



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/08863/2014
OA/08869/2014

THE IMMIGRATION ACTS

Heard at Newport
On 24 November 2015

Decision & Reasons Promulgated
On 7 December 2015

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

ENTRY CLEARANCE OFFICER - MANILA

Appellant

and

S J B

S J B

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondents: Ms Rebecca Harrington instructed by John Atkins

DETERMINATION AND REASONS

1. I make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) as the respondents are children. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the respondents. Any disclosure in breach of this order may amount to a

contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or Court.

Introduction

2. The Entry Clearance Officer appeals against a decision of the First-tier Tribunal (Judge Troup) allowing the appeals of the respondents (hereafter “the claimants”) against refusals to grant them entry clearance for settlement as the children of a person present and settled in the UK, namely their mother (hereafter “the sponsor”) under para 297 of the Immigration Rules (HC 395 as amended).
3. The claimants are brother and sister and are citizens of the Philippines. They were born respectively on 16 February 2003 and 10 March 2000. Consequently, they are now 12 and 15 years old respectively. They were 11 and 14 years old respectively at the date of decision.
4. In July 2005, the sponsor and the claimants’ father came to the UK leaving the claimants in the care of the sponsor’s parents in the Philippines. In 2008, the sponsor and the claimants’ father separated. Their father returned to the Philippines and he and the sponsor were subsequently divorced. On 16 December 2011, the sponsor became a British citizen through naturalisation. On 16 December 2013, the sponsor married a British citizen, “IP” and they live together in the UK.

The ECO’s Decisions

5. On 30 April 2014, the claimants applied for entry clearance to join the sponsor in the UK. They were both interviewed by the ECO in Manila and on 10 July 2014 their applications were refused. The basis of those refusals was that the ECO was not satisfied that the sponsor had “sole responsibility” for each of the claimants as required by para 297(i)(e) of the Immigration Rules.
6. Each of the refusals is in similar terms. In effect, the ECO was not satisfied that the sponsor had sole responsibility for each of the claimants because of their continuing contact with their father in the Philippines. The ECO’s reasoning, which as I say is mirrored in each of the decisions, was in respect of the first claimant as follows:

“The Decision

- You have applied for entry clearance to go to the UK to settle with your mother who holds a British passport.
- Your mother relocated to the UK in July 2005 leaving you in the Philippines. I note that your parents married in Nueva Ecija on October 15th 1999 and that they separated six years ago. Additionally, I note that your mother has remarried in the UK.
- You have applied for settlement to the UK with your sibling. At present you and your two siblings live with your maternal grandparents.
- Following initial assessment of your application, it was necessary to interview you, your sibling and your father to assist with my decision. It was requested for your

father to accompany you for a face to face interview at the British Embassy. The three of you were interviewed on Wednesday July 9th 2014.

- It is noted that you and your sibling provided conflicting reports of your relationship with your father. You stated that you last saw your father in December 2013 and that your father telephones several times per week. However, your sibling stated during interview that your father visits your house for fifteen minutes several times a week.
- I note an affidavit of parental consent to travel abroad dated the 21st March 2014 signed by your father. This document was supplied to assist with your application for settlement but in effect, this document demonstrates that your father is still involved with key decisions in you and your sibling's life and demonstrates that you are not solely dependent on your mother.
- From the evidence above I note that your mother does not have sole responsibility of your upbringing.
- Furthermore, if you were genuinely solely dependent on your mother then you would have had limited or even no contact with your father. I am not satisfied that this application is not one of convenience to gain entry to the UK for education or economic reasons rather than that your mother has sole responsibility for you and that you are dependent on her for your care.
- I acknowledge that your mother has sent remittances and has returned to the Philippines for family visits. In common with many Filipinos working overseas who send funds back to help support family here. I am not satisfied that her limited visits are adequate evidence that she has sole responsibility for you. She has not been involved in your day to day upbringing and welfare for the past 9 years.

I have therefore refused your application because I am not satisfied, on the balance of probabilities, that you meet all of the requirements of the relevant Paragraph of the United Kingdom Immigration Rules."

