



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09249/2017

THE IMMIGRATION ACTS

Heard at Field House
On 3 December 2018

Decision & Reasons Promulgated
On 7 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

MELODY [M]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Popal (counsel instructed on a public access basis)

For the Respondent: Ms J Isherwood (Home Office Specialist Appeals Team)

DECISION AND REASONS

1. This is the appeal of Melody [M], a citizen of Zimbabwe born 9 March 2000, against the decision of the First-tier Tribunal of 13 August 2018 dismissing her appeal against the refusal of entry clearance of 4 August 2017.
2. Her application of 2 May 2017 was to join the Sponsor, her father [BM], as his dependent child on the basis that he had sole responsibility for her.

3. The application was refused because the Entry Clearance Officer did not accept sole responsibility was established: there was no evidence of the Appellant spending time with the Sponsor after he left Zimbabwe in 2002 or his having maintained her financially, and the mother had remained her legal guardian.
4. The background to the application was that the Sponsor had had a brief relationship with the Appellant's mother in 2000, before leaving Zimbabwe for the UK in 2002, where he claimed asylum, ultimately obtaining indefinite leave to remain on 28 January 2016 following a discretionary grant of leave, his asylum claim having been rejected. The Appellant had last seen him when she was two years old. She had lived with her mother until around two years ago, when her relationship with her mother and her new partner, her stepfather, fractured, as the latter refused to incorporate her in the family unit. The Sponsor turned to a former schoolfriend, [EC], who he contacted via Facebook, to take her in; thereafter she lived with [EC].
5. On the appeal, the Appellant maintained the Sponsor did have sole responsibility for her and alternatively that there were serious and compelling family and other considerations rendering her exclusion undesirable. Further evidence was provided by way of two expert reports.
6. A report from a Psychologist, Tichaona Makamure, practising at the Parirenyatwa Group of Hospitals, stated that the Appellant had been under his care since 31 July 2017 since the Appellant's mother became unwilling to care for her any longer, because of the stepfather's stance. She had dropped out of school having obtained poor grades due to a lack of home support, including a lack of financial support. She had since been forced to rely on maternal relatives who could not offer the basic care require and her father in the UK offered her the only hope of a more stable and willing family setting.
7. She had surfaced with psychotherapy needs via the victim friendly unit at a crisis centre which had been contacted by the Sponsor. An initial examination indicated impaired memory and attention, intense feelings of abandonment, poor interaction with other people including adults and peers, failing to adapt to group values and norms, low self-esteem and a lack of ability to trust others. A detailed subsequent examination found poor self-care failing to attend to her basic needs, and a number of sessions led to a diagnosis of problems with various psychosocial issues including child physical abuse, maltreatment and abuse, insomnia, and borderline intellectual functioning, all of which had been affected by the quality of her parental relationships.
8. A clinical social worker, Tapfuma Mashoko, produced a report of 20 May 2018, stating she was duly registered with the government, and that the Appellant had been under her care since 3 September 2017. The mother told social services that she could not take care of the daughter as she had no income in her own right and

was unwilling to jeopardise her current marriage. Social services had sought to contact the stepfather with a view to resolving the question of her guardianship, but he had refused to engage with them. The Appellant's mother had been very quick to suggest giving total custody of the child to the father, and was directed to seek legal advice. This left social services concerned that the social pressures were too great to ensure any future relationship with the mother. Ms Mashoko recommended that the Appellant be reintegrated with her father if possible, and continued to receive sessions for self management, grooming and etiquette, and that her circumstances should be closely monitored by social services, subject to their resource constraints.

Findings of the First-tier Tribunal

9. The First-tier Tribunal directed itself consistently with *TD Yemen* that sole responsibility was a factual matter that looked at whether one parent had continuing control and direction over a child's upbringing.
10. The Judge noted that reports were provided from a social worker and psychologist showing the Appellant's state of mind. She had needed the Sponsor's emotional support. The psychologist stated she had suffered physical abuse and maltreatment. The Judge went on to observe that the Sponsor had not travelled to Zimbabwe to see the Appellant, notwithstanding her fragile mental health. He had maintained that he could not travel to Zimbabwe because of his fear of the authorities there; but his asylum claim's rejection indicated a lack of any well-founded fear of the authorities there. Nor had he invited her to the UK to see him as a visitor, or tried to see her in a third country.
11. The Judge observed that the mother's new relationship had apparently subsisted for some years, given that there was a reference to "other children of the union"; the mother appeared to have continued to engage with her daughter, and there was no explanation of any sudden change of behaviour here; the proposition that the mother would suddenly abdicate responsibility, having brought her up, was mystifying, the more so given there was no lack of money as the Sponsor said he was providing for the daughter. The Sponsor referred to having no other relatives in Zimbabwe to care for his daughter, though this was inconsistent with the mother's letter stating that the Appellant went to live with relatives, and with the psychologist's report saying she went with maternal relatives.
12. There was a lack of evidence from the mother, notwithstanding that she had cooperated with the production of the social worker report and apparently remained on speaking terms with the Appellant. There was a lack of evidence of financial support from the Sponsor, who had vaguely referred to the Sponsor's wife's bank statement to buttress his claim to send money; furthermore he did not know the details of the mental health treatment his daughter received.

