



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13049/2016

THE IMMIGRATION ACTS

Heard at Field House
On 17 August 2018

Decision & Reasons Promulgated
On 10 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

[Z], a minor

Applicant

and

The Entry Clearance Officer, Pretoria

Respondent

Representation:

For the appellant: Mr M. Aslam, Counsel, instructed by Linkworth Solicitors

For the respondent: Mr T. Melvin Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Zimbabwe who was born on 17 November 2003. He is 14 years old. He appeals against the determination of First-tier Tribunal Judge O'Brien promulgated on 10 August 2017 dismissing his appeal against the refusal of the entry clearance officer in Pretoria to admit him for settlement in the United Kingdom as the son of his sponsor, pursuant to the provisions of paragraph 297 of the Immigration Rules.

2. I can confine myself to paragraph 297(i)(e) as being the only material requirement for the purposes of this appeal;

“... one parent is present and settled in the United Kingdom...and has had sole responsibility for the child’s upbringing”

3. The concept of ‘*sole responsibility*’ has been the subject of significant judicial authority. *TD (paragraph 297(i)(e): ‘sole responsibility’) Yemen [2006] UKAIT 49* requires the decision-maker to analyse the activities of the sponsor in the United Kingdom as the contribution she makes to the up-bringing of her child. In essence, a distinction is drawn between a situation where the child’s custodian acts independently of the mother in the care and control of the child on the one hand and, on the other, where the custodian acts as the amanuensis, the hands, through which the mother performs her role as caring for her child. In paragraph 50 of *TD*, it is said

“... The continuing control and direction by the parent in the UK in respect of the “important decisions” about the child’s upbringing. The fact that day-to-day decision-making for a child – such as “getting the child to school safely and on time, or putting the child to bed, or seeing what it has for breakfast, or that it cleans its teeth, or has enough clothing, and so forth” (*Ramos per Dillon LJ at p151*) – rests with the carers abroad is not conclusive of the issue of “sole responsibility”.”

4. The investigation is an holistic exercise looking at the respective roles played by the mother on the one hand and the custodian on the other, taking into account, not only financial matters, but the decision-making process by which choices are made in relation to the child and the parent’s involvement with schools, church and others outside the domestic environment.
5. The First-tier Tribunal Judge was, understandably, unimpressed by the probity of the mother who has a record of abusing the system of immigration control. A claim had been made on the appellant’s behalf in the name of [PC] claiming that his mother was [RC]. This was a clear falsehood. However, given the fact that the appellant was 7 years-old at the time, he bore no personal responsibility for his mother’s wrongdoing. In addition, when the mother came to the United Kingdom in August 2004, she failed to declare in her original entry clearance application that she had a son. When she made an application in 2006 for entry clearance on behalf of the appellant, realising that she had failed to disclose his existence in her own earlier application, she had claimed that the appellant was her step-son.
6. It is, therefore, little wonder that the First-tier Tribunal Judge took a jaundiced view as to the mother’s conduct. However, whilst credibility was inevitably an issue with which he had to grapple, he simply did not deal with the complex issue of sole responsibility where a child is left with his paternal aunt since he was a baby.

7. The judge did not refer to the decision of the Tribunal in *TD*, nor apply its principles. Instead, he merely said in paragraph 35:

“I am prepared to accept that [the mother] has retained some involvement in the appellant’s life but am not prepared to accept that she has retained sole responsibility for his upbringing. She abrogated principal responsibility for the appellant initially to the appellant’s father in 2004 when she came to the United Kingdom and thence to [the paternal aunt].”

8. This is simply insufficient and amounts to an error of law. I set aside the decision of the First-tier Tribunal Judge. Given the fact that there have been no adequate findings of fact as to the nature of the relationship between the appellant and his mother and his paternal aunt, this will require a root and branch consideration of the evidence, albeit one tempered by the mother’s poor immigration history and her, apparent, recognition that her past dishonest conduct has got her nowhere. The hearing must take place in the First-tier Tribunal, sitting at Taylor House.

ANDREW JORDAN
DEPUTY UPPER TRIBUNAL JUDGE
22 August 2018