



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

Appeal Number: OA/07842/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 4 November 2015**

**Promulgated**

**On 24 November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**ENTRY CLEARANCE OFFICER - KINGSTON**

Appellant

**and**

**MASTER ZADE TARKAINE BAILEY  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms J. Isherwood, Home Office Presenting Officer

For the Respondent: Ms. B. E. Jones of Counsel, instructed by Immigration UK Limited

**DECISION AND REASONS**

1. This is an appeal by the Entry Clearance Officer against the decision of First-tier Tribunal Judge T. Jones promulgated on 8 April 2015 in which he allowed Master Bailey's appeal against the Entry Clearance Officer's decision to refuse leave to enter the United Kingdom as the child of a parent settled in the United Kingdom, under paragraph 297 of the immigration rules.

2. For the purposes of this decision I shall refer to the Entry Clearance Officer as the Respondent and to Master Bailey as the Appellant, reflecting their positions before the First-tier Tribunal.
3. Permission to appeal was granted on the ground that it was arguable that the judge's very brief findings were inadequately reasoned and he had failed to take gaps in the evidence into account.
4. The Sponsor attended the hearing. I heard submissions from both representatives following which I reserved my decision.

### Submissions

5. Ms Isherwood submitted that there were inadequate reasons given for the finding of sole responsibility. The Appellant's father had been mentioned in the letter submitted with the application. The witness statements referred to the Appellant's father. She referred to paragraphs [10] and [12] of the Sponsor's witness statement, and paragraph [3] of the Appellant's witness statement. She submitted that the evidence regarding the Appellant's father needed to be resolved.
6. She submitted that the letter from Knox College made no reference to the point of contact for the Appellant. The issue of the application having been made by the Appellant's paternal family referred to in paragraph [11] of the Sponsor's witness statement had not been addressed at all. She submitted that paragraph [5] of the decision raised points which had not been covered by the judge. The findings in paragraphs [14] and [15] were not borne out by the evidence.
7. With reference to the Rule 24 response, paragraph [12], she submitted that the responsibility of the judge was to deal with the issues.
8. Ms Jones relied on the Rule 24 response. This refers to the cases of Buydov [2012] EWCA Civ 1739 and R (Iran) [2005] INLR 633. She further submitted that the Appellant's past history had been fully canvassed in evidence before the judge. The judge clearly had the evidence regarding the Appellant's father in mind as illustrated by paragraph [9] of the decision. She submitted that the Appellant's father had prevented the Sponsor from having sole responsibility until 2004, but in 2004 she had taken control and had had sole responsibility since then.
9. She submitted that the only question that the judge had to address was whether or not the Sponsor had sole responsibility. His finding was that she does, and reasons for this finding were given at paragraphs [14] and [15]. The judge found the Sponsor credible [14]. The key point of the decision was the direction of the Appellant's upbringing. It was not an unreasoned decision. The grounds were no more than a disagreement with the findings of the judge.

### Error of law

10. I have carefully considered the grounds and the decision. The Respondent was not satisfied that the Sponsor had sole responsibility for the Appellant's upbringing. This was the sole issue on which the application had been refused following the concession as to accommodation.
11. The findings of the judge are contained in paragraphs [14] and [15] of the decision. In paragraph [14] the judge found the Sponsor credible. He states:

"In overview and being mindful of the appropriate standard, as to the constituents of her evidence, I do find her credible, in respect of his (sic) claimed sole responsibility at date of decision."
12. The judge then gave reasons for finding the Sponsor to be credible. He stated that when the Sponsor did not know what she was being asked, she asked for clarity. He states:

"She is in my judgement, though nervous and at times a little confused, timid perhaps, she did give credible and reliable evidence as to her care for and the direction she has as to her son's upbringing, welfare and education, in a credible way."
13. Paragraph [15] states:

"I did not doubt in overview from all the Sponsor said and that which is claimed within the other statements (her sons and his aunts), that it is clear she is very much involved in his school choices, friend choices and upbringing. She may have some difficulty documenting all contacts these days, but she was informed and informative, as to her son's life, likes and dislikes. I also noted, and took account of the prior refusal, but equally the Sponsor was not represented and her surprise at the conclusions reached. She commented on this in her statement, as to her been (sic) deemed confused at the prior appeal hearing. I assessed her as I heard her evidence before me, and considered her to be truthful, concerned and involved in her son's life as claimed. It is all such that I find the direction of the Appellant's life, education health and welfare were at the date of decision the sole preserve of the Sponsor. I find with reference to the decision in TD that the submissions made on behalf of the Appellant in this respect are well made out."
14. In both paragraphs [14] and [15] the judge gives reasons for finding the Sponsor to be credible. He has acknowledged that she was nervous, and at times confused, but "in overview" he found her to be credible, [14]. In paragraph [15] he states that he considered her to be "truthful". He gives reasons for his finding that the Sponsor's account of sole responsibility is credible. He noted that she was informed and informative as to her son's life. He found that she was "concerned and involved in her son's life as claimed".
15. I find that although the judge's findings are not lengthy, it is clear that the reason he has found that the Appellant meets the requirement of the rules

regarding sole responsibility is because he found the Sponsor to be an honest and credible witness, whose evidence could be relied on. He accepted her account of sole responsibility for the Appellant, which was the one issue before him. As found in Buydov, with reference to TD, the question is one of fact, and it is acknowledged in the Presenting Officer's note following the hearing in the First-tier Tribunal that "essentially this will come down to a finding of fact for the IJ".

16. In relation to the Appellant's father, the judge refers to the Sponsor's evidence in paragraphs [9] and [10], evidence which he has accepted, and states that the Appellant was "abandoned by his father who farmed him out with relatives pre 2004. She then took control and had always intended his stay with her sister as the then best alternative." It is clear that he had the Appellant's father in mind, and having found the Sponsor to be credible, he accepted the evidence that the Appellant's father has abandoned him. It was not necessary for the judge to make detailed findings as to the status of the Appellant's father, given that the sole issue before him was that of sole responsibility of the Sponsor.
17. The Presenting Officer's hearing minute was provided to support the submission made in the grounds that the Sponsor's claim that she had directed the Appellant's education and welfare was not borne out by the cross-examination. In paragraph [10] of the decision the judge refers to the cross-examination. He refers to the fact that the Sponsor accepted that she received school reports via her sister. In paragraph [14] he accepts that she did not name the school principals and said that she received school results via her sister. However, the judge is clear that "in overview" he found the Sponsor to be credible. He has acknowledged these issues, but they do not alter his findings, that in overview, the Sponsor was credible, and that she has sole responsibility.
18. Given the judge's finding as to the credibility of the Sponsor, for which he gave reasons, and his reliance on her evidence, it is difficult to see how giving more reasons for his decision would have changed the outcome of the appeal. It is clear from a reading of the decision that the reason he finds in the Appellant's favour is because he found the Sponsor to be credible. He relied on her evidence to find that she has sole responsibility for the Appellant.

### **Notice of Decision**

The decision does not involve the making of an error on a point of law and I do not set it aside. The decision of the First-tier Tribunal stands.

Signed

Date 21 November 2015

Deputy Upper Tribunal Judge Chamberlain