The Appeal to the First-tier Tribunal

7. The claimants appealed to the First-tier Tribunal.
8. Before the First-tier Tribunal the claimants relied upon a number of documents including statements from them dated 25 November 2014 and 19 April 2015 and from the sponsor and her husband dated respectively 15 October 2014 and 9 November 2014 together with statements from their grandparents in the Philippines with whom they live dated 26th August 2014 and 4 October 2014. In addition, the sponsor and her husband gave oral evidence before Judge Troup. At para 18 of his determination, the Judge found that the sponsor had established that she had "sole responsibility" for the following reasons:

"It appears to be the Respondent's case that responsibility for the Appellants is shared between the Sponsor and Father. From the evidence before me however it is plain that responsibility is not shared. The Sponsor has had sole responsibility since the breakdown of her marriage. I accept that the Sponsor has provided financial support exclusively; she has taken the major decisions in the children's lives; she is in frequent contact with them by telephone (several times each week and on both days of each weekend) and she visits

them for four weeks every year; I find that Father lives a considerable distance from the Appellants' home and that he rarely visits or contacts them. Accordingly, I find for the purposes of Paragraph 297(i) (e) of the Immigration Rules that the Sponsor is present and settled in the U.K. and has had sole responsibility for the Appellants' upbringing. The remaining requirements of that Rule are not challenged by the Respondent and I find in any event that those requirements are met. It follows from the above that I allow the Appeal under the Immigration Rules."

The ECO's Appeal

9. Mr Richards, who represented the ECO adopted the grounds of appeal. He submitted that the Judge's reasoning in para 18 was inadequate to sustain his finding in respect of "sole responsibility". First, he relied upon the AIT's decision in TD (paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 0049; [2006] Imm AR 569. He submitted that the Judge had not found, in accordance with TD, that the claimants' father had abdicated all responsibility for them. He relied on the fact that the claimants' father had given permission for them to come to the UK; he had attended their interviews with the ECO and the evidence was that he had continuing contact with them. In addition, Mr Richards submitted that even if the Judge had found that the claimants' father had abdicated all responsibility for them, he should have gone on and asked whether responsibility was shared between the sponsor and the maternal grandparents with whom the claimants lived.

Discussion

10. The only requirement of para 297 in issue in these appeals is that in para 297(i)(e) that the sponsor should have "sole responsibility" for the claimants' upbringing. The proper approach to the issue of "sole responsibility" is set out by the AIT in TD at [52] in the following terms:

"Questions of 'sole responsibility' under the immigration rules should be approached as follows:

- i. Who has 'responsibility' for a child's upbringing and whether that responsibility is 'sole' is a factual matter to be decided upon all the evidence.
- ii. The term 'responsibility' in the immigration rules should not to be understood as a theoretical or legal obligation but rather as a practical one which, in each case, looks to who in fact is exercising responsibility for the child. That responsibility may have been for a short duration in that the present arrangements may have begun quite recently.
- iii. 'Responsibility' for a child's upbringing may be undertaken by individuals other than a child's parents and may be shared between different individuals: which may particularly arise where the child remains in its own country whilst the only parent involved in its life travels to and lives in the UK.
- iv. Wherever the parents are, if both parents are involved in the upbringing of the child, it will be exceptional that one of them will have sole responsibility.
- v. If it is said that both are not involved in the child's upbringing, one of the indicators for that will be that the other has abandoned or abdicated his

responsibility. In such cases, it may well be justified to find that that parent no longer has responsibility for the child.

- vi. However, the issue of sole responsibility is not just a matter between the parents. So even if there is only one parent involved in the child's upbringing, that parent may not have sole responsibility.
- vii. In the circumstances likely to arise, day-to-day responsibility (or decision-making) for the child's welfare may necessarily be shared with others (such as relatives or friends) because of the geographical separation between the parent and child.
- viii. That, however, does not prevent the parent having sole responsibility within the meaning of the Rules.
- ix. The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child's upbringing including making all the important decisions in the child's life. If not, responsibility is shared and so not 'sole'."

