



IAC-FH-AR-V1

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

Appeal Number: OA/05890/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4th December 2015**

**Decision & Reasons Promulgated
On 8th January 2016**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR JILONG CHEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Kannagara, Counsel, instructed by Anglo Chinese Law Firm Ltd

For the Respondent: Miss A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant, with permission against a decision of First-tier Tribunal Judge Shand promulgated on 29th May 2015 in which he dismissed the Appellant's appeal against the Entry Clearance Officer's decision to refuse to grant him entry clearance to join his father in the UK. The Appellant is a Chinese national born on 23rd December 1995. He is now an adult almost 20, but he was a minor at the date of the application which led to the decision under appeal that was taken on 10 October 2012.

2. The grounds on which permission to appeal was granted was whether the judge had applied the law correctly, in particular the case of TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 when deciding the single issue in the appeal as to whether the UK sponsoring father had had sole responsibility for the upbringing of his son. Permission to appeal was also granted on the basis of whether the judge had adequately considered Article 8 but that was not pursued before me today.
3. The Appellant's representative has argued that although the judge referred to the case of TD (Yemen) and even set it out in the decision, he in fact did not follow its guidance. The judge has relied solely on the choice of school being shared with the grandparents and the fact that he was separated from his son for a period of sixteen years. The choice of school, it was argued, was made in conjunction with the grandparents because the father himself is not highly educated and the grandparents' knowledge, being in China, would have been far greater than his. It is also argued that it is not necessary for sole responsibility to have subsisted for the entirety of the sixteen years. The judge has not justified his finding that responsibility was shared and not followed TD (Yemen). The representative also referred to paragraph 9 of TD (Yemen) which itself refers to an earlier case (Emmanuel v SSHD [1972] Imm AR 69) which he said related to similar facts to the present one.
4. I would differ in that comparison because the Emmanuel case referred to in TD related to a mother who had left a child at the age of 4 and that child was now aged 11. It was found that she had not given up sole responsibility. That is very different from the facts of this case where the father left the Appellant at the age of only 1 or 2 months old and the Appellant being almost 18 by the time of the application. In the intervening Article 8 years there were only two visits by father to the Appellant. It is true that the father could not visit China prior to January 2010 as up until that point he had no status to be in the United Kingdom and if he had left it he would not have been able to return. Whilst that explains why he had not visited China it is not necessarily a very good explanation because he did not in fact have any status to be in the UK.
5. In defending the First-tier Tribunal's decision the Presenting Officer relied on a Rule 24 response essentially that the judge had directed himself appropriately, had followed the guidance of TD (Yemen) and was entitled to find on the evidence that responsibility was shared and on that basis the father could not be said to have sole responsibility.
6. In the determination at paragraph 22 the judge notes that father came to the United Kingdom in 1996, the Appellant only having been born in December 1995, and finds that the Sponsor left for the UK when the Appellant was only a month or two old. At paragraph 24 he notes that at the date of the decision the Sponsor had only visited China twice, in 2010 and 2012. 2010 was the first time he had seen his son, who was then aged 15.

7. In paragraph 25 he refers to the evidence and finds that the Sponsor is in regular contact with his son by instant messaging, the internet and accepted his evidence that he speaks to his son once a week and he had weekly telephone contact prior to them being connected via the internet. However at paragraph 27 he considers the question of who has made decisions in the child's life and he noted contradictions in the evidence in that regard and he says that

“It is also the case that contrary to the Sponsor's claim that he chose his son's school the Sponsor's mother stated in her telephone interview that it was her husband, the Appellant's grandfather who chose the Appellant's school. Having regard to the fact that the Sponsor has been away from China for many years and was himself (as he says in his witness statement only educated to a low level, it is reasonable to expect the Appellant's grandfather was better placed in China than the Sponsor was in the UK to assess any schools which were possible choices for the Appellant to attend. That would be consistent with the grandmother's statement that her husband chose the school.”

8. He then goes on:

“Having regard however to the Appellant's statement that it has been due to the monies remitted by the Sponsor that the Appellant was able to complete higher middle school education and to the Appellant's grandmother's statement that we discuss all important things with the sponsor I accept that the choice of school for the Appellant was a decision that likely to have been reached consensually.”

9. He then deals with the lack of any evidence about medical treatment, mainly because it does not appear that the child has needed anything in particular.
10. He then at paragraph 27 takes into account that the Sponsor's separation from the Appellant was not simply of short duration; it was virtually the entirety of the child's life. The fact that the child has, during the entirety of his life, lived with his grandparents with close contact with an aunt and on the basis of the paucity of evidence as to father's involvement and decisions that he has actually taken, the judge has found that the true position here was that responsibility was shared between the sponsor and the grandparents. He has reasoned that though, he has directed himself appropriately to TD (Yemen) setting out the relevant parts at paragraph 17 of the decision. Whilst it is of course true that a child being looked after by others does not necessarily mean sole responsibility no longer subsists, it is of course equally the case that in other family situations it means precisely that. That is what the judge found in this case. He directed himself appropriately to the case law and concluded after due consideration of all of the evidence and for detailed reasons that responsibility in this case was shared and therefore the sponsoring father could not be said to have sole responsibility and dismissed the appeal for that reason.

11. So far as Article 8 is concerned, it has not been pressed before me, wisely, because given the findings on shared responsibility the fact that this young man has lived the entirety of life with his grandparents and in China his best interests are no doubt to maintain the status quo and he would not succeed on Article 8 in any event.

Notice of Decision

12. For all of those reasons the appeal to the Upper Tribunal is dismissed.
13. No anonymity direction is made.

Signed

Date 7th January 2016

Upper Tribunal Judge Martin