



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

Appeal Number: HU/14048/2019 (V)

THE IMMIGRATION ACTS

**Heard at Field House
On 5 March 2021**

**Decision & Reasons Promulgated
On 10 March 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

YUELIANG [H]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Galliver-Andrew, instructed by Lisa's Law Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of China, born on 22 September 2005. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his human rights appeal.

2. The appellant applied, on 23 November 2017, for entry clearance to the UK under Appendix FM of the immigration rules as the child of his mother, the sponsor, who had limited leave to remain. The respondent refused the application on 9 March 2018 on the basis that it was noted that the appellant had a parent residing in China and had failed to state with whom he was

currently residing. The respondent did not accept that it had been demonstrated that the sponsor had sole responsibility for the appellant's upbringing, or that there were serious or compelling circumstances which made his exclusion from the UK undesirable. The respondent also considered that the eligibility financial requirements of the immigration rules were not met and concluded that there were no exceptional circumstances leading to unjustifiably harsh consequences for the appellant for the purposes of Article 8.

3. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Head on 20 March 2020. The sponsor gave oral evidence before the judge and her partner attended and adopted his statement. The evidence before the judge was that the sponsor and the appellant's father had divorced on 6 September 2010 and the sponsor had full custody of the appellant, with his father having no parental responsibility. It was claimed by the sponsor that all the appellant's expenses were met by her and that she made all the decisions about him. The appellant lived with his grandparents. The sponsor had entered the UK illegally in May 2012 and had met her current partner with whom she had a daughter, born on 18 May 2015. Her partner was settled in the UK and she had been granted limited leave to remain on the basis of her family life with him, valid until 7 December 2021. She and her husband sent money to China regularly for the appellant's maintenance, clothing and school fees. The appellant's grandparents were getting old and their health was deteriorating and circumstances had therefore changed.

4. It was accepted at the hearing that there was sufficient income for the appellant to meet the financial requirements of the immigration rules and the relevant issue was therefore whether the sponsor had sole responsibility for his upbringing. The judge noted that the divorce agreement relied upon by the sponsor was a copy only and that the signature for the sponsor was not the same as that in her UK residence permit. The judge therefore did not accept that the divorce agreement was a reliable document. She also had concerns about the lack of evidence about the nature of the appellant's contact and relationship with his father and she found that the level of frequency and the duration of contact between the sponsor and the appellant did not reflect the level of contact she would expect of a parent with sole responsibility for a child. The judge also had concerns about the dearth of evidence demonstrating that the sponsor paid for the appellant's school fees and for his upkeep and essential needs and she considered that the evidence did not support the claim that the sponsor was solely responsible for the appellant. She was unable to conclude, from the evidence, that the appellant's father had abdicated responsibility for him. The judge considered that there were no serious or compelling circumstances which made his exclusion from the UK undesirable but noted that such a case was not advanced in any event. She considered that the appellant's best interests lay in remaining in China and concluded that the respondent's decision was a proportionate one and did not breach the appellant's Article 8 rights. She accordingly dismissed the appeal.

5. The appellant sought permission to appeal the decision on the following basis: that the judge made a finding of fact which had never been put to the

sponsor (in regard to her divorce agreement) and had failed to apply the test in TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049; and that the judge's assessment of the best interests of the child was flawed. Permission was granted in the First-tier Tribunal on 16 June 2020 by Designated Judge Shaerf.

6. The matter then came before me for a remote hearing conducted through Skype for Business.

Hearing and submissions

7. A preliminary issue arose in regard to Mr Melvin's reliance upon his written submissions/ rule 24 reply filed the day before the hearing. Prior to the hearing, there was a written request on behalf of the appellant for the rule 24 response to be excluded as it was substantially out of time. However, at the hearing Mr Galliver-Andrew accepted that there was nothing controversial in the document, which was effectively a skeleton argument submitted to assist the Upper Tribunal and which I accepted as such.

8. The parties then made submissions before me.

9. Mr Galliver-Andrew submitted that Judge Head had erred by giving no weight to the sponsor's divorce agreement at page 99/100 of the appeal bundle because of the sponsor's signature, yet the judge was not an expert in graphology and in any event there was a similarity between the first part of the signature and no account given to the fact that the sponsor had re-married and changed her last name. Further, the point was not raised by the respondent and was not put to the sponsor at the hearing to enable her to provide an explanation. That was a material error by the judge because the adverse findings made subsequently flowed from that and it therefore affected the entire decision. It was also material because the divorce agreement confirmed the appellant's case that his father was not in the picture and that he had no contact with him. The sponsor's evidence was that the appellant had no contact with his father and it was not put to her at the hearing that that was not the case. Mr Galliver-Andrew submitted further that the judge had erred by significantly speculating, at [35], about the appropriate level of contact between a teenage boy and his mother. The matters referred to by the judge at [37], namely the lack of evidence demonstrating that the sponsor paid the appellant's school fees, was never put to her at the hearing, and neither were the concerns about the appellant's grandparents' circumstances.

