



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/02799/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 10 January 2019

Decision and Reasons Promulgated
On 26 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

MTA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chowdhury of Kingdoms Solicitors

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

DECISION AND REASONS

Background

- 1 This is the resumed hearing of the appellant's appeal against the decision of the respondent dated 19 January 2017 refusing the appellant entry clearance as a dependent child under paragraph 297 of the immigration rules, and hence refusing his human rights claim. The application was made at a time when the appellant was 11 years old. He is now 13. The application was made on the basis that the

appellant's father, BMT ('the Sponsor'), present and settled in the UK, was solely responsible for the appellant's upbringing.

- 2 The respondent considered the evidence submitted with the application, including evidence contained within an interview with the sponsor conducted on 18 January 2017. The respondent refused the application for reasons set out in the original decision of 19 January 2017: the appellant appeared to have a relative in Bangladesh, GT, who was said to take a 'very active' role in looking after the appellant; had been responsible for his 'everyday care', and had taken important decisions about his upbringing. The respondent was of the view that the sponsor was therefore not solely responsible for the appellant's upbringing.
- 3 Subsequent to the appellant giving notice of appeal against the decision, the decision was reviewed by an Entry Clearance Manager on 18 April 2017. The ECM suggested that responsibility for the appellant's care from birth appeared to have been between the sponsor and the appellant's mother; and since the sponsor obtained a custody order of the appellant in 2009, responsibility appeared to have been shared between the sponsor, the appellant's mother, and other family members in Bangladesh. The ECM was thus not satisfied that the sponsor had sole responsibility for the appellant's upbringing.
- 4 The appellant's appeal against the original decision was heard by Judge of the First-tier Tribunal Andrews on 3 November 2017, and the appeal dismissed in the judge's decision of 16 November 2017.

My previous decision

- 5 In a decision dated 5 September 2018, I found that the judge had materially erred in law in making that decision, and set it aside. That error of law decision is set out below at Annex A. I found as a matter of fact that a letter from the appellant's current school CGSC dated 15 November 2016 had not been before the judge, and the judge had therefore clearly not erred as alleged in failing to take it into account.
- 6 However, my reasons for finding that an error of law had been made were, in summary, that although the judge had expressed the view that the appellant's case could have been supported by other evidence, the judge had failed to give adequate reasons for rejecting the reliability of the evidence actually provided. Further, the judge's reasoning was in some respects circular, having found at the outset of paragraph [38], considering all the evidence in the round, that the sponsor's evidence was not credible, but thereafter dismissing other elements of the evidence 'in the light of' the finding just given.

Rehearing/changes of circumstances

- 7 The principal reason why the matter could not be reheard immediately on 28 August 2018 was that I was informed on that date that the sponsor had then recently changed his residence and employment. It is a requirement for the satisfaction of paragraph 297 of the immigration rules that an applicant for entry clearance under

that rule be adequately maintained and accommodated, and whether the immigration rules are met is a significant consideration to take into account in assessing the proportionality of the decision under appeal. Under paragraph 297, maintenance would be deemed to be adequate if the income of the household including the applicant would match or exceed the level of means tested benefits that such a family may receive, plus housing costs. However, on 28 August 2018, no new evidence had been provided by the sponsor regarding his new residence or employment. The matter was therefore adjourned and was relisted for hearing on 10 January 2019. All issues remained to be determined in the appeal.

The adjourned hearing

- 8 For the adjourned hearing, I had before me three bundles of evidence from the appellant; the original bundle before the First-tier, 'AB1', comprising 10 items over 86 pages; a second bundle prepared for the original hearing before me in the Upper Tribunal on 28 August 2018, 'AB2', consisting of 13 items over 35 pages; and a further supplementary bundle for the present hearing, 'AB3', consisting of 19 items over 207 pages.
- 9 I have considered all of the documents before me in making this decision. The fact that I have not mentioned a particular document does not mean that have not taking it into account. In this appeal, I have made findings of fact on the balance of probabilities.

Evidence

- 10 The sponsor gave evidence before me in the Bangali language, Sylheti dialect, with the assistance of Mr Hoque, court interpreter. I ensured that the sponsor and interpreter could understand one another.
- 11 The sponsor adopted the contents of his witness statements dated 26 October 2017, 2 November 2017, and 29 December 2018.
- 12 Under cross-examination from Mr Tan, the sponsor confirmed that the appellant was now studying at a school 'CGSC', where he had enrolled in January 2016. When asked when the application had been made to enroll the appellant at that school, the sponsor stated that the school had sent him a form and he had signed it, but he could not remember exactly the date. He stated again that he had signed the form and sent it off and sent the money to them to admit the appellant. The sponsor stated that he had been in the United Kingdom when he had signed the form.
- 13 It had been the sponsor's decision to enroll the appellant of that school. Mr Tan pointed out that a letter from the CGSC dated 15 November 2016 regarding the appellant (AB3 page 65) did not specifically state that the sponsor had been involved in enrolling the appellant at the school. The sponsor stated that he had spoken to school over the phone. They emailed him and the sponsor had sent it off the sponsor had also spoken to the Principal.

