



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/12361/2015**

Appeal Numbers:

HU/12362/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 23 January 2018

On 20 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**PENDAFORD AYITEY JUSTICE-FEEHI (FIRST APPELLANT)
PASCALINE J A JUSTICE-FEEHI (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants: Mr L Youssefian of IMK Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. These are the linked appeals against the decisions of First-tier Tribunal Judge Parker promulgated on 7 June 2017.
2. The Appellants are brother and sister, both nationals of Ghana. The first Appellant was born on 7 October 1997; the Second Appellant his sister was born on 30 March 2000. The Appellants are the children of Mr Pendawashington Justice-Feehi a national of Ghana born on 11 August

1966 settled in the United Kingdom. Mr Justice Feehi is the 'sponsor' for the purposes of these appeals.

3. The Appellants applied for entry clearance on 20 July 2015 - at which point the oldest Appellant was not yet 18 years old. The applications were refused for reasons set out in respective Notices of Immigration Decision dated 16 October 2015 with particular reference to paragraph 297 of the Immigration Rules. It was said in support of the decisions to refuse entry clearance that the Appellants had a parent currently residing in Ghana; moreover it had not been shown that the sponsor was exercising sole responsibility in respect of the upbringing of the children; yet further, there were no serious compelling circumstances that warranted the grant of entry clearance.
4. It was also said that the Respondent was not satisfied that the Appellants were related as claimed to the sponsor. However, DNA evidence has since been produced and this particular issue was conceded on behalf of the Respondent before the First-tier Tribunal (Decision at paragraph 19).
5. The Appellants appealed to the IAC.
6. The appeals were dismissed for the reasons set out in the Decision and Reasons of the First-tier Tribunal Judge.
7. The Appellants sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Keane on 29 November 2017.
8. The Respondent has filed a Rule 24 response dated 21 December 2017 essentially arguing that the First-tier Tribunal Judge reached conclusions that were open to him on the evidence and did not misdirect himself in law.
9. The focus of the challenge before the Upper Tribunal is the First-tier Tribunal Judge's finding that the Appellants had not discharged the burden of proof to show that the sponsor exercised sole responsibility.
10. It is clear that the Judge directed himself to the relevant principles in this regard - in particular by way of detailed recitation of the guidance to be found in the case of **TD (paragraph 297(i)(e): 'sole responsibility') Yemen [2006] UKAIT 0049** (Decision at paragraph 21 *et seq.*). The Judge also clearly had regard to submissions made in this respect by the Appellant's Counsel: see for example at paragraph 38 "*Counsel was*

*correct to say that the test in **TD** is whether the parents are continuing control and direction of the children's upbringing".*

11. However, it is argued that the First-tier Tribunal Judge erred in making no finding on aspects of the testimonies of the sponsor and the Appellants that were before him, and otherwise erred in marginalising the witness statements of the Appellants as being essentially self-serving. In this latter regard reference is made in support of the challenge to the cases of **Moyo [2002] UKIAT 01104** at paragraph 14, and **R (SS) v Secretary of State for the Home Department) (self-serving statements) [2017] UKUT 164.**
12. It is to be noted that the First-tier Tribunal Judge did not make any express finding to the effect that any of the sponsor and the Appellants lacked credibility. Moreover it is apparent that under cross-examination the sponsor was not directly challenged with regard to any aspect of his evidence. This is apparent both from paragraph 10 of Decision of the First-tier Tribunal, and also from the record of proceedings which is on file.
13. In advancing the challenge Mr Youssefian adopts and amplifies the grounds upon which permission to appeal was sought - albeit those grounds were drafted by a different Counsel (the Counsel that had appeared before the First-tier Tribunal). In this regard my attention is drawn in particular to aspects of the testimonies that were before the First-tier Tribunal by way of the witness statements of each of the Appellants, and the witness statement of the sponsor which he adopted in his oral evidence. (Similar, but not identical, witness statements from each of the Appellants, both are dated 9 May 2017, were included in the Appellants' bundle before the First-tier Tribunal.)
14. Before consideration of the contents of the witness statements it is perhaps appropriate to say something of the broader chronology of these cases. The Appellants' parents separated in 2002, at which point the Appellants stayed with their mother. The Appellants' father, the sponsor, remarried in 2003. In December 2006 the Appellants' father came to the UK accompanying his second wife. In 2007 the Appellants' mother remarried and moved away (albeit in Ghana). At this point the Appellants relocated to the home of their paternal grandmother where they have remained to date - save that the Second Appellant also spends time as a boarder at school.
15. The First Appellant refers to the time when his mother had remarried and moved away. He states at paragraph 4 of his witness statement that his mother would visit every weekend, but that in due course she had her own family and "*eventually stopped visiting us*". Reference is also made at

paragraph 5 to the First Appellant being sent to a particular school to complete his primary education. The sponsor was able to clarify that this was the second primary school that the children had attended, and that they had changed school in consequence of relocating from their mother's home to the home of their paternal grandmother. As I say, the First Appellant - and indeed the Second Appellant - has identified that it was the sponsor who sent them to this particular school. The evidence of both of the Appellants also refers to the sponsor's involvement in advising which church the Appellants should attend and also in respect of advising them with regard to their education and in particular the retaking of examinations to improve their grades.

