Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20213/2018 (V)

THE IMMIGRATION ACTS

Heard at: Field House
On: 23 February 2021

Decision & Reasons Promulgated
On: 5 March 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

FLORIE MAE SENENCE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Sparkes, instructed by Henry Hyams Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there was no prior objection from the parties. The form of remote hearing was skype for business. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appellant is a citizen of the Philippines, born on 10 July 2000. She has been given permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for entry clearance to settle in the UK with her mother and step-father.

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3. The appellant applied, on 25 May 2018 (shortly before her 18th birthday), for entry clearance under paragraph 301 of the immigration rules, on the basis of her family and private life with her mother, Marivic Fajardo Thompson, who had leave to remain in the UK under the ten-year route until 11 November 2018.

4. In the decision of 28 August 2018 refusing her application, the respondent noted that the appellant claimed to live with her grandparents and that the letters of support submitted with the application stated that her mother, the sponsor, had been financially responsible for her, but there was no explanation as to where the appellant's father was and why he was unable to care for her and there was no evidence to show that the sponsor was financially supporting her. Neither did the evidence demonstrate that the appellant's mother had been responsible for making the important decisions in her upbringing. The respondent noted that the appellant had stated that she had visited her mother for 20 days between 3 October 2015 and 22 October 2015, but that they had not seen each other prior to that visit for 11 years or since the visit. There was no evidence of the claimed regular contact between them. The respondent was therefore not satisfied that the appellant's mother had sole responsibility for her and refused her application under paragraph 301(i)(b) of the immigration rules. As for paragraph 301(i)(c), the respondent was not satisfied that there were serious and compelling family or other considerations making the appellant's exclusion from the UK undesirable, given that there was no evidence to show why she could not continue to live with her grandparents and why her father could not look after her and considering also that she was now 18 years of age and legally an adult.

5. The appellant appealed against that decision and her appeal came before First tier Tribunal Judge Birrell on 18 July 2019. The judge heard from the appellant's mother and step-father. She accepted the sponsor's evidence that her ex-husband had played no role in the appellant's life for the vast majority of her life and that she had been financially supporting the appellant since leaving her with her mother in 2001, sending money initially to her ex-husband until 2004 and from then on to her mother (the appellant's grandmother), although she noted that there were gaps in the remittances which she considered suggested some past support from the appellant's grandparents. The judge noted that the evidence of regular contact between the appellant and her mother related mostly to the past 2 years and that the sponsor had seen the appellant only once in the past 17 years since she left the Philippines, when the appellant visited in 2015. The judge noted further that the sponsor had never been back to the Philippines and that there was no proper reason for that and only extremely limited evidence of her role in making decisions in the appellant's life.

6. The judge found it difficult to accept the sponsor's claim, in her oral evidence, that she had chosen her daughter's university, when the evidence was that her daughter had chosen her own school. The judge accorded limited weight to a letter from a counsellor at the appellant's school and concluded that the appellant had failed to show that the sponsor had sole responsibility

for her at the time she made the application and that responsibility was shared between the sponsor and the appellants' grandparents. It was conceded on behalf of the appellant that her circumstances fell short of those required in paragraph 301(i)(c) and the judge concluded that the requirements of paragraph 301 could not be met and that there were no compelling circumstances outside the immigration rules. The judge found that the decision was therefore not disproportionate and she accordingly dismissed the appeal.

7. The appellant sought permission to appeal to the Upper Tribunal on three grounds: that the judge had misunderstood the evidence about her grandparents' role in her life and had applied the wrong test and failed to conclude that responsibility had previously been shared but was now solely upon the sponsor; that the judge's finding on the evidence about the important decisions made by the sponsor was irrational; and that the judge had failed to take account of the evidence of her grandparents diminishing ability to care for her which had resulted in the sponsor assuming sole responsibility.

8. Permission was granted in the First-tier Tribunal on 3 March 2020 and the matter came before me. As a preliminary issue, Mr McVeety raised the fact that the permission application had been made out of time and that the timeliness issue had not been addressed in the grant of permission. He did not object to time being extended and I therefore extended time so that the application could be admitted. Both parties then made submissions on the error of law matter.