- 14 When asked how often the sponsor was in contact with the school, he stated that this was very often, he rang them and spoke to the Hostel Supervisor and the Principal, asking about progress of the appellant. This was at least 20 times a month. He usually used a call card for this purpose; it was expensive to dial directly from his phone. He would speak to the appellant directly on his mobile, and sometimes using a calling card. The sponsor also used EMO /IMO, an app on his phone to make calls.
- 15 The sponsor was asked whether there was any evidence in the bundles about contacting the school by email. The sponsor stated that he had received a document from school via email; he would write to them by email if he needed to sign or send any documents by email but otherwise he would talk to them.
- 16 Mr Tan directed the sponsor's attention to a document at AB3 page 64, which appeared to be an email from the school to the sponsor dated 25 December 2018. Within the body of the email (and possibly also by attachment) there appeared to be a scanned image of the appellant's school report for the third semester in 2018. Mr Tan asked if this had been the first time that the sponsor had seen the report. The sponsor said that this was the last report that they had sent him. When asked this question again, the sponsor said that this was the first time he had got that report, in the email of 25 December 2018. Mr Tan asked then if that were the case, how did the image contained within the email appear to have the sponsor's signature placed upon it. The sponsor said that it was sent to him; it did not have his signature on it. He printed it out, signed it and sent it back to them with his signature. In clarification, I asked the sponsor whether he had seen a version of that report prior to 25 December 2018. He stated that when he first received, he printed it out, signed it and sent it back to them, all on the same day.
- 17 On resuming cross-examination after the lunch adjournment, Mr Tan asked if it was correct that the appellant had no contact with his mother since 2009, and that she had no interest in the appellant. The sponsor confirm that was correct. Mr Tan asked whether it would therefore be correct that the mother would have no idea which school the appellant attended. The sponsor stated no, and that she had remarried to someone else. Mr Tan referred the sponsor again to the letter from the school dated 15 November 2016. The sponsor confirmed that his nephew had posted this to him. When asked by Mr Tan why the school had written the letter, the sponsor stated that he had wanted them to present the circumstances of his child; he had asked them to write it. Mr Tan asked the sponsor why, if it was correct the appellant's mother had had no contact with the appellant since 2009, did the school letter state that "We observe *little or* no responses from his mother". The sponsor suggested that it was the rule that the mother's name must be on the letter as well. I asked the sponsor to clarify whether the appellant's mother had been in touch with the school at all, and the sponsor said no.
- 18 The sponsor confirmed that he sent money to the appellant by bank transfer to his account. When it arrives in that account, sometimes the sponsor's nephew, or sometimes the school superintendent takes it to the appellant. The sponsor had

arranged with the bank manager that the superintendent could withdraw money, because the appellant was still a minor.

- 19 The sponsor stated that his current two jobs were at Staffline Agency, working at Hollands Pies as a production operator, and his other job was at SK Enterprises as a marketing assistant, since September 2018. Mr Tan asked the sponsor when the very first time had been that he had worked for SK Enterprises. The sponsor stated that he could not remember 'the other one'. When asked what he meant by 'the other one', the sponsor stated that he could not remember the first time he had worked there - although he could remember the second time he started marketing for them. He stated that he had previously worked for them as a 'volunteer', although he stated that they did pay him - £172, but it was voluntary.
- 20 Mr Tan asked if Syed Baplu Uddin (a person named in documents associated with SK Enterprise) had any other business. The sponsor confirmed that he used to have a restaurant business. The sponsor also stated that presently, apart from SK Enterprises, Mr Uddin also has a letting agency and he also issued 'health certificates' relating to housing. Mr Tan asked the sponsor if it was correct that Mr Uddin had prepared the accommodation report in the present case. The sponsor confirmed that that was correct. Mr Tan suggested there were issues with a number of items of evidence from SK Enterprise, and suggested that given that the accommodation report was prepared by Mr Uddin, the same person that was owner of SK Enterprise, that the report was doubtful. The sponsor stated that the accommodation report was 100% reliable. When asked if the sponsor had any connection with Mohammed Nasir Yaqoob other than being his landlord, the sponsor said no. Mr Tan had no further questions.
- 21 At my request the sponsor was asked some further questions to explain the relevance of certain telephone bills which were contained within the appellant's evidence. He was asked for the appellant's mobile phone number in Bangladesh, which he gave; ending 7938. When asked if there was any evidence that that was a telephone number held in the appellant's name, the sponsor stated that there was no specific documentation about that, but that this had been the telephone number that had been entered onto the original application form for entry clearance for the appellant. The sponsor recalled phoning the college only once directly on his mobile; most of the time it was by calling cards.

Submissions

- 22 In submissions, Mr Tan argued that the maintenance and accommodation requirements of the immigration rules were not met, arguing that the evidence relating to the sponsors employment at S K Enterprise was not reliable, pointing out that the accommodation report had essentially come from the same source. However, no issue was taken as to the sponsor's employment Staff line. Further, there were no utility bills in the sponsor's name at the new address of [~], Haslingden. In relation to the sponsor's evidence in support of the proposition that he was solely responsible the appellant's upbringing, and that he provided financial support for the appellant,

Mr Tan argued that there was no evidence to establish that monies allegedly remitted for the benefit of the appellant were actually received in Bangladesh.