11. Ms Harrington, who represented the claimants, submitted that the Judge had, in fact, found that the sponsor made all the important decisions in the claimants' lives and consequently had given a sound basis for finding she had "sole responsibility" for the claimants' upbringing. At para 11 the Judge summarised the statements as follows:

"In the Appellants' bundle are statements from the Appellants (and translations) to the effect that following the separation of the Sponsor and Father, Father provided no care or support for them at all. Care and support was provided exclusively by the Sponsor and her parents."

12. Then at para 13, the Judge summarised the sponsor's oral evidence as follows:

"The sponsor told me that she had had sole responsibility for the Appellants since the breakup of her first marriage and has made all the important decisions concerning their health, welfare and education. She is in contact with the children every other day during the week and every day at weekends. She remits £500 each month for the children's maintenance to her father's bank account. She said that she works hard and has made great sacrifices for the children particularly not being present in the Philippines to see them grow up.

She closely monitors their educational progress."

13. At para 14, the Judge noted the sponsor's evidence that she returns to the Philippines for four weeks every year and that her evidence was that the "father had had no say in the upbringing of the children at all".

14. Her evidence was at para 15 that:

"In the past two years father has visited the children three times and telephoned the first Appellant two or three times in May 2014. He lives about 16 hours away from the Appellants' home."

15. At para 16, the Judge referred to the evidence of the sponsor's husband in relation to visits made to the Philippines with the sponsor in 2011 and 2012 when they stayed with the claimants in the home of their grandparents. In his evidence, the sponsor's husband confirmed that:

"He and the sponsor support the appellants and he is not aware of any support given by the Father at all. The sponsor chose the appellants' schools and is in close telephone contact with the children."

16. The ECO identified an inconsistency between the claimants' evidence about contact with their father. This was dealt with in both their written statements dated 19 April 2015. In particular the first claimant says that:

"My father did not call a few times a week, as stated in the refusal notice, and I do not know why my sister said that my father comes and visits us three times a week. The last time I saw him was in December 2013."

17. The statements go on to state that it is the sponsor who makes the decisions about their lives.
18. There was, undoubtedly, evidence that the claimants' father remained in contact with the claimants. There was, however, no evidence that he exercised any "responsibility" for the claimants. The only evidence in relation to that was that the sponsor alone made the important decisions in their lives.
19. Mr Richards relied upon the fact that the claimants' father had attended the interview with the ECO. However, it is clear that he attended because he was required to do so by the ECO and the claimants' evidence was that they were surprised when they discovered that he was there having been taken by their aunt and grandmother to the interviews. I see no basis upon which it can be said that by attending the interviews in these circumstances the father could be said to be exercising responsibility for his children.
20. Further, Mr Richards relied upon the fact that the claimants' father had signed a document giving them permission to travel to the UK. Again, Ms Harrington reminded me that this was a requirement imposed by the UK Government. That was not challenged by Mr Richards. It is true that the Judge made no reference to this but, again, in the circumstances in which a declaration of this sort is required by the UK Government the fact that the claimants' father signed such a document, given all of the other circumstances supported by the evidence, provides no support for the view that he was exercising any responsibility for the children's upbringing.
21. In short, the evidence in these appeals was effectively all one way. It was that the sponsor exercised sole responsibility for the claimants' upbringing. The suggestion by Mr Richards that the Judge should have considered whether the claimants' grandparents were jointly exercising responsibility was not a matter raised by the ECO in the refusal decisions and, in the absence of a Presenting Officer at the appeal hearing, was not raised before the Judge. In these circumstances, it was not a matter that he was required to consider. But, in any event, his finding is clear that the

sponsor had sole responsibility and that is a finding which is soundly based in the evidence before him and nothing in the evidence provided any basis for a finding that responsibility was shared with the grandparents.

22. In my judgment, the Judge's finding that the sponsor had "sole responsibility" for the claimants was properly open to him on the evidence.

Decision

23. For these reasons, the First-tier Tribunal's decision to allow each of the claimants' appeals under para 297 of the Immigration Rules did not involve the making of an error of law. Those decisions, therefore, stand.
24. Accordingly, the ECO's appeals to the Upper Tribunal are dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

I see no basis for departing from Judge Troup's decision not to make a fee award on the basis that the decisions in the claimants' favour were in large part founded upon the evidence that the Judge heard at the hearing.

Signed

A Grubb
Judge of the Upper Tribunal