



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/02190/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC (via Decision & Reasons Promulgated
Skype)
On 28 January 2021**

On 19 February 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

BOE

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Inoma of Highland Solicitors.

For the Respondent: Mrs Aboni Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Abdar ('the Judge') promulgated on 18 November 2019, in which the Judge dismissed her appeal on human rights grounds.
- 2.** The appellant is a citizen of Nigeria born on 24 August 2001 who applied for entry clearance on 19 September 2018 to enable her to

join her mother, a Nigerian national, in the United Kingdom. That application was refused on 19 December 2018.

Background

3. Having considered the documentary and oral evidence for Judge sets out findings of fact from [19] of the decision under challenge.
4. In relation to the question of whether the appellant had established that her mother had sole responsibility for her the Judge clearly considered the decision in TD (paragraph 297 (i)(e) "sole responsibility") Yemen [2006] UKAIT 00049, setting out the guidance as to how consideration of that question should be approached at [20] of the decision under challenge.
5. Having considered the evidence, the Judge sets out conclusions in relation to this aspect between [21 - 25] in the following terms:
 21. I have considered all the evidence before me and I find that the Appellant has failed to discharge the burden, on the balance of probabilities, in showing that the Sponsor has sole responsibility for the Appellant. The evidence before me, I find, is almost negligible of the Sponsor's involvement in the Appellant's life. I also find this lack of evidence from the Sponsor, particularly corroborating evidence or an explanation for the lack of the same, to be an indication of the Sponsor's evidence being unreliable.
 22. There is evidence of the Sponsor sending money to [K] in Nigeria. However financial support alone is not, in my judgement, sufficient demonstration of sole responsibility or evidence of directing the Appellant's upbringing.
 23. I have considered the WhatsApp messages, which I find to be very generic well wishes and they only cover a few months of 2018. The messages do not appear to be regular either and are sporadic with long gaps between messages. I do not find the messages to show the Sponsor having sole responsibility for the Appellant for directing her upbringing at all.
 24. I have no evidence of any other family that the Appellant may have in Nigeria or the Sponsor as in the UK though I note that there is a reference to the Appellant's sister in the WhatsApp messages. It was in response to the Tribunal's enquiry at the hearing, the Sponsor gave evidence of visiting the Appellant in 2018 for the first time since entering the UK in 2007. I have no evidence of why the Sponsor did not visit the Appellant previously or how the Sponsor engaged with the Appellant and directed her upbringing over the years.
6. Having found the appellant had not established that her mother had sole responsibility for her the Judge went on to consider whether the requirements of paragraph 297(i)(f) relating to the question of whether serious and compelling considerations existed warranting a grant of leave to the appellant in any event between [26 - 30]. The Judge considered the guidance provided by the Upper Tribunal in Mundeba [2013] UKUT 88 at [26] and bore such guidance in mind including, in particular, that the assessment involves "consideration as to whether the combination of circumstances sufficiently serious and compelling to require admission", as the Judge confirmed that [27].

7. The Judge's findings on this issue are set out at [28 - 30] in the following terms

28. I find that the Appellant applied for entry clearance shortly after turning 17 years of age and has lived in Nigeria all her life, with friends and family of the Sponsor and has completed the first stages of her education at a boarding school with the financial assistance of the Sponsor. On all accounts, the Appellant was a healthy teenager approaching young adulthood at the date of the application and remains so. The Sponsor has previously assisted the Appellant financially in securing accommodation and there is no evidence of the Sponsor's inability to continue to support the Appellant as before.
29. On a holistic assessment of the little evidence before me and on balance, in my judgement, the Appellant has failed to discharge the burden of showing that she meets the high threshold of paragraph 297(i)(f) of the Rules. In making my finding, I keep in mind that the Appellant's best interest, as encompassed within the Rules, and I do not find that the status quo of Appellant at the date of the application or now to be such that it makes the Appellant's exclusion undesirable.
30. For these reasons, I do not find any serious or compelling or other considerations of any kind which make the Appellant's exclusion undesirable.

8. Thereafter the Judge considered whether, notwithstanding the inability of the appellant to succeed under the Immigration Rules, any interference with a protected right as a result of the decision under challenge was proportionate to the legitimate aim relied upon by the respondent, pursuant to Article 8 ECHR. The Judge accepts that the relationship between the appellant and sponsor to have been proved as mother and daughter sufficient to support a finding that family life recognised by article 8 exists.

9. The Judge, bearing the 'balance sheet' approach in mind, concludes the issue is the proportionality of the decision and sets out the findings in relation to this aspect at [34 - 36] of the decision under challenge in the following terms:

34. I repeat my findings of above in respect of the Appellant and the Appellant's circumstances in Nigeria. I have not been directed to any other factors and I find nothing in the evidence which countermands the balance against the Appellant.
35. In the proportionality assessment, I also take into consideration the Sponsor's rights under article 8. However, I do not find any interference with the Sponsor's rights by maintaining the current status quo to sway my assessment in the Appellant's favour. On the evidence before me, the Sponsor has minimally engaged with the Appellant in Nigeria and has only visited the Appellant once in over 10 years and I have no reliable evidence or argument to find the maintaining of that balance now to be disproportionate.
36. I do not find the positive factors in the Appellant's favour, either exclusively or cumulatively, to outweigh the factors against the Appellant, particularly the public interest elements. Therefore, I find that the decision under appeal is reasonable and proportionate in all the circumstances and I dismiss the appeal.