- 23 In relation to contact, Mr Tan argued that there was little evidence of direct telephone contact between the sponsor on appellant in the sponsor's '3' mobile phone bill and they were all 1 minute long (and I note charged at £1.21 including vat for that minute).
- 24 Mr Tan argued that the sponsor's evidence about how he had been in contact with the school was inconsistent, having initially stated that this was by telephone, but then accepting that he had email contact as well. The sponsor's evidence as to how his signature came to be shown on a scanned attachment sent to him by email on 25 December 2018 made no sense. The document dated 29 December 2015 regarding the appellant's admission to his current school does not explicitly state that the sponsor was involved in the enrolment process. The appellant's mother's name was recorded on that admission form. Further, the letter from the school dated 15 of November 2016, in stating that 'We observe little or no responses from his mother' suggested that at least *some* contact had been made between the mother and the school, which contradicted the sponsor's evidence that the appellant's mother had had no input in his life since 2009.
- 25 Further, the letter at page 68 of AB3 from Md Jahirul Haque, Hostel Super & Accountant, asserted that no one comes to see the appellant at the school hostel except the sponsor as his father so far. This was inconsistent with other evidence in which the sponsor's nephew was said to visit the appellant.
- 26 Mr Chowdhury referred to his skeleton arguments previously filed. He referred to the telephone number of the appellant, recorded in the sponsor's telephone records, and crossed referred this to the appellant's telephone number given at question 24 of the original application form, as evidence of the sponsor's contact with the appellant. He referred to evidence of telephone contact in AB3 pages 93, 102, 113, 124, and 132. I permitted a further question to be put as to the duration of the calls: the sponsor stated that this arose because when the appellant rings him, the appellant gives the sponsor a missed call, making a short connection only. There is a minimum £1.00 charge every time the sponsor makes a call to the appellant.

Discussion

Relevant law

- 27 Paragraph 297 of the immigration rules provides, insofar as relevant:

"Requirements for indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom

297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

(i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:

...

(e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; or

(f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and

(ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and

(v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and

(vi) holds a valid United Kingdom entry clearance for entry in this capacity; and

(vii) does not fall for refusal under the general grounds for refusal."

28 TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 provides:

"Sole responsibility" is a factual matter to be decided upon all the evidence. Where one parent is not involved in the child's upbringing because he (or she) had abandoned or abdicated responsibility, the issue may arise between the remaining parent and others who have day-to-day care of the child abroad. The test is whether the parent has continuing control and direction over the child's upbringing, including making all the important decisions in the child's life. However, where both parents are involved in a child's upbringing, it will be exceptional that one of them will have "sole responsibility".

and

"52. Questions of "sole responsibility" under the immigration rules should be approached as follows:

i. Who has "responsibility" for a child's upbringing and whether that responsibility is "sole" is a factual matter to be decided upon all the evidence.

ii. The term "responsibility" in the immigration rules should not to be understood as a theoretical or legal obligation but rather as a practical one which, in each case, looks to who in fact is exercising responsibility for the

child. That responsibility may have been for a short duration in that the present arrangements may have begun quite recently.

iii. "Responsibility" for a child's upbringing may be undertaken by individuals other than a child's parents and may be shared between different individuals: which may particularly arise where the child remains in its own country whilst the only parent involved in its life travels to and lives in the UK.

iv. Wherever the parents are, if both parents are involved in the upbringing of the child, it will be exceptional that one of them will have sole responsibility.

v. If it is said that both are not involved in the child's upbringing, one of the indicators for that will be that the other has abandoned or abdicated his responsibility. In such cases, it may well be justified to find that that parent no longer has responsibility for the child.

vi. However, the issue of sole responsibility is not just a matter between the parents. So even if there is only one parent involved in the child's upbringing, that parent may not have sole responsibility.

vii. In the circumstances likely to arise, day-to-day responsibility (or decision-making) for the child's welfare may necessarily be shared with others (such as relatives or friends) because of the geographical separation between the parent and child.

viii. That, however, does not prevent the parent having sole responsibility within the meaning of the Rules.

ix. The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child's upbringing including making all the important decisions in the child's life. If not, responsibility is shared and so not "sole".

29 I have also had regard to the provisions of Part 5A, Nationality, Immigration and Asylum Act 2002 ('NIAA 2002').

Findings of fact

30 Although I have set aside the decision of Judge Andrews, there are certain findings made within the judge's decision which I am able to agree with, such matters being properly supported by evidence.

31 Although certain challenges had been made by the Presenting Officer before Judge Andrews in November 2017 regarding the sponsor's own immigration history, and the reliability of the Bangladeshi court documentation granting the sponsor custody of the appellant in 2009, no such arguments were advanced before me, and I have no reason to doubt the reliability of the evidence relied on by the appellant that the sponsor gained sole custody of him in 2009.

32 As far as the respondent's original decision letter suggests that GT is the appellant's brother rather than cousin, I accept that they are cousins; I accept the written evidence given by GT and the sponsor that it may be customary for near relations to

refer to one another as brother in Bangladeshi society, and I have also taken into account GT's birth certificate, which shows that his father is someone other than the sponsor.

