



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/03786/2017
HU/03788/2017

THE IMMIGRATION ACTS

Heard at Field House
On 16th August 2018

Decision & Reasons Promulgated
On 31st August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MASTER WILBERT AMPIAW
MASTER JESSE AMPIAW
(ANONYMITY ORDERS NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Martin of Counsel instructed by Indra Sebastian Solicitors
For the Respondent: Ms R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Ghana who made an application under paragraph 297 of the Immigration Rules for settlement in this country. The application was rejected and their subsequent appeal heard and dismissed by First-tier Tribunal Judge Jones QC in a decision promulgated on 19th December 2017.
2. The judge's finding was that it was "quite hopeless" to suggest that the Appellants' mother had had sole responsibility for their upbringing since she left them in care of her parents in 2009. Given that finding the judge went on to dismiss the appeal on human rights grounds taking into account Article 8 ECHR.

3. Extensive grounds of application were lodged.
4. The grounds set out what was said by the judge namely that since 2009 when the Sponsor left Ghana her two sons had resided with her parents. She had visited Ghana on four occasions staying for four to six weeks at a time. She paid the school fees and remits money to Ghana for them. The judge had before him in the bundle of evidence a letter sent from the Appellants' father who said that the Sponsor "took care of the children from day 1". There was a letter from the grandmother who said that she and her deceased husband were carrying out their daughter's Emelia's day-to-day instructions in bringing up the children. Every day Emelia would telephone her on a mobile phone and speak to her regarding the children's activities. Those activities were what they were doing, their food, sleep hours, washing their uniform and ironing, attending church, choosing their church and clubs and church activities, after school activities etc.
5. The Sponsor had also confirmed in her witness statement that she spoke to the children four times a day and that she decided to change the school and she supports them financially. It was submitted that the judge made no reference to the evidence of the grandmother and Sponsor concerning the daily contact and issues that the contact addresses. There was no challenge to this evidence and it was submitted that the evidence should be accepted. If the evidence of financial support, visits and daily instructions of their lives was accepted then it was submitted that sole responsibility was established given what was said in **TD (paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049**.
6. Permission to appeal was duly granted and thus the matter came before me on the above date.
7. A Rule 24 Notice was lodged by the Secretary of State indicating that the Respondent did not oppose the Appellants' application for permission to appeal and invited the Tribunal to determine the appeal with a fresh oral hearing to consider whether the Appellants had demonstrated that the Sponsor has had sole responsibility for their upbringing.
8. Before me the concession of the Home Office went further. Given the unchallenged evidence given before the judge Ms Pettersen indicated that there was no issue in my setting the decision aside and going on to allow the appeal.
9. Mr Martin was relying on his grounds and was content that the matter proceeded as indicated.

Conclusions

10. What is clear in this case is that the judge ignored material evidence and was plainly wrong in his view that the appeals should not be allowed. Certainly, the judge did not follow what was said in **TD**.
11. On the basis of the unchallenged evidence of the Sponsor and grandmother it is as plain as it could possibly be that the Sponsor has been exercising sole responsibility.

As is said in **TD** and as referred to in the grounds sole responsibility is a factual matter to be decided upon all the evidence. Where one party is not involved in the child's upbringing the issue may arise between the remaining parent and others who have day-to-day control of the child abroad. The test is whether the parent has continuing control and direction of the child's upbringing including making all the important decisions in the child's life.

12. What is clear from the unchallenged evidence before me is that the Sponsor did exercise continuing control and direction over the children's upbringing and did make the important decisions in their life. It follows that the test in **TD** has been met.
13. It is therefore clear that the judge made a material error in law and the decision is set aside and remade in that the appeals of the children are allowed on human rights grounds. I was not asked to make a fee award no doubt because it may be that much of the evidence post-dated the refusal by the Entry Clearance Officer and in the circumstances, I will make no award.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

The appeals are allowed on human rights grounds.

No anonymity orders are made.

Signed *JG Macdonald*

Date 23rd August 2018

Deputy Upper Tribunal Judge J G Macdonald

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award for reasons given above.

Signed *JG Macdonald*

Date 23rd August 2018

Deputy Upper Tribunal Judge J G Macdonald