



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15780/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 11th May 2018

Decision & Reasons Promulgated
On 1st June 2018

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

KP
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed, Counsel, instructed by M A Consultants (Blackburn)
For the Respondent: Mr Bates, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought by the appellant, whom we shall refer to publicly by means of his initials, KP, to challenge the decision of the First-tier Tribunal, Judge of the First-tier Tribunal Dearden, who in a decision dated 10th August 2017 dismissed the appellant's appeal against the respondent's refusal of his human rights claim.
2. The matter came before the First-tier Tribunal in the following way. The appeal originated in a decision made by the Entry Clearance Officer in Jamaica to refuse to grant entry clearance to the appellant in order to come to the United Kingdom to live with his father, the sponsor, in this case. The Entry Clearance Officer noted that the father was in employment in the United Kingdom. The Entry Clearance Officer noted

that the appellant lived with his grandmother in Jamaica and that a letter had been provided showing that she had cared for the appellant for some fourteen years. She also declared that she was the legal guardian of the appellant. She said that she was no longer able to care for the appellant due to ill health. The Entry Clearance Officer, however, was unable to conclude on the state of that evidence that this matter had been demonstrated.

3. A letter had also been submitted by the appellant's school and from his pastor. These showed, according to the Entry Clearance Officer, that the grandmother had been responsible for the appellant's safety and welfare in Jamaica. There was, however, evidence that showed the sponsor father had supported the appellant financially. That issue alone did not, according to the Entry Clearance Officer, mean that the sponsor had sole responsibility for the applicant's upbringing.
4. The issue of sole responsibility is crucial to this case. It is common ground that if the sponsor were able to show that he has sole responsibility in terms of the Immigration Rules then the requirements for entry clearance would be met. That would mean that, so far as human rights are concerned, there would be no prospect of the respondent showing that refusal of entry clearance would be anything other than a disproportionate interference with the appellant's Article 8 rights. These rights would exist by reason of his biological relationship with his father. There would, if the Rules were satisfied, be no reason to exclude him.
5. The Entry Clearance Officer also noted that the appellant had been refused a visa for the United States of America in 2015. A letter in this regard had been provided from the appellant's mother, showing that she was resident in that country and that she granted permission for the appellant now to go to live with his father in the United Kingdom. That suggested to the Entry Clearance Officer that the appellant's mother had some responsibility for his upbringing in Jamaica and again told against the assertion that the sponsor in the United Kingdom had sole responsibility. Although the Entry Clearance Officer went on to make findings regarding employment of the sponsor, it seems to me that these were not treated by the judge as the crucial issue in this case.
6. That, then, was the nature of the refusal by the Entry Clearance Officer. The matter came before the judge as a human rights appeal. The judge heard oral evidence at the hearing from the sponsor. The judge noted that the Immigration Rule in question was paragraph 297 of HC 395. He also correctly noted at paragraphs 6 and 7 the relationship between the Rules and Article 8. In particular, he observed there and later in the decision that if the Immigration Rules are not met, then there would need to be in effect an exceptional set of circumstances in order to compel entry clearance to be given, notwithstanding that the Rules regarding sole responsibility have not been met.
7. The judge then turned to the evidence of the sponsor. This is set out at paragraphs 8 to 18. The judge's findings are at paragraph 23. I shall not read them in their totality. They are broken into seven discrete aspects. The first concerns an alleged mistake by the Entry Clearance Officer regarding the date of birth of the appellant. The judge

noted that the sponsor was understandably irritated by the error of the Entry Clearance Officer but in the judge's view, this did not mean that the whole of the Entry Clearance Officer's decision was vitiated by the mistake.

