



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/14400/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13<sup>th</sup> October 2017**

**Decision & Reasons  
Promulgated  
On 20<sup>th</sup> October 2017**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**BIBEK GURUNG**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Ms S Akinbola (instructed by Everest Law Solicitors)  
For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant, with permission, in relation to a Decision and Reasons of the First-tier Tribunal (Judge AMS Green) promulgated on 10 June 2017. Judge Green dismissed the Appellant's appeal against an Entry Clearance Officer's decision to refuse him leave to enter the UK to join his mother, the Sponsor.
2. The background to this case is that the Appellant was born on 21 September 2001. He and the Sponsor are nationals of Nepal. The Appellant's parents divorced in 2010 and in 2011 the Appellant's mother secured entry clearance to the United Kingdom as a spouse. As her husband had insufficient funds to sponsor him the Appellant was left

behind in Nepal by his mother where he lived with his maternal uncle and his wife.

3. The Appellant's mother was subsequently granted indefinite leave to remain and then made an application for the Appellant join her in the UK. That application was refused, the Entry Clearance Officer not being satisfied that she exercised sole responsibility for the Appellant. The Appellant appealed and that appeal came before First-tier Tribunal Judge Blandy. Judge Blandy made numerous adverse credibility findings in relation to the Sponsor. The Sponsor relied on a letter purported to have been written by the Appellant's father supporting the application. However when challenged at the hearing she confessed to having written that letter herself with the assistance of a friend. Judge Blandy found the Sponsor did not have sole parental responsibility either prior to the date of the application or at the date of the hearing. He found that while there was some evidence of money being transferred to Nepal there was no clear evidence that this was received by the Appellant.
4. After that appeal was dismissed the Sponsor travelled to Nepal and apparently removed the Appellant from her brother's care and placed him in a hostel attached to his school. She then made a fresh application for her son's entry clearance. That was refused on 1 December 2015 and the decision upheld by an Entry Clearance Manager. That was the decision under appeal before the First-tier Tribunal.
5. In her submissions Miss Akinbola said that the issue for me to decide was a narrow one. She argued that in relying on the previous decision of Judge Blandy, Judge Green had not made findings about what had changed in the intervening period. The Judge noted the evidence but did not make any findings about what had changed. She submitted that while the Judge set out the legal principles concerning the issue of sole responsibility he had not made findings in relation to it. Furthermore in paragraph 13 the Judge attached little weight to a letter from the school written two years previously but failed to appreciate that there was a more up-to-date letter in the bundle.
6. Miss Isherwood on behalf of the Entry Clearance Officer submitted there was no material error of law. The Judge was required to take the previous decision as a starting point and did assess the evidence in relation to sole responsibility and reached findings that were open to him on the evidence and found that the Sponsor had not exercised sole responsibility. He had acknowledged that there was some evidence of money being transferred but not clear that this money reached the Appellant.
7. The Judge was right to take Judge Blandy's Decision and Reasons as a starting point as required by Devaseelan [2002] UKIAT 00702 and as acknowledged by Miss Akinbola. I do not agree that the Judge failed to consider the current situation. At paragraph 7 he listed various issues with the evidence. There are difficulties with the Sponsor's evidence about her former husband and his involvement, particularly when the Appellant's birth was registered [7(iv)]. The Judge noted difficulties with the Sponsor's

evidence as to why she approached the Appellant's father for permission to bring him to the UK when she had sole custody. The Judge noted the Sponsor's evidence at one point that the Appellant was living with his uncle but then later that he is no longer living with his uncle but with a friend.

8. The Judge noted difficulties with the Sponsor's evidence about how the school was able to say that she collected the Appellant from the school bus.
9. The Judge also noted the Sponsor's dishonesty in the earlier proceedings. The Judge found he could attach little weight to the evidence coming from the uncle which is in complete control contradiction to what he had said earlier, namely that he made all the decisions in relation to the Appellant's life. The Judge also noted difficulties in the letter now purporting to be from the Appellant's father which gives information which if, as claimed, he had no involvement and no contact he would not know.
10. There is clearly an issue as to the Sponsor's credibility and honesty in this appeal. The Judge assessed the up-to-date evidence and concluded that it did not give him any reason to depart from the same conclusion that was reached by Judge Blandy earlier.
11. The more up-to-date letter which the Judge did not refer to from the school which appears at page 50 of the Appellant's bundle and is dated 3 March 2017 does not assist the Appellant as it also contradicts previous evidence and the evidence of the uncle provided for the previous appeal. Rather surprisingly it makes no mention of the time he spent living with his uncle. The Judge did not accept the uncle was no longer involved as claimed.
12. In short the nature of this case has been so varied over time as to precisely what has happened that it is unsurprising that the Judge was unable to conclude that the Sponsor had been exercising sole responsibility for her son. It is not the case that the Judge did not assess the up-to-date evidence.
13. The First-tier Tribunal did not make a material error of law in its determination of this appeal.
14. **Notice of Decision**

The appeal to the Upper Tribunal is dismissed.

There was no application for an anonymity order and I see no reason to make one.

Signed

Date 19<sup>th</sup> October 2017

Upper Tribunal Judge Martin