- 10.** The appellant sought permission to appeal which was initially refused by another judge of the First-tier Tribunal but granted by the Upper Tribunal on a renewed application, the operative part of the grant being in the following terms:
1. It is not without some hesitation that I grant permission to appeal. The evidence directly relating to the control and direction that one would normally expect to see being exercised by the sponsor over the appellant's life, to support a claim of sole responsibility, was limited. The FtJ's assessment of the issue of sole responsibility at [21] to [24] does however arguably fail to properly consider the evidence from the sponsor's nephew [K] and the evidence from the appellant's head teacher at pages 56 to 58 of the appellant's bundle. There is certainly no engagement with that evidence in the section of the decision containing the FtJ's findings, and there are no findings in respect of the appellant's claim that she was no longer living with [K] and had been supervised, and then living with, her headteacher, and that she is now living with different friends. Even if the sponsor did not have sole responsibility for the appellant before she left [K's] home (if this was accepted), she may nevertheless have assumed sole responsibility afterwards. It is arguable that the judge failed to make adequate findings in respect of the material issues before him, and that he failed to take account of relevant evidence.
 2. The remaining grounds (from paragraph 3 onwards of the grounds) have less merit, but I nevertheless grant permission on all grounds.

Error of law

- 11.** The grounds seeking permission to appeal assert the requisite test was in fact satisfied on the evidence. The appellant further claims an inconsistency in the Judge's findings at [22] and that at [25] in the Judge accepting that there was financial support from the sponsor to the appellant but then claiming that the sponsor was not solely responsible. The appellant asserts that is a finding that was not plausible and is illustrative of the Judge's failure to consider all the evidence provided. In relation to article 8 ECHR, it is asserted the Judge did not consider all relevant factors including the claim the appellant did not have a place to live in Nigeria and taking into account her age at the date of application.
- 12.** It is settled law that a judge is not required to set out the evidence in full or to findings in relation to each and every aspect of the same in the determination, provided all relevant evidence was adequately considered.
- 13.** The Judge was clearly aware of the evidence relating to the history of this matter including the involvement of [K] and the payment by the sponsor to this individual of funds to meet the cost of the appellant's school fees and upkeep. Notwithstanding this, the Judge finds, having considered documentary and oral evidence, at [24] that there was no evidence as to how the sponsor engaged with the appellant including directing her upbringing over the years. The grounds fail to identify any specific evidence that the Judge failed to take into account in undertaking the required analysis or to identify alternative findings that the Judge should have more rationally made on the evidence that would make a material difference.

- 14.** The Judge clearly took into account the relevant case law and the finding that the provision of financial support was not sufficient to satisfy the test of sole responsibility, without more, is a finding within the range of those reasonably open to the Judge.
- 15.** The Judge was aware of the appellant's history and background which is set out between [4 - 6]. As Mrs Aboni noted, at the date of application the appellant was a full-time border being cared for by the school headmaster. The Judge clearly took into account the appellant's age, lack of own accommodation, and evidence of the availability of continued ongoing adequate financial support.
- 16.** The grant of permission makes specific reference to the evidence at pages 56 to 58 of the appellant's bundle. At page 56 is a letter from the Amannachi Secondary Commercial School dated 11 July 2019 stating that the sponsor introduced her nephew [K] to the school management team as the primary contact for the appellant should the school require the attention of an appropriate adult during the appellant's time at the school. The letter states that [K] has been very regular for many years during school visiting periods as well as paying all the school fees and dues. At pages 57 is a document dated 12 September 2019 written by the Principal of the school confirming that she agreed that the appellant, who was in her final year, could stay with her and her family until she finished her exams. The letter states it was because her mother approached the Principal explaining there was a relationship breakdown as a result of which [K] could no longer accommodate the appellant in his house and because she had no other place to stay.
- 17.** The Judge was clearly aware of the guidance in TD in which the Upper Tribunal found that "Sole responsibility" is a factual matter to be decided upon all the evidence, and that 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. The Judge's conclusion that having carefully considered the evidence insufficient material had been provided to show that the sponsor had made all the important decision in the appellant's life such that she had not established she had sole responsibility has not been shown to be a conclusion infected by arguable legal error. The guidance in TD was that the decision should be made on the basis of all the evidence and the assessment of whether a parent had sole responsibility would include a consideration as to the nature of the relationship between parent and child in a given case and the decision maker would be able to assess whether particular decisions were or were not important ones in the context of the evidence as a whole. The Judge clearly noted the poor quality of the evidence relating to ongoing contact between the appellant and the sponsor which included one visit in 10 years, a limited number of WhatsApp messages, and inadequate evidence to show the sponsor had maintained control and direction over the appellants life.
- 18.** It is not made out the weight the Judge gave to the evidence is irrational. The Judge had the benefit of forming an opinion on the

merits of the claim having considered both the written and oral evidence, as noted above. The weight to be given to that evidence was a matter for the Judge. It is not made out the Judge did not consider all the material provided or that the weight given to the evidence is infected by legal error. Whilst the appellant may disagree with the Judge's conclusion the grounds fail to establish the decision to dismiss the appeal is one outside the range of those reasonably available to the Judge on the evidence. It has not been shown to be either unfair or unreasonable in light of the factual findings made.

- 19.** No error of law material to the decision to dismiss the appeal is therefore made out. Disagreement with the same or desire for a more favourable outcome does not establish it is appropriate in all the circumstances for the Upper Tribunal to interfere any further in this matter.

Discussion

- 20. There is no material error of law in the First-tier Tribunal decision which shall stand.**

Anonymity.

- 21.** The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 29 January 2021