8. The judge considered the position of the sponsor. He noted, as I have already indicated, that there is no question of the sponsor's ability to maintain the appellant, were entry clearance to be granted. The judge then turned to the issue regarding an application made for the appellant to go to live in the United States. The judge said that the evidence given by the sponsor was that the appellant had not spoken to his mother since 2003. The judge, however, found that that was incorrect because an application had been made to enable the appellant to visit the United States of America. This was lodged with the appropriate embassy in 2012 or perhaps in 2015. The sponsor said that he was not informed of this application being made because the appellant was slightly embarrassed to tell him that he was going to visit his mother, when it was his father who provided all the money upon which the family lived.
9. However, the judge found that the very fact that the application was made meant that the appellant's mother was interested in the appellant's welfare. She wanted the appellant to visit her in the United States for a lengthy period of time and, it transpired, had visited the appellant in Jamaica. The judge, like the Entry Clearance Officer, considered the fact that the appellant's mother had granted permission for the appellant to go to the United Kingdom was indicative of the fact that she was very interested in the appellant's welfare and this was not indicative of the fact that, as alleged by the sponsor, she was uninterested in his welfare.
10. Next, the judge addressed the issue of remittances. He noted that regular remittances had been made. The judge then turned to the physical condition of the grandmother. This was a matter of some importance to the application. It was said that the grandmother, who was 62 years of age, suffered from osteoarthritis and glaucoma, conditions which may worsen over time. It was said that she was no longer able to work and that she could therefore not provide or continue to care for the grandson. The judge, however, took issue with that contention. He concluded that there was a "big difference between ability to work and an ability to care for a 15 year old grandson. There is no indication of any medical treatment which is received by the grandmother and I concluded that the sponsor's assertions about her medical difficulties were rather exaggerated".
11. In any event, the judge went on to find that during the course of cross-examination it turned out that the appellant did not solely live with his grandmother but also lived with the sponsor's sister, aged 22 years. There was then what is said by Mr Ahmed to be some confusion as to precisely whom the appellant lived with, beyond the grandmother and the sister. I do not consider that any issue in this regard can be held against the judge. The matter came out during cross-examination. The precise details of whom the appellant was living with should have been made far clearer far earlier.
12. At all events, it appears that the 22 year old sister is in fact in full-time employment as a police officer. Mr Ahmed says on instruction that she would accordingly not be in a position to have any responsibility for the appellant. With respect, that cannot be right.

A teenage boy can be plainly looked after by somebody who is in full-time employment. Indeed, if he would come to the United Kingdom that would almost undoubtedly be the position vis-à-vis the sponsor. Significantly, the judge recorded the sponsor as saying in oral evidence that the boy was in good hands, and that was the reason he felt no compelling need to visit him in Jamaica. The judge found that that statement was inconsistent with the assertion of sole responsibility and of compelling or other circumstances.

13. The judge then turned to the issue regarding schooling. The school of the appellant was selected by a joint decision of the grandmother and the sponsor because according to the sponsor's evidence "she had a bit of a say in it too". That, in my view, was a striking piece of evidence which went to the overall conclusion of the judge that the sponsor did not have sole responsibility for the appellant.
14. There was then some issue regarding telephoning. The judge said he could not be clear who had been telephoned by the sponsor or whom the sponsor had spoken to at any particular time.
15. At paragraph 24 the judge then, accurately in my view, summarised the issues relating to sole responsibility as set out in Macdonald's Immigration Law & Practice, Eighth Edition. The judge also looked at the Immigration Directorate Instructions of 2009 and set out the considerations in paragraph 25 of his decision. At paragraph 26 the judge noted, again correctly, in my view, the test of serious and compelling circumstances.
16. The judge concluded in all the circumstances that there was no sole responsibility in the hands of the sponsor. He also concluded that there were no serious and compelling family or other reasons as to make exclusion of the appellant undesirable. On that basis, he looked at Article 8 and could find no reason, applying that provision correctly, why entry clearance should be granted. He reiterated at paragraph 32 that the medical difficulties concerning the appellant's grandmother were assessed by him to be modest.
17. Permission to appeal was granted by the First-tier Tribunal on the basis that it was arguable that the judge had not been clear as to with whom responsibility was shared. Mr Ahmed maintained that line of criticism of the judge's decision in his submissions to me. With respect to Mr Ahmed and notwithstanding his efforts, I have no hesitation in rejecting that criticism. The judge had to decide whether the sponsor had sole responsibility. It was not for the judge to decide whether anyone else had sole responsibility or indeed if responsibility was shared or precisely with whom that responsibility might be shared.
18. The judge gave, in my view, entirely cogent and sustainable reasons for finding that the sponsor did not have sole responsibility for the appellant. It follows that the criticism of the judge's findings collapses into a disagreement with findings of fact that the judicial fact-finder was entitled to make on the evidence before him. In particular, I note that significant matters only became apparent during cross-examination of the sponsor at the hearing. By the same token, I find no criticism of the judge's findings

regarding compelling and compassionate circumstances or indeed Article 8. On the contrary, an analysis of his decision shows plainly that his conclusions on those issues followed directly and properly from his findings of fact.

19. The appellant is, it seems, still of an age whereby a fresh application could be made. I am not in any sense seeking to encourage an application, still less am I predicting what the outcome of any such application might be. Although the position of the grandmother may not have been as serious as was contended at the date of the hearing, it is in the nature of things that people become progressively more unwell, the older they become. On the other hand, the position of the sponsor's sister, the police officer, would also need to be taken into account in any further application. All that, however, is beside the point, so far as this challenge is concerned.
20. For the reasons I have given there is no material error of law in this judge's decision and I therefore dismiss the appeal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Dated: 30 May 2018

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber