



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

Appeal Number: OA/22177/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 7 September 2015**

**Decision and Reasons
Promulgated
On 6 October 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MASTER CHRISTIAN DOM RAPISURA REAL

Respondent

Representation:

For the Appellant: Ms Karen Pal, Senior Home Office Presenting Officer

For the Respondent: Ms Nicola Braganza, Counsel, instructed by E2W UK LTD

DETERMINATION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal

Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.

2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge Majid) allowing the respondent's appeal against a decision taken on 15 November 2013 to refuse an application for indefinite leave to enter the UK.

Introduction

3. The respondent is a citizen of the Philippines born on 11 November 1995. He applied to join his father, Mr Narciso Carnay ("the sponsor"), who is a British citizen born on 11 June 1971. The sponsor has been in the UK since 2000.
4. The Secretary of State accepted the respondent's identity and nationality but concluded that there was insufficient evidence that the sponsor had sole responsibility. The respondent had never lived with the sponsor and had lived with his mother for all of his life. He had never previously applied to join the sponsor or even to visit him. The fact that the mother wished to go to Saudi Arabia to work was a matter of choice. There were no compassionate circumstances of a serious and compelling nature such as to make exclusion undesirable.

The Appeal

5. The respondent appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 18 March 2015. He was represented by Mr D Bazini. The First-tier Tribunal found that the sponsor had sole responsibility for the respondent and that the requirements of paragraph 297 of the Immigration Rules ("the Rules") were met.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law in finding that there was sole responsibility given that the judge also found that the mother retained an interest in the respondent's welfare, was committed to his welfare, still talked to him and made her contribution where she could.
7. Permission to appeal was granted by First-tier Tribunal Judge White on 19 May 2015. It was arguable that the judge had given inadequate reasons under the Rules and failed to identify why there was a disproportionate breach of Article 8 in this case.
8. Thus, the appeal came before me

Discussion

9. Ms Pal submitted that the challenge focusses on sole responsibility. The judge found that the mother still talks to the respondent and makes a

contribution. There are inadequate reasons for the conclusion that the sponsor has sole responsibility. The mother is still involved. The judge has failed to resolve the conflict in the evidence.

10. Ms Braganza submitted that this is a reasons challenge and the submission that the judge was not entitled to find sole responsibility is not sustainable. The judge directed himself as to the law; there can be some involvement by the other parent. The reasons are listed from paragraph 10 of the decision onwards. The judge only needs to give sufficient and adequate reasons. The parties know why they have won and lost. The affidavit in the original bundle from the mother makes it clear that she has delegated full responsibility to the father. All of the issues in the refusal letter were dealt with by the judge. There was a positive finding in relation to the sponsor's credibility. No other paragraphs have been highlighted to indicate a lack of reasoning. There can always be more in a decision but the test is whether the Tribunal has applied the correct law to the facts. Paragraph 52(ix) of TD applies; the mother is marginal and there is no conflict in the evidence.
11. I have considered the findings of fact. The judge found at paragraph 10 of the decision that the sponsor was the person who had been helping the respondent during the lives of the wife's parents and actively when the care of the appellant was taken over by his own parents. All of the decisions relating to the respondent were taken by the sponsor whose money was used by his elderly mother to see the respondent properly schooled, etc. The mother still talked to the respondent and made her contribution where she could but her contributions to the respondent's welfare were marginal and the sponsor was fully dedicated to the respondent's welfare. Crucially, the judge found at paragraph 16 that he was persuaded that the sponsor had been doing **everything** for the respondent.
12. I reject the submission that there is any conflict in the evidence. The role of the mother is identified by the judge as marginal but she was still in contact with the respondent. I have considered TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049. In this case, the mother does not reside with the respondent and there is no finding of regular contact or involvement in decision making regarding the respondent. I find that the factual matrix described by the judge falls into paragraph 52(v) of TD (paragraph 52(ix) is about shared responsibility between one parent and someone other than the other parent).
13. The finding of fact in paragraph 16 of the decision is clear - the sponsor had been doing everything for the respondent. That must mean that the mother was effectively doing nothing and that is consistent with the evidence before the judge that the mother had abdicated responsibility for the respondent's upbringing. Contact and a marginal supporting role does not mean that the mother is involved in the upbringing of the child and it was open to the judge to find that the mother no longer had responsibility. From paragraph 52(ii) of TD, the term "responsibility" looks to who **in fact**

is exercising responsibility for the child. The judge unambiguously answered that question at paragraph 16 of the decision.

14. Thus, the First-tier Tribunal's decision to allow the respondent's appeal under the Rules did not involve the making of an error of law and its decision stands.

Decision

15. Consequently, I dismiss the appeal of the Secretary of State.

Signed: 

Date: 3 October 2015

Judge Archer

Deputy Judge of the Upper Tribunal