- 33 The appellant lives in the school hostel about 65 km where he had previously lived with his grandmother. The grandmother is now 81 years old.
- 34 The sponsor regularly calls the appellant, but the calls recorded in the phone bill are of short duration only; typically being billed as calls of one minute. I did not follow the sponsor's explanation as to why this was the case. However, I also take into account the sponsor's oral evidence that he additionally called the appellant using a call card. I accept that there is regular telephone communication between the two.
- 35 There is evidence that the sponsor has occasionally sent parcels to the appellant. I am prepared to accept that the sponsor had sent clothing to the appellant, as asserted.
- 36 I accept that the sponsor travelled to Bangladesh from November 2009 to July 2011, November 2011 to May 2012, and from June to September 2015. This represents two years and seven months that the sponsor has spent in Bangladesh since he moved to the UK in 2009. He has not been to Bangladesh since September 2015.
- 37 I consider the school letter dated 15 November 2016 at AB3 page 65. This letter includes the following passage:
- "His father ... lives in the United Kingdom who bears all his expenses enquires of his well-being and progress in study. We observe little or no responses from his mother. She neither communicates with him nor enquires of his well-being."
- 38 Mr Tan suggests that the reference to 'little or no' response from the appellant's mother suggests that there must be at least some contact from her. I find that that sentence must be read alongside what follows, which is that she neither communicates with him nor enquires of his well-being.
- 39 I also consider the school admission form at AB2 page 77 completed in December 2015. Although the names of both the appellant's mother and father are set out at the outset of that form, the document is signed by the sponsor, and not the appellant's mother. I do not think that the inclusion of GT's name, and that of another person, at point 7 of the form as 'local guardian (in absence of the parent)' sheds much light on the issue as to who has sole responsibility for the the appellant's upbringing.
- 40 I am prepared on balance to find that the appellant's mother does not have any input to the appellant's care or upbringing.
- 41 I take no adverse point regarding the sponsor's evidence as to how he received the 3rd semester report on 25 December 2018; I accept his explanation regarding having received it, signed it, and sent it back to them again. The fact that he also occasionally receives emails from them is understandable.

- 42 However, I have grave doubts about the reliability of information contained in a letter from Md Jahirul Haque, said to be the Hostel Super & Accountant of CGSC, at AB3 page 68. The letter is undated, but refers to his having emailed the sponsor result cards for the 1st and 2nd term examinations for the appellant. The letter also refers to the fact that the author had sent the card attached with a photograph of the appellant. The index to AB3 identifies item 12 of the evidence contained therein, at pages 68 to 73, as being 'Reference letter from Hostel Super & Accountant along with the school progress report'. At AB3 page 69 there is a photograph of the appellant holding a progress report card, but no dates can be seen on the card. AB3 page 70 seems to be an unrelated photograph of the appellant and sponsor at a results publication ceremony for the year 2014 to 2015 at the appellant's previous school. At AB3 page 71 there is a progress report card for CGSC, year 2018. That document has a similar appearance to the one shown at page 69 being held by the appellant, although there are no actual results shown on the document at page 71. Pages 72 and 73 are the appellant's actual results for the 1st and 2nd semesters of 2018 respectively. The 2nd semester report was signed by the school Principal on 19 September 2018.
- 43 Taking into account the description within the bundle index of the evidence contained at pages 68-73, and the evidence itself (save for the photograph at page 70), I find that although undated, the letter from the Hostel Super & Accountant at page 68 must have been prepared on a date after 19 September 2018, as the letter refers to the author having forwarded the other documents, set out nearby within the bundle.
- 44 I then consider the following extract within that letter :
- "The school authority and I myself are enormously glad and delighted with you. Because, in spite of your busy time and activities, you are enthusiastically attentive to him, bearing all his expenditures, such as health, treatment, study, private tutor, books & notebooks, pens & pencils, uniform, cloths, food & fruits, and above all, school & hostel fees & expenses.
- I would also like to mention that none (*sic*) comes to see him at the school hostel, except you as his father so far. As a consequence, he always suffers from mental agony and tension."
- 45 However, it is to be noted that the appellant has resided at the hostel at CGSC since early 2016, and there is no evidence that the sponsor has visited the appellant since 2015. Further, the statement from GT at AB2 page 57, dated 12 October 2017, states "When I go to his school to give him money sent by his father, he always asks me when he can go to his father." The letter from the Hostel Super & Accountant, which I have found must have been written after 19 September 2018, which suggests that no one comes to see the appellant other than the sponsor, is therefore contradicted by both the evidence of GT and that of the sponsor himself. I find that the content of this letter is unreliable and it diminishes the weight that I can attached to the sponsor's assertions about the extent of his responsibility for the appellant's care and upbringing.

- 46 When undertaking my overall assessment as to who has continuing control and direction of the appellant's upbringing, I also take into account the sponsor's evidence regarding the proposed maintenance and accommodation of the appellant in the United Kingdom. Any issues of credibility over the sponsor's evidence in that regard may affect my assessment of the credibility of the sponsor's evidence about his role in the appellant's upbringing.
- 47 Although disputed by Mr Tan, I accept that the sponsor has moved to a new address in Haslingden. There is within AB3 a copy of the sponsor's assured short hold tenancy commencing 27 March 2018 at the new address, and the sponsor's Staffline payslips, his most recent Barclays bank account, and his '3' mobile phone statements show that address.
- 48 There is no issue taken by the respondent as to the reliability of the sponsor's evidence that he is currently employed by Staffline. The sponsor asserts in his witness statement of 29 December 2018 that he works for them for 30 hours week as a production operative, receiving an average of £195 net weekly in that employment, which is indeed the average of all of the Staffline payslips contained at AB3 pages 32-44. However, to satisfy the requirement of adequate maintenance, the appellant accepts in his skeleton argument that he would need to demonstrate an income of £206 per week. The sponsor therefore falls short on his Staffline employment alone.
- 49 However, I have very grave concerns over the reliability of the sponsor's evidence that he is also employed at SK Enterprises as a marketing assistant. The sponsor asserts that he commenced employment with this company in September 2018. Mr Tan asked what the sponsor's previous connections with this company might be. The sponsor appeared to accept that he had worked 'voluntarily' for the company at a previous point in time, but was unable to state the period of employment. His assertion that the work was voluntary also made little sense, as he accepted that he had been paid for that employment.
- 50 I note the following evidence regarding the sponsor's past employment. Before the original judge, there was a letter from Green Bangla Indian Restaurant, 61 Marsden Road, Burnley, written by Mr S B Uddin, Sole Proprietor, dated 14 November 2016 which stated as follows:

