



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/22079/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 August 2019

Decision & Reasons Promulgated  
On 3 September 2019

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

A (PAKISTAN) [A MINOR]  
[ANONYMITY ORDER MADE]

Appellant

and

ENTRY CLEARANCE OFFICER  
SHEFFIELD

Respondent

Representation:

For the appellant: Mr Abdurahman Jafar, Counsel instructed by Eden Solicitors  
For the respondent: Mr Esen Tufan, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity order**

*The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court*

*directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties.*

***Any failure to comply with this order could give rise to contempt of court proceedings.***

## **Decision and reasons**

1. The appellant appeals with permission against the decision of the First-tier Tribunal refusing his entry clearance application for settlement as a minor with his mother in the United Kingdom, the application being made on human rights grounds. The appellant is a citizen of Pakistan born on 6 December 2003 and is 15 years old.

## **Background**

2. The appellant was born in 2003 from the marriage of his mother (the sponsor) to her first husband. The appellant's application says that the sponsor's marriage broke down before his birth and in 2005, when he was 2 years old, the appellant began to live with his maternal grandmother in Pakistan.
3. In 2006, when the appellant was 3 years old, the sponsor went to the United Kingdom, leaving the appellant in the care of his grandmother. The grandmother in her witness statement records that the sponsor asked her to 'assume the responsibility of the child' but that the sponsor always had the intention to take the child with her to the United Kingdom as soon as she was in a position to do so.
4. The sponsor's evidence to the First-tier Tribunal was that in 2006, following guardianship proceedings, the grandmother was appointed the appellant's guardian. In fact, the Upper Tribunal having now seen the guardianship order, that happened 6 years later, in 2012.
5. The sponsor met her second husband soon after coming to the United Kingdom and remarried in May 2008. In her second marriage, the sponsor has two much younger children, a girl aged 9 and a boy whose age is not given. They are said to be sad that their half brother has not yet been able to join them in the United Kingdom. The appellant's step-father is supportive, referring to the appellant as 'our son' and saying how distressed the sponsor is that he has not been granted entry clearance.
6. On 14 June 2012, following Court proceedings in the Lahore courts, his grandmother was appointed the appellant's guardian. I have been given a copy of the guardianship proceedings with an English translation, sealed by the Court. The guardianship order records that it was the grandmother who filed the petition, that the petition was advertised to the public at large in a newspaper. Nobody objected. The grandmother gave a surety of 2,00,000 (two Lakhs Rupees) and undertook to stand as the appellant's guardian under the Guardians and Wards Act 1890 (VIII of 1890).
7. At the hearing, the appellant's father appeared in person and recorded his statement that he had no objection to the grandmother being appointed his son's guardian and

that 'he does not have any objection if petitioner and real mother of the minor [the sponsor in these proceedings] would take the minor to abroad'. The grandmother undertook not to take the appellant beyond the jurisdiction of the Court in Lahore without prior permission, 'except for occasional visits' and to keep the Court informed of any change of address for the minor.

8. The appellant last saw his mother in 2016, according to the refusal letter. She also visited in 2013/2014. He has friends in Pakistan and has lived there all of his life, for most of it with his grandmother.

### **Entry clearance decision**

9. The respondent refused entry clearance on the basis that the sponsor had not demonstrated that she had sole responsibility for the appellant (sub-paragraph E-ECC.1.6), and further, that the financial requirements were not met (E-ECC.2.1). The sponsor had not shown that having regard to the sources of income specified in E-ECC.2.2, she had the specified gross income of at least £22400 per year.
10. The respondent considered whether pursuant to paragraphs GEN.3.1 and GEN.3.2 there were serious and compelling family or other considerations which made exclusion of this child undesirable, taking into account his best interests as a primary consideration. any compelling compassionate circumstances but concluded that there were none.
11. The application was refused under paragraph D-ECC.1.2 of Appendix FM with reference to paragraph EC-C.1.1(d) and that the appellant did not qualify for entry clearance on the 5-year child route or the 10-child route on the basis of exceptional circumstances.
12. The appellant appealed to the First-tier Tribunal.