9. With regard to the first ground, whereby it was asserted that the judge had wrongly found that there had been a concession by the appellant's counsel as to the grandparents' role in the appellant's care, Mr Sparkes accepted that that was not in itself sufficient to consider that the judge's decision should not stand. He submitted that when taken together with the other errors, however, there were sufficiently material errors such that the decision should be set aside. With regard to the second ground, the judge ought to have set out the key decisions which she expected a person with sole responsibility for a child to have made and, as for the third ground, the judge erred by speculating about the appellant's grandfather having worked and supported her.

10. In response, Mr McVeety submitted in regard to the first ground that there was no material error in the judge's assessment of the appellant's grandparents' role. It was not doubted that she was well looked after by her grandparents up to the age of 18, but the relevant question was whether there was shared responsibility or sole responsibility by the sponsor. As to the second ground, there was a clear absence of evidence of any important decisions made by the sponsor. The decision as to the appellant's university was not relevant to the question of sole responsibility as it was taken after she was 18 years of age. As for the third ground, the judge was entitled to take account of the gap in evidence of remittances and draw the conclusions that she did. The judge's decision was a sound one and did not contain any material errors of law.

Discussion and conclusions

11. I am entirely in agreement with Mr McVeety that the grounds do not disclose any errors of law in the judge's decision. It is clear that the judge gave detailed consideration to all the evidence and provided full and cogent reasons for making the findings that she did. I find no merit in the assertion in the first of the written grounds that she misunderstood the appellant's evidence and misapplied the test for sole responsibility. On the contrary, as the respondent stated in her written submissions, the judge summarised the appellant's case clearly and properly at [37] and directed herself properly in accordance with the guidance in TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 in relation to the test for determining the question of 'sole responsibility'. The judge was clearly aware of the case being put for the appellant, namely that the grandparents' role had diminished more recently as their health deteriorated and that the sponsor's role had therefore increased as a result. That was the basis upon which she considered the evidence and assessed the appellant's case and she made cogent findings in that regard. The grounds mischaracterise the judge's observations on the evidence at [47] and it is plain that she was not recording any concession on the part of the appellant's representatives as to the current level of responsibility of her grandparents, but was simply observing that it was accepted that they had done a good job looking after her. I find that nothing material arises out of this.

12. Likewise, there is no merit in the second ground and the respondent properly observed that there was nothing controversial about the judge's finding at [41], whereby she simply found that there was only one example given by the sponsor of her making an important decision in the appellant's life, which she gave in her oral evidence, having given no examples in her statement. The judge went on to give proper reasons for her concerns as to the credibility of that example, namely the sponsor having chosen the appellant's university, when it was the appellant herself who had chosen her school, at a younger age, and it therefore would be more likely that she would have chosen her university herself. In addition, Mr Sparkes accepted the point made by Mr McVeety that the decision as to the appellant's choice of university was made after she had reached 18 years of age and was therefore not a relevant matter in considering the question of 'sole responsibility'.

13. Finally, and contrary to the assertion in the third written ground, the judge clearly gave full and detailed consideration to the two letters produced from the appellant's school counsellor and the two letters from her grandparents, at [42] to [46], providing cogent reasons for preferring the first letter from the school to the second and for according the weight that she did to that evidence. As for the challenge made by Mr Sparkes to the judge's findings about the gap in the remittances from the sponsor and speculating about a shared financial role with the appellant's grandparents, that is not a particularly material matter when considering that there was no dispute as to the grandparents' earlier role. In any event, I agree with Mr McVeety, that the

judge was entitled to make observations about the level of remittances and that there was no error in her approach to the evidence at [38].

14. In all of the circumstances it seems to me that the judge's decision is a sound and comprehensive one including a full and careful assessment of the evidence and clear and cogent findings. I do not find any material errors of law requiring the decision to be set aside. On the evidence before the judge, the conclusion that she reached was one which was fully and properly open to her.

DECISION

15. 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: 24 February 2021