"This is to confirm that Mr (BMT) of (address given) is currently employed at the above mentioned establishment.

Mr (T)'s current employment status is on a permanent part-time basis, (*sic*) Mr (T)'s net wages is in the region of £172.80 per week. Mr (T) has worked with the establishment for quite some time now and have found him to be a very hard-working colleague. He is highly organised, has great communication skills and I have always been very impressed with the way that he has approached work.

For any more quires (*sic*) please do not hesitate to contact me on the above contact details."

- 51 At AB2 page 84 there is a letter from S.K. Enterprise Haslingden, written by Syed Paplu Uddin, dated 18 October 2017. At the top of the letter the business address of SK Enterprise is given as 32 Blackburn Road, Haslingden, and telephone numbers and an email address are given. The body of the letter is identical in content to the letter quoted above from S B Uddin of Green Bangla Restaurant, including the grammatical and spelling errors noted above. This letter appears to relate to the sponsor's previous period of employment at SK Enterprises which the sponsor described as voluntary. The sponsor could not state the period for which he had worked for SK Enterprise in this previous capacity, whereas the letter of 18 October 2017 refers to the sponsor having worked for SK Enterprise for 'quite some time now'.
- 52 At AB3 page 48 there is a letter dated 13 September 2018 from a Mr K Ahmed, bearing the header 'SK Enterprise, Blackburn Road, Haslingden. A mobile phone number is given, but no full street address, or landline or email contact details are given. The body of the letter is again identical to the content of the letters mentioned above dated 14 November 2016, and 18 October 2017, again including grammatical and spelling errors.
- 53 The inescapable conclusion arrived at when considering these letters is that they were created by the same person, or by persons connected to one another, using an electronic template created some time ago.
- 54 I also consider the remittance receipts relied upon by the sponsor to demonstrate that he has sent money to the appellant over a period of time. There are many such receipts, all being produced by 'S.K. Money Transmitter', of 32 Blackburn Road, Haslingden. The telephone and email address given for that business are the same as the details given in the SK Enterprise letter dated 18 October 2017.
- 55 There is also the property inspection report from INA Sales & Lettings dated 13 September 2018 written by Mr Syed Bablu Uddin at AB3 page 13-14. The address given for that company is 32 Blackburn Road, Haslingden. The landline number given is the same as for SK Enterprise and SK Money Transfers.
- 56 I am prepared to accept that Mr Uddin is a local businessman and may well have had a number of different business interests. I am also prepared to accept that he may have more than one business operating at the address of 32 Blackburn Road, Haslingden; that address was given for SK Enterprise in the letter 18 October 2017, for INA Sales & Lettings in its report of 13 September 2018, and on the various receipts from SK Money Transmitter.
- 57 Accepting also, at least as a possibility, that the sponsor may have been employed by Mr Uddin originally at a restaurant, then at SK Enterprise, and then again at SK Enterprise, I do not accept as reliable the evidence supporting that proposition. The three letters relating to those alleged periods of employment are identical. No specific dates are given for the periods of employment. There is no explanation in the SK Enterprise letter of 18 October 2017 why the sponsor's employment with the same

person (Mr Uddin) at the restaurant came to an end. There is no explanation given in the SK Enterprise letter of 13 September 2018 why the sponsors' earlier employment there came to an end, and why he has been re-employed there. There is no reference in either letter from SK Enterprise to suggest that the first period of employment was casual or 'voluntary' as the sponsor put it; both letters described the sponsor's employment at that company as being on a permanent part-time basis.

