



IAC-FH-CK-V1

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

Appeal Number: OA/00452/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**Judgment given orally at hearing  
On 29 October 2015**

**On 13 November 2015**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**S**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Brocklesby-Weller, Home Office Presenting Officer

For the Respondent: Mr D Mold, Counsel instructed by David Tang & Co

**DETERMINATION AND REASONS**

1. The appellant in these proceedings is the Secretary of State. For the sake of clarity however, I refer to the parties as they were before the First-tier Tribunal.
2. Thus, the appellant, whom I shall identify as S because of her age, is a citizen of Jamaica born on 17 May 2001. An application was made for entry clearance as a dependent child. That application was refused in a decision dated 4 December 2013 with reference to paragraph 297 of the

Immigration Rules. There was in fact a contemporaneous decision made in respect of the appellant's brother K, whose appeal also came before the First-tier Tribunal but whose appeal was dismissed by the First-tier Judge.

3. Returning to the case of this appellant, the appeal came before First-tier Tribunal Judge Thanki at a hearing on 29 May 2015 whereby he dismissed the appeal of the appellant's brother but allowed the appeal of this appellant. He concluded, in summary, that the appellant's mother, YF, who is a British citizen, has had sole responsibility for the appellant within the meaning of the Rules.
4. The respondent's grounds of appeal before me focus on the question of a letter apparently provided by the appellant's father in Jamaica consenting to the appellant living in the UK permanently. It is argued on behalf of the respondent in the grounds that there is no other independent evidence to confirm that the appellant's father had indeed so consented or whether the signature on the letter was his.
5. It is submitted that the appellant had failed to discharge the burden of proof by failing to prove that the appellant's father had abdicated responsibility for her. It is also said that at [14] of the determination there is a contradiction or inconsistency although that purported inconsistency was not relied on in submissions before me.
6. The grounds also raise the issue of there being no serious and compelling family or other considerations which make the appellant's exclusion from the UK undesirable; although again, that was not supported by oral submissions before me and is not a factor that features in the determination of the First-tier Judge.
7. Ms Brocklesby-Weller's admirably succinct submissions argue that the assessment of sole responsibility was flawed because in part it was based on evidence from the appellant's father in the letter to the effect that he consented to the appellant coming to the UK. However, the fact of the matter was that as at the date of the decision it appeared that he, even if not in direct contact with the appellant, had not disappeared from the scene as appeared to be the case by the date of the hearing. Nevertheless, the evidence recorded was that they had lost all contact with him.
8. Furthermore, there was evidence that nearer to the date of decision remittances had been provided to the appellant by her father, referred to in the determination, for example at [14]. It is submitted on behalf of the respondent that the reasons for the judge's findings of sole responsibility are confined to one paragraph, and in reality confined to the evidence of the appellant's mother.
9. Mr Mold on the other hand contends that the respondent's submissions and grounds really amount only to a disagreement with the findings of the First-tier Tribunal. He submitted that the letter dated 14 September 2013

from the appellant's father indicates that there would be a permanent separation and indeed the last sentence of that letter states as follows: "I understand that by signing this letter I may be permanently separated from my child". It is submitted that in reality that letter is not properly characterised as a letter of consent.

10. For my part I do not think it necessary to decide how that letter should be described. Suffice to say it was a letter written about three months before the date of decision and states that the appellant's father has no objections to her going to the UK and he understands that there would be permanent separation. More to the point it seems to me, is what is said at [26] of the determination, whereby Judge Thanki found the appellant's mother to be a credible witness who, in the judge's words, gave her evidence in a measured way and avoided the temptation to exaggerate issues before him.
11. He stated that he believed her when she said she had sole responsibility for the appellants plural, although it is only one appellant that this decision is concerned with. However, it is not simply a case of the judge blindly and blandly accepting the evidence of a witness without reference to any other detail. In that paragraph the judge explains what it is about the appellant's mother's contact and responsibility for the appellant that persuaded him that she did have sole responsibility for her. He referred to the daily communications, the six visits since 2010, the last being in February 2015, to her provision of maintenance from the UK and crucially he accepted that she makes all the important decisions in her life.
12. Further detail on the issue of sole responsibility was given in the letter in support of the appeal from the appellant's grandmother Mrs M. She gave the background to her having looked after the appellant since 2010 but she states in the letter that she seeks the consent of her daughter, the sponsor (the appellant's mother) in all the matters concerning the appellant; receives money for the children, and that they maintain daily contact and that she visits regularly. She states in her letter that the sponsor buys school uniform, books, pays school fees and when in Jamaica takes them to school and brings necessities from the UK. She discusses the details of school reports with the sponsor.
13. Crucially, and earlier in the determination, the evidence from the appellants' mother, whom again it is to be noted the judge found to be a credible witness, was that she was solely responsible for the appellants' upbringing and "made all the important decisions in their life". Apart from maintenance that included choice of schools, guidance on medical care and almost daily contact.
14. There was also evidence from Mr EF, who stated that the appellants' mother had found schools for the appellants and paid their school fees. There was no cross-examination in relation to his evidence. The judge made findings insofar as he could as to the extent of the role of the

appellant's father and it was noted that he had provided financial assistance in the past.

15. Although the judge did not make a specific finding in relation to the letter from the appellant's father, I am satisfied that when one looks at the determination as a whole and the specific findings in relation to the credibility of the evidence that was before him, supplemented by the written evidence of the appellant's grandmother, he reached sustainable conclusions in relation to sole responsibility.
16. It should also not be overlooked that there was a document from the Supreme Court of Jamaica dated 19 May 2014 in the appellant's bundle stating that the appellant had sole legal custody and care and control of both the appellants. Even without that document from the Supreme Court, the findings of the First-tier Judge would otherwise have been sustainable.
17. In all these circumstances, I am satisfied that the judge reached legally sustainable conclusions on the basis of the evidence before him and there is no error of law in his decision. Accordingly the decision of the First-tier Tribunal is to stand.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek

12/11/15