



IAC-AH-DP-V1

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

Appeal Numbers: OA/12076/2013
OA/12078/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 9 October 2014**

**Determination
Promulgated
On 21 October 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**L P G
T T T N
(ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Martin, Counsel

For the Respondent: Mr A McVeety, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Vietnam. They applied for entry clearance to the United Kingdom as family members of the sponsor (Mr N V T) under paragraph 297 of HC 395 (as amended) on the basis that the sponsor had

sole responsibility for their upbringing and/or that there were serious and compelling family or other considerations which made their exclusion from the United Kingdom undesirable. The applications were refused by the respondent by a notice dated 23 May 2013; in particular, the respondent was not satisfied that the sponsor had sole responsibility for the appellant. The appellants appealed to the First-tier Tribunal (Judge Blackford) which, in a determination promulgated on 29 May 2014, dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.

2. The sponsor has been settled in the United Kingdom for a number of years. The appellants (now aged 19 years and 14 years respectively) remained in Vietnam with their mother. They would have continued to live with her had not problems arisen in 2010. The appellants' mother had married in 2009 (she had not been married to the sponsor although there is DNA evidence to show that he is the natural father of the appellants). In 2010, there was an incident involving the husband of the mother of the appellants who appears to have attempted to sexually abuse the appellants. The appellants moved to live with a cousin. Since September 2010, they have been living with a niece of the sponsor. The sponsor visited the appellants in Vietnam in 2011. He claims to have sole responsibility for their upbringing.

3. Mr Martin, for the appellants, challenged the manner in which the judge had concluded at [53] that the sponsor did not have sole responsibility. The judge had written:

Sole responsibility may not be easy to prove. However, it seems to be the way in which the difficulty can be addressed by a sponsor is to provide detail. In my judgment the sponsor could have provided a great deal more detail of the conversations that he has had with his niece regarding decisions about the appellants' upbringing and education. He could have told me in detail what were the issues that had been addressed and given details of the conversations he had had with his niece. That is almost entirely lacking although his niece has gone into greater detail than the sponsor has. When we add this lack of detail to the remarkable vagueness demonstrated by the sponsor regarding the sexual abuse by the stepfather and any lasting effect, I find that the appellants have not discharged the burden of proving to the required standard as regards the issue of sole responsibility.

4. Mr Martin submitted that a lack of detail alone appears to have been insufficient to persuade the judge that the sponsor did not possess a sole responsibility; rather, it was a combination of that factor together with "this lack of detail ... regarding the sexual abuse by the stepfather" which led the judge to that conclusion. He submitted that the "lack of detail" regarding the sexual abuse allegations had not been material to the question of sole responsibility and should, therefore, have been disregarded by the judge. It would follow that the lack of detail alone would have been insufficient to lead the judge to dismiss the appeal.

5. That submission has some force in the light of the positive findings which the judge made at [49]. The judge accepted "in broad terms" [the

sponsor's] account of being positively involved in his daughters' upbringing and his account as well as his niece's account of the conversations which they have had about his daughters' welfare, education, health and so-on". He also found that it was "very clear that the sponsor has become heavily committed to his daughters' welfare" and I accept the point made by Mr Martin at the dramatic change in their lives which occurred when they left [there] as to have had a cause". Mr Martin submitted that the judge had regard to irrelevant matters in rejecting what he had otherwise planned to be a credible account.

6. However, as Mr McVeety pointed out, the intervening paragraphs [50-52] must be read in conjunction with [53]. At [50], the judge noted that he had "reservations about the extent of the sponsor's involvement". He was "surprised" that the sponsor was unable to tell him which of his daughters had allegedly been the victim of attempted sexual abuse. The sponsor had also been unable to give any detail as to any lasting impact of that attempted abuse upon either appellant. The judge observed at [52] that "the situation is such that it would be quite possible for the sponsor to have sole responsibility for his daughters." That statement is not in the nature of a finding but rather an observation on the jurisprudence, from which the judge then proceeded to quote. By reference to the case law, he noted that a parent may have sole responsibility notwithstanding the fact that financial responsibility is shared with another individual. He was aware also that "the relative with whom the child lives" may "have some degree of responsibility". The judge then quite properly moved on to make his own assessment of the whole evidence. He rejected at [53] not the sponsor's claim to have involvement in his children's lives, but the extent and depth of that involvement. I can identify no error of law in the judge's approach or analysis. I consider that it was open to the judge to be surprised by the fact that the sponsor was unable to say which of his daughters had been the victim of attempted abuse. The judge clearly found that that ignorance, coupled with the credibility of the sponsor to give details about his discussions with his niece regarding the upbringing of the children, indicated that the sponsor did not have sole responsibility as claimed. I consider that to be a finding which was open to the judge on the evidence before him. There is no inconsistency with the positive findings at [49]. As I have said, it was possible for the judge to find that the sponsor was involved in the lives of his children without necessarily finding that he had sole responsibility for their upbringing.
7. The remainder of Mr Martin's submissions (and the grounds of appeal) amount to no more than disagreement with the judge's conclusion. Because that was a conclusion properly reached by the judge by reference to the evidence and supported by cogent and clear reasoning, I find that the appeals should be dismissed.

DECISION

8. These appeals are dismissed.

Direction Regarding Anonymity - Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

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 21 October 2014

Upper Tribunal Judge Clive Lane