### **First-tier Tribunal decision**

13. The First-tier Judge was not satisfied that the sponsor had sole responsibility for the appellant, or that the financial requirements were met. He did not accept that the sponsor was guiding the grandmother, nor that there was any convincing evidence that the grandmother would be unable to continue to perform her role as guardian. The First-tier Judge found it not plausible that all the decisions as to the appellant's care were made by the sponsor who was nearly 4000 miles away.
14. He considered that the sponsor had decided that the appellant's best interests lay in his remaining in Pakistan with his grandmother, and noted that the appellant had friends in Pakistan. He accepted that the sponsor and her two children in the second marriage could not be expected to return to Pakistan and live there with him.
15. The First-tier Judge said that the figures for income provided by the sponsor and her second husband were vague and 'seemed to be subject to variation since most of

their income was from self-employment'. The First-tier Judge did not make any finding whether the income requirements were met, on the evidence before him.

16. The First-tier Judge dismissed the appeal. The appellant appealed to the Upper Tribunal.

### **Permission to appeal**

17. The grounds of appeal focused on the First-tier Judge's findings on sole responsibility and on the appellant's Article 8 ECHR family and private life rights to have family reunion with his mother and half-siblings, 'who evidently were eagerly waiting for [his] inclusion in the family'. There was evidence of electronic communication between the sponsor and appellant.
18. There was no challenge to First-tier Judge's rather obscure findings on the parties' financial position, save to note that the sponsor had provided over 8 years of financial remittance evidence, which was undisputed.
19. Permission to appeal was granted on the basis that the First-tier Judge had erred in his finding that the sponsor did not have sole responsibility and in his overall assessment of the appeal by reference to Article 8 ECHR. In particular, it was arguable that the Judge's findings and reasons were inadequately reasoned and failed to take account of the best interests of the child appellant.

### **Rule 24 Reply**

20. There was no Rule 24 Reply by the respondent.
21. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

22. At the hearing, I heard oral submissions from both representatives, which I have taken into account in reaching my decision. Mr Tufan noted that the decision had been made under the wrong paragraph of the Immigration Rules HC 395 (as amended), under Appendix FM EC-C, rather than paragraph 297. That was significant as the income figure which appears in Appendix FM is not specified in paragraph 297.

### **Analysis**

23. As Mr Tufan accepted, the correct paragraph of the Immigration Rules for this application was 297(i)(e):

"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 ...

(ii) is under the age of 18; 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; ...."

24. The evidence before me shows that the sponsor and her husband have maintained their United Kingdom family without recourse to public funds and have maintained the appellant in Pakistan, paying what is required for him. They do not need to show that they have £22400 income and the respondent has not taken the opportunity which Rule 24 provides to give reasons why the income they do have will not be sufficient to maintain the enlarged family adequately.
25. There remains the question of sole responsibility. I have regard to the terms of the guardianship order. It is clear that the appellant's natural father has renounced any parental responsibility and is content for his former wife and mother-in-law to take responsibility for the appellant. I place weight on the grandmother's evidence that the sponsor always intended to take the appellant to the United Kingdom with her when she could and that he is now in his late teens, and his grandmother wishes to go and live with other relatives, who do not wish to accommodate the appellant. It is right that there is little evidence of her health problems, but there is no reason not to accept her statement of her future plans.
26. I also have regard to the very detailed supervision of the appellant's schooling and external activities revealed by the emails in the First-tier Tribunal bundle and the Upper Tribunal bundle.
27. The guidance given in TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 that
 

*"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".*
28. At [52] in TD, the Upper Tribunal held that it is always a question of fact who is exercising responsibility for the child and that "that responsibility may have been for a short duration in that the present arrangements may have begun quite recently'. Responsibility may be shared between different individuals, where the only parent involved lives in the United Kingdom.
29. The crucial element of the TD guidance is at [52] sub-paragraphs (vi) – (ix):

“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".”

30. The evidence in this appeal is quite clear, that although the grandmother has day-to-day responsibility for this child, at present his mother makes all the important decisions in his life. I am satisfied that the sponsor has sole responsibility and accordingly, this appeal falls to be allowed.

## DECISION

31. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeal.

Signed *Judith AJC Gleeson*  
Upper Tribunal Judge Gleeson

Date: 23 August 2019