16. The Second Appellant also makes reference to her mother stopping visiting, but additionally said this with regard to her father's encouragement in her schoolwork *"This is so important because our mum hasn't been in our lives"* (witness statement at paragraph 7).
17. The sponsor, in his witness statement (also dated 9 May 2017), refers to the way in which he has been responsible for the direction and control of the Appellants' lives by reference to their education and church. He refers to the Appellants' mother in these terms:

"The refusal letter and the Entry Clearance Manager's states that my children have a parent who resides in Ghana. The last thing we knew of her was that she resided in Ghana but she has had nothing to do with her children for over ten years so it is not fair to say because their mother lives in Ghana that they cannot with the parent who has supported them both financially and emotionally" (paragraph 12).

It seems to me that that is a clear statement to the effect that the Appellants' mother has not been involved in the upbringing of the children since in or about 2007 - which would accord with the notion that she continued to have only brief contact with them after remarrying which soon thereafter petered out.

18. I accept that the First-tier Tribunal Judge has made no findings in respect of these aspects of the evidence that were before him.
19. The Judge considers the facts and evidence with regard to 'sole responsibility' at paragraph 32 of the Decision with reference, in particular, to letters that had been produced from the children's school indicating that their father was paying the fees and was to that extent involved in directing their education. The Judge observes that these letters were in effect silent on the question of whether the Appellants' mother had contact *"it does not say their mother had no contact"*. The silence of those letters on the issue of the mother's contact is in no way

contradictory to the testimonies of the Appellants and the Sponsor. At best it seems to me that the absence of any such reference in the letters from the schools was a neutral factor. It was not an adverse factor that went against the testimonies of the witnesses.

20. Paragraphs 38-40 are the key paragraphs setting out the Judge's conclusion in respect of sole responsibility. Paragraph 38 essentially echoes the analysis at paragraph 32 in that it refers to the letters from the school and that they "*do not confirm*" that it is the case that the sponsor has exercised responsibility solely for the children. It is also in this paragraph that we see reference to the marginalisation of the Appellants' own evidence as being self-serving: "*We have only the self-serving evidence from the Appellants themselves on this point*".
21. I entirely agree with the challenge that it was inappropriate for the Judge to marginalise this evidence by characterising it as 'self-serving'.
22. Paragraph 39 makes reference to the involvement in the children's lives of their grandmother. It seems to me, however, that the nature of the involvement referred to by the Judge does not contradict or otherwise undermine the clear testimonies of the witnesses. There is certainly nothing therein that absolves the Judge from making a clear finding on the assertions of the sponsor and the Appellants.
23. For these reasons I accept that the Judge fell into material error in his consideration of the evidence such as to amount to an error of law.
24. In my judgment that means that the decisions of the First-tier Tribunal must be set aside.
25. Both representatives acknowledge that it would be possible for the Tribunal to remake the decisions in the appeals without referring the matter back to the First-tier Tribunal. In this context it to be recalled that the Presenting Officer before the First-tier Tribunal did not challenge directly the testimony of the sponsor during the course of evidence. When invited to comment on whether there was anything that might be said to gainsay the testimonies now, Mr Tarlow declined to identify anything.
26. In the circumstances it seems to me that in substance the evidence on appeal of the sponsor and the Appellants remains essentially unchallenged. I find that the burden of demonstrating that the sponsor has had sole responsibility for the Appellants is thereby discharged.

27. I remind myself that this is not an appeal brought under the Immigration Rules but an appeal brought on human rights grounds. However, in circumstances where in substance paragraph 297 is met, and where the sponsor has sole responsibility for the Appellants' upbringings, I find that family life is established. As regards the proportionality of interfering with that family life by refusing entry clearance, in my judgement the answer - including consideration of the public interest considerations pursuant to section 117B of the 2002 Act - is subsumed in the Rules. The Appellants satisfy specific Rules that have at their core the protection and promotion of family life. In those circumstances I find that it would indeed be disproportionate to uphold the Respondent's decision.
28. In all the circumstances I conclude that the Respondent has not established that the decision to refuse entry clearance is a proportionate interference with the mutual family lives of the Appellants and the sponsor, and accordingly the appeals are allowed on human rights grounds.

Notice of Decisions

29. The decisions of the First-tier Tribunal contained material errors of law and are set aside.
30. I remake the decisions in the appeals.
31. Appeal HU/12361/2015 is allowed on human rights grounds.
32. Appeal HU/12362/2015 is allowed on human rights grounds.
33. No anonymity directions are sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **15 February 2018**

Deputy Upper Tribunal Judge I A Lewis

TO THE RESPONDENT
FEE AWARDS

I have allowed the appeals and in all of the circumstances make a full fee award in each of the appeals.

Signed:

Date: **15 February 2018**

Deputy Upper Tribunal Judge I A Lewis