



IAC-AH-V1

Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/03910/2020

HU/03918/2020

THE IMMIGRATION ACTS

**Heard via MS Teams
On the 28th October 2021**

**Decision & Reasons Promulgated
On the 19th November 2021**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

HBR

ASR

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Shoye, CW Law Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge FE Robinson, promulgated on 4 March 2021. Permission to appeal was granted by First-tier Tribunal Judge Feeney on 11 June 2021.

Anonymity

2. No anonymity direction has been made previously however I make one now owing to the first appellant's minority.

Background

3. On 29 October 2019, the appellants, then aged 14 and 17, applied for leave to enter the United Kingdom as dependent children under paragraph 297 of the Immigration Rules. Their applications were refused in decisions dated 7 January 2020, principally on the basis that their sponsoring parent was not solely responsible for their upbringing, there were no serious and compelling family or other reasons which made the appellants' exclusion undesirable, and that refusal of entry would lead to no unjustifiably harsh consequences.

The decision of the First-tier Tribunal

4. At the hearing before the First-tier Tribunal, the sponsor HR, and his wife M, gave evidence. It was not accepted by the judge that the sponsor had continuing control and direction of the appellants' upbringing, primarily owing to a lack of documentary evidence as well as owing to the sponsor's description of the responsibilities undertaken by his eldest daughter Monique, who provides day-to-day care of the appellants following the death of their grandmother in August 2020.

The grounds of appeal

5. The grounds of appeal were not clearly made out and expressed a series of disagreements with the decision in question.
6. While permission to appeal was not refused on any ground, permission was granted for the following reason:

"However, there is an arguable error in terms of her approach to proportionality. This is set out by the Judge in paragraph [36]. In that paragraph the judge explains that it is for the appellants to establish that it is more likely than not that the decision to refuse them entry to the UK is a disproportionate interference with their family life with the sponsor."

7. The respondent did not file a Rule 24 response.

The hearing

8. When this matter came before me for an error of law hearing, Mrs Aboni indicated that the appeal was opposed and that even if the arguable error identified by the judge granting permission was made out, it was an immaterial error.
9. For the appellants, Mr Shoye attempted to rely on evidence submitted after the hearing which he said demonstrated that there was further evidence of the sponsor's financial support. I declined to view that evidence as it was not before the judge. Mr Shoye contended that

difficulties caused by the pandemic prevented all the sponsor's evidence from being submitted, albeit no adjournment had been requested.

10. Mr Shoye argued that the judge's error related to the issue of proportionality, in that the decision did not protect the family life of the sponsor and the appellants. The sponsor and his partner were found to be credible. In response to my question regarding the judge's findings at [46], Mr Shoye contended that the judge was wrong to say that the appellants' sister was mainly responsible for the appellants' upbringing because the financial evidence was deserving of more weight and the elder daughter would not be able to provide such "*fantastic support*" without the finance being available.
11. Mrs Aboni submitted that the judge directed himself appropriately and considered all relevant factors. She added that the judge appeared to accept that the sponsor sent financial remittances to the appellants however this was not the only requirement. The Rules required that control and direction over the appellants' lives must be shown. Adequate reasons were given by the judge for finding that the sponsor did not have such involvement and thus the Rules were not satisfied. The judge's consideration of Article 8 outside the Rules took into consideration the best interests of the appellants as well as the absence of evidence of serious, compelling family or other considerations. There was no legitimate expectation that entry clearance would be granted if the Rules were not satisfied, and no unjustifiably harsh circumstances were identified.
12. In reply, Mr Shoye emphasised that if it were not the financial support from the sponsor, the eldest daughter would not be able to provide the level of responsibility she did for the appellants. The most the sponsor could do was to travel to Jamaica and send money. The judge's findings were strongly influenced by inadequate financial support.
13. At the end of the hearing, I informed the parties that there was no material error of law in the decision of the First-tier Tribunal.

Decision on error of law

14. Mr Shoye's submissions were preoccupied with the further financial evidence which was available to the sponsor at the time of the hearing, but which was not submitted. He was wrong to place so much emphasis on this issue given the judge's acceptance at [40] that the sponsor's oral evidence that he provided the appellants with financial support was "*credible despite the limited documentary evidence.*" That disposes of the main plank of the submissions on the appellants' behalf.
15. Permission was granted owing to the judge's apparent understanding that the burden of proof was on the appellants to show that the decision to refuse them entry was disproportionate. Indeed, that is what the judge's

self-direction at [36] indicates and is erroneous. Nonetheless, I find this not to be a material error for the following reasons.

16. Firstly, at [58-60] the judge carried a balancing exercise and considered both those factors which suggested the respondent's decision was disproportionate as well as those suggesting it was proportionate, prior to reaching a global finding.
17. Secondly, the judge found that the requirements of paragraph 297 were not met and thus was entitled to find this to be a weighty factor. Mr Shoye was unable to address the fact that evidence showed that the sponsor's involvement in the appellants' lives was limited to financial support and occasional visits.
18. In deciding this matter, I have had in mind the conclusions in *TD (Yemen)* [2006] UKIAT 00049 where the Tribunal found that the test for sole responsibility was whether the sponsoring parent had continuing control and direction over the child's upbringing, including making all the relevant decisions in the child's life.
19. At [45] the judge finds there is "*no documentary evidence*" to support the claim that the sponsor had continuing control and direction of the appellants' upbringing. In addition to that, at [46] the judge notes the absence of evidence of communication between the sponsor and the appellants' school, the lack of mention of the sponsor in the letters to the British High Commission from the relevant educational establishments, as well as the sponsor's oral evidence that his eldest daughter dealt with education issues including contacting the school, attending meetings, and receiving school reports. The sponsor admitted not having had contact with one of the schools for over a year. Even the choice of schools was made by the appellants and their elder sister rather than the sponsor, according to his own evidence [47]. The judge's consideration of the issue of sole responsibility [39-55] was detailed and contained appropriate self-direction, applying *TD (Yemen)*. Neither the grounds of appeal nor submissions made on the appellants' behalf dislodged those findings.
20. Thirdly, both the grounds of appeal and the submissions I heard in relation to Article 8 on behalf of the appellants amounted to mere disagreement with the outcome of the appeal. Mr Shoye referred to no serious and compelling circumstances nor unjustifiably harsh consequences which could result from the refusal of entry clearance. Consequently, it is difficult to see how the outcome of the appeal would differ had the judge not misdirected herself at [36]. There was no material error of law in the judge's decision and reasons and that decision is upheld in its entirety.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is upheld.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are 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: 4 November 2021

Upper Tribunal Judge Kamara

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email