- 58 I therefore have very considerable doubts that any of these three letters give reliable evidence of the sponsor's employment.
- 59 Payslips from SK Enterprise at AB3 pages 45-47, are marked month 11, 30/11/2018; month 10, 01/10/2018-31/11/2018 (*sic*); and month 9, 01/09/2018-30/09/2018 respectively. The figures on the pay slips suggest a pay per week of £187.92, but the payslips state that the payment method is monthly, and each shows a nett pay of £751.68. There are a number of issues here:
- (i) The dates given on the month 10 payslip appear to be for period 01/10/2018 to 31/11/2018 i.e. 2 months.
 - (ii) There are no deductions for tax or national insurance on any of the payslips.
 - (iii) If the payslips are for work done over a month (which is longer than 4 weeks), there is no explanation as to why the total nett pay appears to be simply 4 x the weekly wage of £187.92.
 - (iv) There are no credits in the Sponsor's bank account which are clearly from SK Enterprise (as opposed to the credits from salary from Staffline, which are shown). There are however weekly credits to the sponsor's bank account of £187.92, but these are mostly deposits made at Barclays Rawtenstall branch, and one, on 1 October 2018, is a transfer from the sponsor's own savings account.
- 60 Mr Tan had suggested to the sponsor in cross examination that the documentation from SK Enterprises was suspect. I agree. I find on a balance of probabilities that the sponsor is not employed at SK Enterprise. In addition to the appellant therefore failing to meet the maintenance requirements of the immigration rules, the sponsor's dishonesty about his alleged employment with S K Enterprise causes me concern about the reliability of the money transfer receipts, from SK Money Transfer, operating at the same business address as SK Enterprise and INA Sales & Lettings. I cannot see any cash withdrawal or debit from the sponsor's bank account around 2 July 2018, correlating to a payment of £140.12 to SK Money Transfer shown on a receipt at AB3 page 79, and I cannot see any cash withdrawal or debit from the account around 5 September 2018 correlating to a payment of £144.06 to SK Money Transfer shown on a receipt at AB3 page 77.
- 61 I find that the sponsor has not established, to a balance of probabilities, that he has sent the appellant the monies asserted.
- 62 The above findings significantly undermine the sponsor's assertion that he has had sole responsibility for the appellant's upbringing. I find that the sponsor's evidence is so fundamentally undermined that I am unable to accept his evidence about what

support the appellant receives, and from whom, and who it is that has continuing control and direction of the appellant's upbringing including making all the important decisions in his life. I therefore find that the appellant has failed to demonstrate that he meets the requirements of the immigration rules for entry clearance under paragraph 297(1)(e).

- 63 Insofar as the appellant seeks entry under 297(1)(f) ('there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care'), the appellant has not established that there are any serious or compelling family or other considerations making his exclusion from the United Kingdom undesirable; the sponsor's unreliable evidence results in it being wholly unclear what the appellant's circumstances are in Bangladesh, other than that he appears to be a boarder at a privately paying school. The requirements of 297(1)(f) are not met.
- 64 Although I accept that the sponsor has visited the appellant on three occasions since 2009, and that they have a family life together, I find that the decision to refuse entry clearance, and to refuse the appellant's human rights claim does not represent a disproportionate interference in the family life between the appellant and sponsor. I take into account that the appellant does not meet the requirements of the immigration rules, and that the maintenance of immigration control is in the public interest (s.117B(1) NIAA 2002). I am prepared to accept that the appellant speaks English; I accept that he does in fact attend CGSC, and that this is an English medium school (AB3 page 71) and that the appellant has performed well in his study of English (report, AB3 page 64).
- 65 Having found that the appellant does not meet the maintenance requirement for entry clearance under paragraph 297, I take into account that he would thus not be financially independent (s.117B(3)). Sections 117B(4)-(6) do not appear to be relevant, this being an appeal relating to the refusal of entry clearance and appellant is outside of the United Kingdom.

Decision

- 66 The appellant's appeal against refusal of his human rights claim is dismissed.

Signed:

Date: 23.4.19

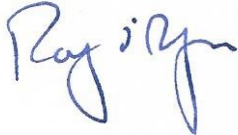


Deputy Upper Tribunal Judge O'Ryan

This appeal concerns a minor child. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 23.4.19

A handwritten signature in blue ink, appearing to read 'Ray O'Ryan', written in a cursive style.

Deputy Upper Tribunal Judge O'Ryan

Annex A: Decision of 5.9.18 following hearing of 28.8.18:

DECISION AND REASONS

1 The appellant, a national of Bangladesh, appeals against the decision of Judge of the First-tier Tribunal Andrews dated 16 November 2017, dismissing the appellant's appeal against the respondent's decision of 19 January 2017, refusing him entry clearance and refusing his human rights claim.

2 The appellant, a minor aged 11 at date of application and 12 at date of appeal, applied for entry clearance to enter the United Kingdom as the dependent child of his father BMT ('the Sponsor') under paragraph 297(1)(e) of the immigration rules on the basis that the Sponsor had sole responsibility for the appellant's upbringing. The respondent rejected the application on the grounds that the appellant had not established to the respondent's satisfaction that the Sponsor was solely responsible for the appellant's upbringing. The respondent queried whether another individual, GT, described as either cousin or brother of the appellant, or the appellant's grandmother, might have shared some responsibility for the appellant's upbringing. No other issues, for instance adequacy of maintenance or accommodation, were raised in the decision.

3 The appellant appealed against that decision, the matter coming before the Judge on 3 November 2017. Mr Chowdhury, who appears before me today, also appeared before the Judge on that occasion. The sponsor attended and gave oral evidence. There were also witness statements from GT, who asserted that he was in fact the appellant's cousin (nephew of the Sponsor), and from the appellant's grandmother.

4 The Judge referred at [9] to the evidence before him, and in particular at [9(iv)] to a second 'bundle' of appellant's documents (in fact, they were loose) handed up on the day of hearing, which the Judge referred to as 'AB2'.

5 The his decision, the Judge held: at [22] that the Sponsor had been granted custody of the appellant since 2009; at [24] that GT was the nephew of the Sponsor, and therefore cousin, not a brother to the appellant; at [26(i)] that the appellant's grandmother lived 65 km away from where the appellant lived in a school hostel; and at [27] that the Sponsor had been present in Bangladesh for periods of time between the 2009 and a 2015 totalling two years and seven months. Although the Judge found at [29] that the appellant's mother had lived in Bangladesh since 2009, there appears to have been no positive evidence at all that she had had any contact or dealings with the appellant since that time.