10. Mr Melvin submitted that the appellant's legal representatives ought to have known what evidence to produce in response to the respondent's concerns in the refusal decision and in relation to sole responsibility. As for the divorce agreement, even if the document was genuine, it did not state that there was no contact between the appellant and his father and the judge properly noted that there was an absence of evidence from the appellant in that regard. Even if the judge's findings on the divorce agreement were not sustainable, there was still a dearth of evidence before her and she was entitled to make the findings that she did on that basis.

11. Mr Galliver-Andrew, in response, reiterated the point previously made that the sponsor had had adverse findings of fact made against her without being given the opportunity to respond. Mr Galliver-Andrew also referred to the significant period of time that had elapsed since the appellant had made his application, which was beyond his control.

Discussion and conclusions

12. Much is made in the grounds and the submissions before me of the judge's findings on the sponsor's divorce agreement at page 99 and 100 of the appeal bundle and the differences in the signature of the sponsor in that document and in the residence permit at page 37. Had that been the sole basis of her adverse conclusions on 'sole responsibility' I would agree that the sustainability of the judge's decision would be in question, given in particular that the judge was comparing a signature in different languages over a period of time in which the sponsor may have changed her name on re-marriage.

13. However, it was not the case that the judge went on to make her findings on the basis that the sponsor and the appellant's father were not divorced but rather she observed at [33] that the fact that the couple were divorced did not mean that the appellant's father had no contact with him. Further, as Mr Melvin submitted, there were many other findings made by the judge on the issue of 'sole responsibility' in any event. Accordingly I reject the submission that any error by the judge in relation to the signature on the divorce agreement, and the reliability of that document, was material to the overall decision.

14. The main basis for the judge's adverse conclusion on the sole responsibility issue was a lack of evidence – as to the appellant's relationship with, and contact with his father, the level of support provided to the appellant by the sponsor and the level of contact between them, and the role played by the appellant's grandparents. The only response to that by Mr Galliver-Andrew was effectively an attempt to relieve the appellant of the burden of proof, since the tenor of his submissions appeared to be that none of the concerns had been put to the sponsor at the hearing, a matter he repeated throughout his submissions. Yet, as Mr Melvin properly submitted, the significant gaps in the evidence were made clear in the ECO's refusal decision and were repeated in the ECM review in view of the absence of any further evidence submitted with the grounds of appeal. It was therefore for the appellant to produce that evidence and address the respondent's concerns at the hearing through the sponsor's evidence and supporting documentation. The appellant had the benefit of legal representation in preparation for, and at the hearing and there was therefore no explanation for the continued lack of evidence.

15. In response to that submission made by Mr Melvin, Mr Galliver-Andrew said that it was not for the legal representatives to burden the court with unyielding and never-ending bundles of evidence. However, it clearly is the role of the appellant's representatives to produce a bundle of evidence which addresses the respondent's concerns. The evidence produced before Judge Head was significantly lacking. As she observed, there was no statement from the appellant himself, nothing from the appellant's grandparents with whom it

was claimed he was living, and only a short statement from the sponsor and her partner in the UK, neither of which made any mention of the appellant's father. The record of the proceedings shows that the sponsor was not examined in chief by Mr Galliver-Andrew and that there was no re-examination following cross-examination. There was clearly every opportunity for the sponsor to clarify the relevant matters of concern, but that opportunity was not taken up by her representatives and the judge was perfectly entitled to draw the adverse conclusions that she did from that.

16. It was Mr Galliver-Andrew's submission that it was clear from the evidence that the appellant's father was 'out of the picture'. However when I asked him to refer me to that evidence he was unable to do so. As already mentioned, the sponsor's statement did not provide such evidence. I do not agree with Mr Galliver-Andrew that such a conclusion was to be drawn from the divorce agreement, since that confirmed no more than that the sponsor had custody of the appellant and that his father was not responsible for his maintenance. That was the position in June 2010, in any event, prior to the sponsor coming to the UK. Neither did the evidence make it clear that the appellant's grandparents' role in his life was limited in terms of care and support and responsibility – there was simply no evidence in that respect other than a brief reference by the sponsor in her statement to her parents getting old and to having health issues. I reject Mr Galliver-Andrew's submission that it was for the judge and the respondent to elicit such evidence from the sponsor and I reject the suggestion that the judge was otherwise required simply to accept the sponsor's unsupported and unparticularised claim to have sole responsibility for the appellant. It was entirely open to the judge to consider the lack of evidence troubling and concerning and it was entirely open to her to conclude that the limited evidence before her, which included some WeChat messages and some remittances made to an unexplained third party, and brief oral evidence from the sponsor, was insufficient to demonstrate that the sponsor was solely responsible for the appellant's upbringing.

17. Accordingly I find no merit in the grounds. The judge's decision is a full and comprehensive one, including a careful assessment of all the evidence, an application of the correct legal test and clear and cogent reasoning. The judge was fully entitled to reach the adverse findings and conclusions that she did and she made no errors of law in her decision.

18. As for the submission made by Mr Galliver-Andrew about the delay between the appellant making his application and having his appeal heard, I fail to see how that is relevant to the question of whether the judge erred in law. In any event there plainly would have been no need for a delay if the appellant had produced the relevant evidence to support the application at any stage of the process.

DECISION

19. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 5 March 2021