



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/15471/2014**

Appeal Number:

OA/15479

/2014

OA/15485

/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
On 2 August 2017**

**Decision &
Promulgated
August 2017**

**Reasons
On 24**

Before

**MR C M G OCKELTON, VICE-PRESIDENT
DEPUTY JUDGE OF THE UPPER TRIBUNAL DEANS**

Between

**MISS CHARITY SMITH
MASTER ALBERT SMITH
MASTER FRANCIS SCOTT SMITH**

Appellant

and

ENTRY CLEARANCE OFFICER, ACCRA

Respondent

Representation:

For the Appellants: Mr H Ndbuisi, Drummond Miller LLP, Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. These are appeals against a decision by Judge of the First-tier Tribunal Boyd dismissing appeals against refusal of entry clearance as children of a parent settled in the UK.
2. The appellants are siblings and nationals of Ghana. The oldest is now over 18 years of age but was under 18 at the time the applications were made. The applications were refused because the Entry Clearance Officer (ECO) was not satisfied that their father, who is settled in the UK, had sole responsibility for their upbringing and that maintenance and accommodation was available without recourse to public funds. It seems that there was also a question over the relationship between the children and their father though this was resolved to the respondent's satisfaction before the appeal to the First-tier Tribunal was heard.
3. The appellant's father in his evidence before the First-tier Tribunal said that he last saw the children in 2007. The children were abandoned by their mother around that time when their parents' marriage broke down. Since then the children have lived with their maternal grandparents. Their father said in his evidence that he sends money for the children. He claims he cannot return to Ghana because of a family feud, seemingly arising from a property dispute.
4. The Judge of the First-tier Tribunal was not satisfied that the appellants' father had sole responsibility for them. The judge found that the children's maternal grandparents made all the day-to-day decisions in respect of them. The judge acknowledged that sole responsibility could be exercised from a distance but was not satisfied on the evidence that the father was doing this.
5. The judge further considered whether there were serious and compelling considerations which made the exclusion of the appellants undesirable and suitable arrangements had been made for their care. The judge observed that the relationship between the children and their grandfather might not be ideal but there was insufficient evidence to show that the test of serious and compelling considerations was satisfied. On the issue of suitable arrangements, the judge accepted there was adequate accommodation. Both the appellants' father and his partner were in employment. The requirement for suitable arrangements was therefore satisfied.
6. Permission to appeal was granted by the Upper Tribunal primarily on the basis of a 9 month delay between the hearing before the First-tier Tribunal and promulgation of the decision. On the face of it this raised some doubt about the accuracy of the judge's analysis. Other grounds were also found to be arguable. These included contentions that the judge had made no finding in respect of the

evidence given by the appellants' father's partner and no finding on the father's oral evidence about the condition of the appellants.

7. A rule 24 notice by the respondent contended that the judge had taken into account all the oral evidence and made findings supported by adequate reasons.
8. At the hearing before us Mr Ndbuisi, for the appellants, submitted that the judge had not had proper regard to the evidence of the appellants' father and his partner. The concept of sole responsibility did not exclude the delegation of care by a parent to someone else. Care of the appellants had been delegated by their father, who provided the appellants with their main source of income and made decisions about their upbringing. The appellants' mother had abdicated responsibility and their father had sole responsibility for them. He had entrusted day-to-day care to the children's grandparents.
9. For the respondent, Mr Diwnycz relied upon the rule 24 notice.
10. We are, of course, greatly concerned by the delay in promulgation of the decision of the First-tier Judge. Although the cause of this was not known to the parties we understand that the judge was affected by serious health issues. Under these circumstances this may mean that the decision was not done as it should have been.
11. We consider that the judge did not make adequate findings on the question of sole responsibility. Such findings were necessary for consideration of the issues in accordance with TD (Yemen) [2006] UKAIT 00049. If the children's mother was not involved in the care of the children, their father might have sole responsibility for them, notwithstanding that he had entrusted day-to-day care to their maternal grandparents. The judge did not state clearly whether he accepted the evidence given at the hearing by the appellants' father and his partner. Little if any evidence is recorded in the decision about the responsibility for making decisions about the appellants' upbringing and welfare.
12. We are satisfied the judge erred in law by omitting to address the relevant issues in accordance with TD (Yemen). We do not consider the evidence recorded and the findings made are adequate for us to re-make the decision and accordingly the appeals will be remitted to the First-Tier Tribunal for a fresh hearing before a different judge with no findings by Judge Boyd preserved.

13. For the appellants to succeed at the fresh hearing they will need to show sole responsibility in accordance with TD (Yemen). This may require their father and his partner giving oral evidence once more.

Conclusions

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

We set aside the decision and remit the appeal to the First-tier Tribunal to be heard afresh before a different judge with no findings preserved.

Anonymity

The First-tier Tribunal did not make an anonymity direction. We have not been asked to make such an order and see no reason of substance for doing so.