13. The First-tier Tribunal concluded that the Appellant continued to live with her mother or had some other satisfactory arrangements for her care; it was not shown that the mother had abdicated responsibility for her or that the stepfather was a controlling malign influence.
14. The reports from the psychologist and social worker portrayed the Appellant whilst she was at her worst, and the Sponsor had admitted she had not received treatment for some two years. The evidence of conversations on social media did not suggest a person with emotional or mental health problems. The Appellant clearly had a roof over head and was well provided for; she was in education, and the Sponsor maintained he sent her money to care for her. There were no serious and compelling family and other considerations rendering her exclusion undesirable.
15. The best interests of the child were relevant to the assessment under the Human Rights Convention, bearing in mind that there was clearly family life between Appellant and Sponsor. Relevant considerations were continuity of residence, the trauma of breaking up a family and the disruption caused in changing the status quo. It was to be assumed that the Appellant had established cultural and educational links and had many friends in Zimbabwe. She would be used to living apart from the Sponsor. It was not in her best interests to uproot her from that background. She must have stronger ties to her mother than to her father, given the length they had lived apart. Thus the appeal fell to be dismissed.

Onwards appeal

16. Grounds of appeal contended that
 - (a) Relevant considerations had been overlooked, such as the cost of visits or travel, the fact that the Sponsor maintained a subjective fear of travel to Zimbabwe notwithstanding the rejection of his asylum claim, the cultural right of the stepfather to refuse to accommodate the daughter particularly in circumstances where she had been born out of wedlock which would risk social shame for the mother, and the fact that the daughter had not managed to sit her GCSEs because of the difficulties she suffered.
 - (b) Evidence from the expert reports had been overlooked.
17. The First-tier Tribunal granted permission to appeal, without any limitation on the grounds, placing particular importance on the arguability of the grounds that the expert reports had not been adequately engaged with, and that plausibility factors had been relied on without regard to the prevailing country conditions.
18. Ms Popal submitted that cultural factors had not been considered, contrary to the enjoiners to assess evidence in the context of the culture in which it arose without applying presumptions based on life in the UK. Furthermore, the expert evidence had not been adequately engaged with, and the First-tier Tribunal appeared to have evaluated the Appellant's mental health by reference to its own assessment

of the likely presentation of a person with mental health problems on social media. There was no bright line at which a child should be treated as if an adult if they remained vulnerable.

19. Ms Isherwood submitted that there was no material error of law in the decision, and that the Judge had referred to all relevant evidence before him, making findings to which he was entitled to come.

Findings and reasons

20. The authorities recognise that reasons must be given for both the determination of the appeal and the material findings of fact upon which that decision is based and they must be provided in sufficient detail to “enable the reader to know what conclusion the decision maker has reached on the principal controversial issues”: see Lord Bridge in *Save Britain’s Heritage v No 1 Poultry Ltd* [1991] 1 WLR 153. As noted by Beatson LJ in *Haleemudeen* [2014] EWCA Civ 558 §35, 37:

“What is required is that the reasons must give sufficient detail to show the parties and the appellate tribunal or reviewing court the principles upon which the lower tribunal has acted, and the reasons that led it to its decision, so that they are able to understand why it reached its decision. The reasons need not be elaborate, and need not deal with every argument presented ... judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined and it should not be assumed too readily that the tribunal misdirected itself because not every step in its reasoning is set out in it”.

21. Where professional medical expert opinion is available, then as stated by the Court of Appeal in *Miao* [2006] EWCA Civ 75 §17:

“A medical expert witness's function is precisely to give an opinion on the basis of his clinical knowledge of the patient and of his field...and in the absence of some good reason for doubting his expertise or the factual or logical foundation of his opinion, the immigration judge was wrong to dismiss it as merely an opinion, much less to treat it as speculative or conjectural.”

22. Here of course there was evidence from social services as well as from a medical expert who had treated the Appellant at some length. It seems to me that the range and depth of the material from the two expert sources required greater treatment than it received here.
23. Whilst the duty to give reasons is finite, nevertheless, the more extensive the case put, then the greater the duty on the Tribunal to engage with it. Here there was a range of detailed expert opinion from two ostensibly creditable sources whose expertise the Secretary of State did not apparently put in issue, both of whom had

had a sustained engagement with the Appellant. The psychologist gave extensive details of the Appellant's presentation with a mental health profile consistent with a real lack of direct parental care over an extended period.

24. Both report authors appeared to have professional exposure to the Appellant for a significant period, inconsistent with being dismissed on the basis of providing a "snapshot" alone. In fact, when one bears in mind that the psychologist produced a report in 2018 based on care since July 2017, and social services produced a report of May 2017 based on circumstances since September 2017, it seems to me that more reasoning was required before this material could be discounted as simply a "snapshot". Whilst the Tribunal discounted their opinions as a reliable assessment of present circumstances, it seems to me this was the wrong approach, not least because an Appellant's age is effectively frozen at the application date in entry clearance cases; and if that is the public policy position struck by the Rules, then it must also be taken into account in appeals on human rights grounds, given the weight to be afforded to the public interest as expressed in the Rules.
25. In any event, the reports could not be discounted by generalised presumptions as to how individuals might act in any particular country of origin, particularly where there was express evidence of social services having ruled out any serious possibility of the mother's ongoing involvement in the Appellant's care given her partner's rejection of the daughter. It is telling that the psychologist records that it was the Sponsor, rather than the mother, who took action to bring her to the attention of mental health professionals, which is a relevant factor in assessing who has had dominant responsibility for her welfare in recent times.
26. I accordingly find that the decision of the First-tier Tribunal cannot stand. Given that all the issues in the appeal require re-determination, the matter must be remitted for re-hearing afresh.

Decision:

The appeal must accordingly be re-heard in the First-tier Tribunal.

Signed:

Date: 3 December 2018



Deputy Upper Tribunal Judge Symes