



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/21118/2013

### **THE IMMIGRATION ACTS**

Heard at Field House, London  
On the 4<sup>th</sup> November 2015

Decision & Reasons Promulgated  
On the 23<sup>rd</sup> November 2015

#### **Before:**

DEPUTY JUDGE OF THE UPPER TRIBUNAL MCGINTY

#### **Between:**

ENTRY CLEARANCE OFFICER-(BEIJING)

And

MISS YEYI HUANG  
(Anonymity Direction not made)

**Appellant**

**Respondent/Claimant**

#### **Representation:**

For the Appellant:

Mr Walker (Senior Home Office Presenting Officer)

For the Respondent/Claimant: Ms Monica Mac (Legal Representative)

### **DECISION AND REASONS**

1. This is the Respondent's the Entry Clearance Officer's appeal against the decision of First-tier Tribunal Judge Rastogi promulgated on the 18<sup>th</sup> May 2015 in which she allowed the Appellant's appeal against the Respondent's decision to refuse Entry Clearance to the Appellant as a child in order for her to settle in the United Kingdom with her father Mr Ye under paragraph 297 (1) (E) of the Immigration Rules. For the purposes of clarity,

throughout this decision Miss Huang is referred to as “the Claimant”.

2. Permission to appeal case been granted by Upper Tribunal Judge McGeachy on the 1<sup>st</sup> September 2015 on the grounds that it was arguable that it had not been demonstrated that the Appellant qualified for Leave to Enter under the Rules, as it had not been shown that there were serious and compelling family or other considerations which made exclusion of the Appellant from the UK undesirable and it was arguable that there was no evidence of sole responsibility.
3. In his submissions before me Mr Walker properly conceded that although he was not in a position to concede the appeal, he was not able to point to any material error of law within the decision of First-tier Tribunal Judge Rastogi. He accepted on behalf of the Appellant that in fact First-tier Tribunal Judge Rastogi had heard oral evidence from the sponsor, and that he was not perusing the argument within the Grounds of Appeal that there needed to be corroborative evidence. He conceded that at [9] the Judge had given careful consideration as to the question of sole responsibility both in respect of the responsibility of the Appellant's mother and also her grandmother and that at [33] the Judge had given consideration to the responsibility of Mr Ye for making decisions about the Appellant in terms of choosing her schooling and that First-tier Tribunal Judge Rastogi also considered the responsibility of Mr Ye for taking the other important decisions in the Appellant's life. He again agreed that the First-tier Tribunal Judge had considered the evidence of the Appellant's mother going for the DNA test and the TB test as part of the evidence that supported a finding of Mr Ye having sole responsibility for the Appellant, in that these tests were carried out solely so that the Appellant could come to the United Kingdom, rather than remain in China with her mother.
4. Ms Mac on behalf of the Claimant relied upon her skeleton argument and argued that she made full submissions within the skeleton argument and that the Judge had made adequate and appropriate findings regarding sole responsibility and that there was no material error of law.

#### My Findings on Error of Law and Materiality

5. In respect of the argument in the Grounds of Appeal that the Judge made inadequate findings by accepting the oral evidence of the Sponsor in the absence of supporting documentary evidence, there is in fact no requirement for the oral testimony of the sponsor to be corroborated by documentary evidence in this case. It was perfectly open to the Judge to accept the oral evidence of the sponsor on these issues. It is not an error of law for a Judge to believe a witness. Further, to the extent that the Grounds of Appeal argue that without documentary evidence there is no evidence to show the Appellant and Sponsor are in fact related as claimed, the fact that they were related as claimed in terms of being father and daughter was proved by the DNA evidence from the DNA Diagnostics Centre which established that they were related as father and daughter with a probability of 99.999999999%, which was accepted by the Entry

Clearance Officer within the refusal decision.

6. Further, the argument that the entry and exit endorsements on the Sponsor and his cousin's passport did not prove who they visited or that they had brought funds specifically for the Appellant and there is no independent evidence confirming the mother's signature as being genuine on the letter from her or that she actually did consent to relinquished responsibility, misses the point that the judge was perfectly again entitled to accept the sponsor's evidence in this regard. There was no evidence before the Judge to show that the letter from the mother was forged or that there were any concerns regarding its validity.
7. In respect of the Grounds of Appeal that the mother had been trying to maintain contact with the Appellant and had demonstrated some responsibility for the Appellant by accompanying her to the DNA/TB testing, the Judge had again given perfectly clear, adequate and sufficient reasons for his findings at [34] that a parent would have to accompany the child for such a procedure, in light of the fact it was being carried out in order that the child could leave the country. It also was clear that the Appellant's mother was required to attend the DNA testing as samples were also taken from her. The Judge's findings in regards to why the mother attended at those tests were therefore perfectly open to him, as was his finding that this did not in fact give rise to her accepting responsibility for the Appellant.
8. In a very thorough determination Judge of the First-Tier Tribunal Rastogi gave full and adequate reasons for his findings that the Appellant had been abandoned by her mother and was residing with her paternal grandmother, as a result of the mother having got married and her new husband not wishing for the Appellant to live with her and that the sponsor Mr Ye had taken over financial responsibility for the Appellant since 2010. In his decision between [26] and [28] he also gave clear sufficient and adequate reasons for his findings that the sponsor had visited the Appellant on numerous occasions including for a period of 26 weeks in 2009 and had set out fully and clearly the reasons why he found that the sponsor did make all of the substantial decisions in the Appellant's life including schooling and which clinic she was to go to when ill. The Judge also properly considered the reasons why he found that the mother had abandoned responsibility for her and why although the Appellant lived with her grandmother, she was simply responsible for the Appellant's care on a day-to-day basis, rather than having responsibility for her and that sole responsibility did in fact lie with the sponsor Mr Ye. The fact that the Judge accepted Mr Ye's evidence regarding sole responsibility does not mean that there was no evidence in this regard. It was perfectly open to the Judge to accept the sponsor's oral evidence which he did, and he gave adequate and sufficient reasons for doing so. There is no material error in this regard.
9. In respect of the submission that there were no serious or compelling family or other circumstances made the Appellant's exclusion from the UK

undesirable, it is further clear from the Judge's decision having found that Mr Ye was solely responsible for the Appellant he allowed the appeal under paragraph 297 (i) (e) of the Immigration Rules, and at [45] stated that he did not therefore need to go on to consider whether or not the Appellant was able to meet the requirements of paragraph 297 (i) (f) in terms of whether or not there were serious and compelling family or other considerations which made exclusion of the child undesirable and whether suitable arrangements had been made for the child's care. These subparagraphs under paragraph 297 are an alternative basis for granting indefinite Leave to Enter the United Kingdom as a child of a parent, and having found sole responsibility under paragraph 297 (i) (e) the Judge did not need to go on to consider 297 (i) (f).

10. In such circumstances, given the concession properly made by Mr Walker that the decision of First-Tier Tribunal Judge Rastogi did not disclose a material error of law, and given my findings in respect of the grounds of appeal above, I find that the decision of First-tier Tribunal Judge Rastogi does not contain a material error of law and the decision shall stand.

Notice of Decision

The decision of First-tier Tribunal Judge Rastogi does not contain a material error of law and shall stand;

No anonymity direction was made by the First-tier Tribunal Judge, and no such application for an anonymity direction was made before me. I therefore do not make any such order.

Signed

Dated 4<sup>th</sup> November 2015



Deputy Judge of the Upper Tribunal McGinty