



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14403/2015

THE IMMIGRATION ACTS

Heard at Field House
On 29 June 2018

Decision & Reasons Promulgated
On 17 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

MR DANIEL NII KLU ADJEI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mukulu (Counsel)

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ghana who was born on 17 June 1998. He applied to enter the United Kingdom as the child of a parent here and the Respondent refused the application in a decision dated 10 November 2015. The Respondent reviewed the decision in an Entry Clearance Manager review of 19 July 2016 but maintained the decision.

2. The Appellant appealed against that decision to the First-tier Tribunal under Section 82(2) of the Nationality, Immigration and Asylum Act 2002 and alleged that the Respondent's decision breached his human rights. That appeal came before First-tier Tribunal Judge Mace and in a decision and reasons promulgated on 14 June 2017 the First-tier Tribunal dismissed his appeal on human rights grounds.
3. The Appellant sought permission to appeal against that decision and permission was granted on renewal to the Upper Tribunal by Deputy Upper Tribunal Judge O'Ryan. He found in a very full grant of permission that it was arguable that the Judge omitted to deal with the Appellant's case under paragraph 297(i)(f) and failed to consider the application in the round when it came to the issue of sole responsibility. Judge O'Ryan in granting permission also found that the First-tier Tribunal had not considered the Appellant's case under 297(i)(f) of the Immigration Rules and appeared to treat the Appellant's application for entry clearance purely as a human rights application outside the Rules.
4. He found it arguable that the Judge had failed to direct himself as to the potential Immigration Rules, to determine the extent to which the Appellant met those Rules and then proceeded to apply **Mostafa (Article 8 in entry clearance appeals) [2015] UKUT 112** to consider the issue of proportionality bearing in mind the consideration set out in that decision that positive satisfaction of the Immigration Rules would be a weighty consideration in the proportionality assessment.
5. He found it also arguable that the judge had not directed himself to the head note in **TD (paragraph 297(i)(e) "sole responsibility") Yemen [2006] UKAIT 00049** nor to the detailed guidance set out at paragraph 52 of that decision as to the assessment of the question of sole responsibility. He concluded that it was arguable that the First-tier Tribunal's assessment of the question of sole responsibility was incomplete in the light of the failure to make a self-direction as per the case law. Further there was no consideration at all as to the potential application of paragraph 297(i)(f) on the question of whether as a result of recent events there were serious and compelling family or other considerations which made the exclusion of the child undesirable and suitable arrangements had been made for the child's care.
6. The appeal therefore comes before the Upper Tribunal in order to determine whether there was a material error of law in the decision of the First-tier Tribunal such that it must be set aside.
7. Mr Walker helpfully conceded at the outset of the hearing that for the reasons set out in the grant of permission the decision of the First-tier Tribunal did contain material errors of law such that the decision needed to be set aside and reheard before the First-tier Tribunal.
8. I agree with that concession for the following reasons. The First-tier Tribunal neither references the relevant Immigration Rules in the decision, which are of course paragraph 297 of the Immigration Rules, nor refers to the relevant case law which in

this case was **TD (Yemen)** which deals with the question of what constitutes sole responsibility under paragraph 297.

10. At paragraph 52 of **TD (Yemen)** the Upper Tribunal set out, having summarised relevant case law, how to apply the term sole responsibility. It was the Appellant's case that whilst he had been looked after by his grandparents in the past the circumstances were such that they were no longer able to take care of him and it was the Appellant's case that his grandparents were acting at the direction of the sponsor.
11. Given this is a case where the Judge accepted that the sponsor was a credible witness, he accepted that the Appellant's mother had abdicated responsibility and consequently the test to which the Judge should have directed his mind was not whether anyone else had day-to-day responsibility but whether the parent in the United Kingdom had continuing control and direction of the child's upbringing including making all the important decisions in the child's life.
12. Whilst the Judge makes a number of factual findings it is not apparent from the decision that he properly directed himself in relation to that test nor did he direct himself in relation to the appropriate Rules. Whilst this is an appeal on human rights grounds, the relevance of the Immigration Rules is, as recently found by the Court of Appeal in the case of **TZ (Pakistan) v SSHD [2018] EWCA Civ 1109**, that if an appellant meets the requirements of the Immigration Rules his removal is not proportionate.
13. In the circumstances in the absence of this exercise having been conducted by the First-tier Tribunal, the First-tier Tribunal fell into material error such that the decision must be set aside and in view of the fact-finding required remitted to the First-tier Tribunal for a de novo hearing.

Notice of Decision

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal for a de novo hearing before a Judge other than Judge Mace.

No anonymity direction is made.

Signed

Date 9 July 2018



Deputy Upper Tribunal Judge L J Murray