6 The Judge's reasons for dismissing the appeal are essentially set out [35] to [39]. At [35] the Judge states:

'The Sponsor says that no one else has any responsibility for the appellant's upbringing. GT and the appellant's mother (sic - should be grandmother) say the same (see AB57 and AB60). But if that were true, I would expect the sponsor to have provided evidence of this from someone other than his close family members.'

7 The Judge then suggested that he would have expected to see letters from the hostel superintendent, the college principal, the appellant's doctor, or from anyone else in

Bangladesh such as friends or members of the local community confirming that no one other than the sponsor had any responsibility for the appellant's upbringing [35]. The Judge noted that the sponsor had signed the appellant's school reports, but observed that none of the reports actually mentioned the sponsor. The sponsor had provided no evidence of him having contact with the appellant's teachers [36]. Although there was evidence of three extended visits to Bangladesh, there was very little evidence of the sponsor's involvement with the appellant during those visits [37].

8 The Judge concluded at [38]-[39]:

"38. Having considered all the evidence in the round, I do not find the sponsor's evidence credible, in respect of his claimed sole responsibility for the appellant. In the light of this finding, I also find not credible GT's, and the appellant's mother's (sic), evidence on this issue. The weight of the evidence points to the conclusion that one or more persons in Bangladesh has at least some responsibility for the appellant's upbringing. Such a person might be GT, who is said to be the appellant's guardian on the appellant's application form (in the RB) and on the November 2016 Sample Declaration form (in the AB2). And/or it might be someone else.

39. Having considered all the evidence in the round I find on the balance of public probabilities that the sponsor does not have sole responsibility for the appellant's upbringing. The requirements of paragraph 297(1)(e) are not met in this case either on the date of the appellant's application, the date of the ECO's decision, or on the date of the hearing before me."

9 The Judge then considered the best interests of the appellant under section 55 at Borders, Citizenship and Immigration Act 2009 at [40] to [49], and any interference with the appellant's right to family life for the Sponsor, at [50] -[56]. It is to be noted that the Judge accepted at [51] that family life did exist as between the appellant and the Sponsor and at [53] that the respondent's decision amounted to an interference by a public authority with that right, but held in the light of certain factors, including that the immigration rules were not satisfied [55(i)], the decision was not disproportionate.

10 The appellant applied for permission to appeal in grounds of appeal dated 27 November 2017 arguing in summary that:

- (i) in finding at [35] that there was an absence of documentary evidence from the school principal, the Judge had failed to take into account a document that had been submitted to the Tribunal, being a letter dated 15 November 2016 from that principal;
- (ii) there was adequate evidence before the Judge to have satisfied him that the Sponsor had sole responsibility for the appellant's upbringing, including other documents from the school such as school reports which the Sponsor had signed;
- (iii) the Judge failed to give any adequate reasons for finding at [38] that the evidence of GT and the sponsor's mother was not credible;
- (iv) the Judge's findings on the best interests of the appellant, and on proportionality were unsustainable.

11 Permission to appeal was initially refused by Judge of the First tier Tribunal Farrelly on 16 April 2018. The appellant renewed his application in redrafted grounds dated 11 May 2018 essentially making the same points, although before me today Mr. Chowdhury

does not seek to rely upon paragraphs 5 and 7 of those grounds which erroneously argue that if only one biological parent is involved in the care of an appellant, then that parent must be deemed to have sole responsibility for the child's upbringing. That is a misdirection in law, and is clearly contrary to relevant authority, including the case of TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049.

12 Permission to appeal was granted on the renewed grounds by Upper Tribunal Judge Kebede on 26 June 2018, remarking that although she had not been able to locate the letter of 15 November 2016 in the court file, if such evidence was before the Judge it was arguable that a failure to consider such evidence was material to his findings on the sole responsibility. On that basis the grounds were arguable. Permission to appeal was said to be granted generally on the face of grant of permission to appeal. There is no rule 24 response from the respondent.

13 A new bundle has been submitted to the Upper Tribunal for the purposes of the hearing before me. Included in this bundle is the letter dated 15 November 2016 from Mr. MA Shahio, Principal of Cambridge Grammar School and College stating in summary that the appellant, being the son of the Sponsor, had been reading at the school since January 2016 and stayed in the school hostel. It stated that "His father ... lives in the United Kingdom who bears all his expenses and inquires of his well-being and progress in study. We observed little or no responses from his mother. She neither communicates with him nor inquires of his well-being."

14 However at the outset of the hearing today at I took considerable time to establish between the parties what material had in fact been placed before the First tier Judge (as opposed to contained within the bundle submitted for the present hearing before me). There was on the court file a copy of a bundle of evidence that with a covering letter dated simply October 2017 running to some 86 pages. This was 'AB' as referred to by the Judge. There were also some loose documents, fitting the description given by the Judge at[9(iv)], and described by him as 'AB1'. Amongst these papers were some money transfer receipts. Although the Judge does not refer to money transfer receipts at [9(iv)], they are referred to at [26(iii)].

15 Having myself undertaken a thorough examination of the content of the Tribunal file, it was apparent that there was no copy of the letter of 15 November 2016 on file, other than in the new bundle submitted for the purposes of the Upper Tribunal hearing. I asked Mr. Bates what documents were contained within the respondent's file. Unfortunately the original file for the respondent is not in Mr. Bates' possession but material from that file had been scanned and provided to him by colleagues for the purposes of today's hearing. Mr Bates informed me that there was no copy of any letter dated 15 November 2016 contained within his scanned material.

