



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: OA/00889/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 November 2015**

**Decision & Reasons Promulgated  
On 21 December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

Miss CHANDA NDASHYE

Appellant

**and**

ENTRY CLEARANCE OFFICER - Pretoria

Respondent

**Representation:**

For the Appellant: Mr L Rahman (counsel) instructed by The Immigration Law Practice.

For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Turquet promulgated on 27 March 2015, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 4 December 1995 and is a national of Zambia.
4. On 28 November 2013 the Secretary of State refused the Appellant's application for entry clearance to join her mother, Maureen Ndashye, in the UK in terms of paragraph 297 of the immigration rules.

#### The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Turquet ("the Judge") dismissed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged and on 26 August 2015 Upper Tribunal Judge Goldstein gave permission to appeal stating inter alia

"This renewed application demonstrates that the first-tier tribunal Judge may have made an error of law in her approach to paragraph 297 of the immigration rules, not least on the question of sole responsibility, that is one fact in each particular case. Such was the guidance in TD [2006] UKIAT 49. See also Baydov v ECO, Moscow [2012] EWCA Civ 1739 that may have further and arguably informed the first-tier tribunal's approach. In that regard it is further submitted with arguable merit the Judge failed to give adequate reasons for her findings on material matters and raises arguable issues as to whether the Judge was entitled in law to reach the conclusions that she did for the reasons given.

#### The Hearing

7. Mr Rahman, for the appellant, adopted the terms of the grounds of appeal, and argued that the Judge had taken an inconsistent approach to the evaluation of the sponsor's evidence and the evidence of the sponsor's witness. He argued that the Judge had made material errors of law by failing to record the evidence of the sponsor's witness and by failing to make any findings in relation to the reliability or credibility of the sponsor or her witness. He argued that throughout the decision reference can be found to the sponsor's oral evidence, but that the Judge did not properly engage with the oral evidence and did not draw findings of fact from the oral evidence. He argued that the Judge's analysis of the evidence is inadequate and that the Judge reached conclusions which were not open to the Judge. He effectively argued that the Judge's findings are irrational and, on the evidence produced, the Judge should have found that the sponsor has sole responsibility (within the meaning of paragraph 297 immigration rules) for the appellant.

8. Ms Holmes for the respondent argued that the decision is a well-reasoned decision which does not contain a material error of law. She argued that the Judge reached conclusions which were properly open to the Judge to reach; that the Judge adequately records the reasons for reaching those conclusions after a careful analysis of the evidence. She urged me to dismiss the appeal and allow the decision to stand.

#### Analysis

9. In TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 the Tribunal said that "Sole responsibility" is a factual matter to be decided upon all the evidence. The test is whether the parent has continuing control and direction over the child's upbringing, including making all the important decisions in the child's life. However, where both parents are

involved in a child's upbringing, it will be exceptional that one of them will have "sole responsibility".

10. In Buydov v ECO Moscow 2012 EWCA Civ 1739, as part of their written divorce agreement, the parents had agreed that the mother would have sole responsibility for the claimant's upbringing. The judge (in that case) found that in practice the claimant's father retained some responsibility. It was held that the judge had misdirected himself when he found that it was necessary to show that the father had abdicated responsibility for the child before the mother could have sole responsibility. The finding that the father had not abdicated responsibility was clearly relevant but that was not the same as treating the finding as conclusive. The residence order for the child was clearly evidence but it would be wrong to treat it as necessarily sufficient evidence to prove sole responsibility. The Upper Tribunal's conclusion that it could not derive assistance from the IDI could not be characterised as an error of law. The Upper Tribunal was entitled to find that the mother did not have sole responsibility.

11. Between [6] and [13] the Judge sets out the appellant's claim in detail. At [2] & [3] the Judge clearly sets out the oral and documentary evidence placed before her. At [2] the Judge records that she heard evidence from the appellant's witness, Veronica Sibanda. Between [17] and [25] the Judge sets out findings in fact made on the basis of the evidence presented. Between [26] and [13] the Judge sets out her consideration of the law and conclusions.

12. The criticism made by counsel for the appellant amount to a suggestion that the judge has ignored material aspects of the evidence in this case and has failed to make findings in fact after considering the credibility and reliability of individual witnesses. A fair reading of the decision indicates that there is no merit in that argument. Perhaps the judge could have made greater use of subheadings, indicating which chapter of the decision she was moving on to. The Judge could have dealt with the evidence of each witness individually & explained which findings of fact relate to which strand(s) of evidence. But those are criticisms of style, not of substance.

13. A fair reading of the Judge's decision would satisfy the objective reader that the Judge considered each source of evidence, and made findings of fact based on the evidence presented. The Judge correctly directed herself in law at [26], before drawing conclusions which were manifestly based on the evidence driven fact finding exercise that the Judge has carried out. The suggestion that the Judge has either ignored or completely forgotten about a witness is entirely without foundation.

14. The fulcrum of this case is the question of sole responsibility. The first sentence of [26] clearly indicates that the Judge identifies the determinative question in this case. The Judge's self-direction in law in that same paragraph cannot be criticised.

15. It was for the Judge to decide whether or not the sponsor has had sole responsibility for the appellant. A fair reading of the decision clearly indicates that the Judge fully engaged with both the legal test and the crucial factual questions. A fair reading of the determination indicates that the Judge fully

considered the evidence presented in order to make findings of fact before asking the correct question in law. Having done that the Judge reached a conclusion. The conclusion that the Judge reached is not one that the appellant likes, but there is no error of law. The Judge applied the correct legal test of the facts as she found them to be; that is precisely what a Judge should do.

16. It is not an arguable error of law for a Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for a Judge to fail to deal with every factual issue under argument. Disagreement with a Judge's factual conclusions, her appraisal of the evidence or assessment of credibility, or her evaluation of risk does not give rise to an error of law. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible.

17. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the Judge draws from the primary data were not reasonably open to him or her.

18. A fair reading of the Judge's decision indicates that there is no misdirection of law and that the fact-finding process cannot be criticised. As I have already indicated, the Judge's conclusions are conclusions which were reasonably open to her to reach.

19. I find that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

## **CONCLUSION**

**20. No errors of law have been established. The Judge's decision stands.**

## **DECISION**

**21. The appeal is dismissed.**

Signed

Date 3 December 2015

Deputy Upper Tribunal Judge Doyle