determined in accordance with the evidence pertaining to the date of the decision. The application had been made on 10 September 2012.
6. Judge Baird had refused this appeal on two main grounds. The first, the issue raised in the leave, related to whether the sponsor had had sole responsibility for the appellant and the second related to finances, in that the income of the sponsor was insufficient to maintain the appellant and herself in accordance with the requirements of the rules.
7. In respect of the appellant's finances the matter is dealt with in paragraph 7 of the determination. The accounts of the sponsor disclosed a net yearly profit/income from self-employment between 29 July 2012 on 30 June 2013 of £7720. Thus the sponsor had a net weekly income of £148.46.
8. Within the VAF it was stated that the sponsor's monthly income was £2200. It was also asserted that the sponsor was working as a hairdresser 10 hours a week and earning £300. I draw specific attention to paragraph 8.7.12 where it was asked whether or not the sponsor had any savings and it was stated that she had none.
9. In order to meet the requirements of the rules the sponsor has to have sufficient to support herself and the appellant to the adequately, which has been taken as being at a level equivalent to the level of social security/benefits payments.
10. The level of benefits for a single person with a child is £71.00 for the sponsor plus £64.99 for the child plus £22.20 family premium as a single parent plus rent and council tax payments/housing benefit payments. The sponsor would therefore need income of £138.19 after taking account of her rent and council tax.
11. The sponsor's rent was £60.09p at the time of the decision. After paying the rent the sponsor would therefore be left with £88.35 net income resulting in a weekly shortfall of £49.84p. During the course of the hearing the appellant's representative stated that

the shortfall was £39.75p. I do not have the calculations upon which that figure is based.

12. In order to make up the shortfall the sponsor was seeking to rely upon money that she had in her bank account.
13. At the time of the original application the sponsor's bank account had on the bank statements provided a credit balance of £217.51. On the basis of that evidence the appellant and the sponsor could not meet the financial requirements of the rules.
14. However the sponsor had produced further bank statements for the hearing. Those bank statements indicated on and after 9 November a series of deposits were made into the account. Those deposits are not consistent with the history of the account. On 9 November 2012 £400 was paid in; on 12 November 2012 £458; on 15 November £500; on 19 November £500; and on 20 November £1000. A total of £2,858. To cover the deficit between the income and social benefits payment the savings would last just over a year and a little over a month [57 weeks x £49.48= £2820.36] or approximately a year and 19 weeks if the lower figure is taken. [71 x 39.75 = £2,822.25] [although as these are the only funds the cost of a flight to the UK would also have to be taken out].
15. There seemed to be a number of issues with regard to the source of the money. No reference had been made in the VAF to any savings at all. According to the sponsor these are monies that were owed to her. There is no assessment of whether it is accepted that the monies were genuinely owed her and had merely been repaid to or whether that explanation was accepted. Equally there is no assessment as to whether or not in light of the savings the appellant and the sponsor could meet the requirements of the rules. With that in mind consideration will have to be given to the cases of Jahangara Begum & others (maintenance: savings) Bangladesh [2011] UKUT 00246(IAC) and KA and others (Adequacy of Maintenance) Pakistan [2006] UKAIT 00065.
16. The second issue raised within the determination relates to sole responsibility. In the determination the judge has stated in paragraph 17 that:-
 

It may well be that all the significant decisions in his life would be made by the Sponsor and indeed some of the less significant decisions such as perhaps being allowed to go on an outing, but in practical terms it must leave the case that his grandmother makes many decisions for him in the course of a week.
17. As identified in the case law the principal issue in determining sole responsibility is who has made all the significant decisions and directed the life of the child. The case however recognises that the day-to-day decisions may have to be made by people that are present with the child on a day-to-day basis.
18. In the circumstances it appears that the judge has failed to apply the guidance in the case of TD (Paragraph 297(i)(e) ; " sole responsibility") Yemen UKAIT 00049. Equally it appears that the judge has failed to make decisions as to whether or not the funds

in the account and the sponsor are genuinely available to the sponsor to be used in the system the support of the appellant and whether taking into account those savings there is sufficient funds to maintain the appellant.

19. There is therefore a material error of law within the determination. The proper course appears to me for the appeal to be remitted back to the First-tier Tribunal hearing a fresh on the issues identified. I see no reason to revisit the other requirements of the rules as it has been found to the benefit of the appellant that he meets the requirements.
20. Accordingly for the reasons set out I find that there is no material error of law within the determination and remit the case back to the First-tier Tribunal for a hearing on the issues identified.

Signed

Date **21<sup>st</sup> November 2014**

Deputy Upper Tribunal Judge McClure