16 I ruled at the hearing that I was not satisfied that the document dated 15 November 2016 was in fact before the First tier Judge. The Judge set out in some detail in his decision what evidence had been submitted on the day, and there was no sign of such a document in the Tribunal file, and although the original of the respondent's file was not present in court today, neither had any copy of that letter been scanned and provided to Mr. Bates by his colleagues. I therefore not only rule that such document was not before Judge but

naturally, the appellant's ground of appeal that the Judge erred in law failing to take that document into account fails.

17 However, the appellant argues that there was sufficient evidence before the Judge for him to have found on a balance of probabilities that that the Sponsor did have sole responsibility for the appellant, and that the Judge had erred in failing to give reasons which were adequate in law for rejecting the credibility of the evidence given in letters from the Sponsor's nephew and mother which confirmed in effect that the Sponsor has sole responsibility for the appellants upbringing.

18 Although the judge expressed the view that the appellant's case could have been supported by other evidence, I find that the Judge has failed to give adequate reasons for rejecting the reliability of the evidence actually provided. In relation to the evidence of the Sponsor's nephew and mother, the Judge's reasoning at [38] (set out above) is confused. It seems to me that the first sentence purports to take all the relevant evidence into account in the round in determining the Sponsor's credibility, but then in the second sentence refers to the evidence of the Sponsor's nephew and mother, and purports to reject it 'in the light of' the finding just given in the first sentence. These two sentences, juxtaposed, do not stand scrutiny. The latter evidence was clearly relevant to the credibility of the Sponsor's evidence, and the way that the Judge's reasoning is set out suggests that the Judge failed to take the latter evidence into account when assessing the Sponsor's credibility, and then failed to give any reasons, other than his earlier rejection of the Sponsor's credibility, for the rejection of the latter evidence. The Judge has not taken all the evidence into account, in the round.

19 Further, I also find it unsatisfactory that the Judge fails at [38] to identify with any clarity who, other than the Sponsor, has had responsibility for the appellant's upbringing, or to what extent, given in particular that "The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child's upbringing including making all the important decisions in the child's life" (TD, para 52(ix)). The Judge's conclusion appears to be that 'one or more persons' in Bangladesh has had 'at least some' responsibility for the appellant's upbringing, which might be GT and/or it might be someone else. This falls short of a finding someone other than the Sponsor has had a degree of responsibility for the appellant such that the Sponsor has not had continuing control and direction of his life, including making all the important decisions in his life. This issue, combined with the Judge's error in the way that he treated the evidence of the Sponsor's nephew and mother, result in my finding of the Judge's decision is not sustainable.

20 I set aside the Judge's decision.

21 Although an interpreter was present for me to re-hear the appeal, I adjourned the re-hearing of the appeal at the appellant's request. This was because it transpired that the Sponsor has moved home, and changed his employment, such that he has, in the last month, commenced two new part time jobs. Although the adequacy of the appellant's maintenance and accommodation was not a matter raised in the respondent's original decision, the appellant submitted evidence of his then employment to the First tier Tribunal. This was no doubt to dispel any question over the adequacy of the appellant's maintenance. In any event, whether or not it was considered necessary to adduce evidence

of the Sponsor's employment at the First tier hearing, it should have been apparent to those acting for the appellant that further evidence was necessary to address the question of whether the appellant would, at the time of re-making the decision before the Upper Tribunal, be adequately maintained and accommodated.

22 Standard directions issued in this appeal provided at paragraph 4 that there is a presumption that, in the event of the Tribunal deciding that the decision of the FtT is to be set aside as erroneous in law, the re-making of the decision will take place at the same hearing, based on the original evidence and any fresh evidence submitted under Rule 15(2A) of the procedure rules, and, as per paragraph 6(iv) of the directions, any notice under Rule 15(2A) was to be filed no later than 10 working days before the appeal hearing. Notwithstanding that the appellant in this case had specifically requested that an interpreter be booked for today's hearing, and therefore appears to have wished, if possible, to have the appeal re-heard at the present hearing, no such application under Rule 15(2A) has been made.

23 However, although it is unfortunate that such new evidence has not been filed and served, I appreciate that the Sponsor's change of circumstances are quite recent. I reject the suggestion by Mr Chaudhury that it is procedurally unfair for the issues of maintenance and accommodation being raised at this re-hearing of the appeal before the Upper Tribunal. I find that it is not the case that the respondent has raised these issues, but rather that it is the change in the Sponsor's circumstances which causes the issues to be raised. I find that Mr Bates, in indicating to me that he is not prepared to accept on behalf of the respondent, in the absence of any documentary evidence, that the appellant would still be adequately maintained and accommodated, acts entirely fairly.

24 The appeal is adjourned to the first available date after 4 weeks, to be re-listed before me.

25 The appellant is directed to file and serve any further evidence on which he relies, and to provide a notice under Rule 15(2A), 5 working days before the re-hearing of the appeal.

Decision

The decision involved the making of an error of law.

I set aside the decision.

I adjourn the re-making of the appeal, for further hearing before the Upper Tribunal.

Signed:

Date: 3.9.18

Deputy Upper Tribunal Judge O'Ryan