



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/25376/2016

THE IMMIGRATION ACTS

Heard at Field House
On 10 July 2018

Decision & Reasons Promulgated
On 17 July 2018

Before

UPPER TRIBUNAL JUDGE DAWSON
UPPER TRIBUNAL JUDGE BLUM

Between

PRINCESS [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Coleman, Counsel instructed by Stella Maris Solicitors LLP
For the Respondent: Mr T Wilding, Senior Presenting Officer

DECISION AND REASONS

1. The decision dated 1 June 2018 (annexed below) gives the reasons for the conclusion that the First-tier Tribunal had erred in law in dismissing the appeal against the refusal of entry clearance by the appellant to join her mother in the United Kingdom.
2. Pursuant to a transfer order, the remaking of the decision came before a reconstituted panel of the Upper Tribunal on 10 July. After hearing evidence from the appellant's mother and submissions we allowed the appeal for the reasons which we now give.

3. We begin with the additional evidence. The appellant's mother (Ms [S]) adopted a supplementary witness statement which adds nothing new of a material nature to the evidence that she gave before the First-tier Tribunal. A bundle of Whatsapp messages dating from 12 May 2105 was provided recording exchanges between the appellant and her mother. Mr Coleman helpfully highlighted those he particularly relied on amongst the many logged. An additional witness, Miss [B], was also present. She had provided a statement to the First-tier Tribunal and it was proposed that she would adopt it before us. In the event Mr Wilding had no questions for her and she was not called. Her evidence related to her contact with the appellant since her friendship with the appellant's mother in 2007.
4. In cross-examination, Mr Wilding questioned Ms [S] on aspects of her decision making in the appellant's life. Some three to four times a month she would be in communication with Juliana with whom the appellant stays, and Juliana's father Mr Kamanda who takes care of the appellant when Juliana travels; she is frequently on business and is away sometimes for up to three months. Mr Kamanda lives in the same town but in different accommodation. Her contact with Mr Kamanda is between two to four times a week using calling cards. When Juliana and Mr Kamanda make decisions, they are following Ms [S]'s directions. This was illustrated by the appellant continuing to attend a church to which she was introduced by her mother rather than the church attended by Juliana. School activities would be based on Ms [S]'s decision illustrated by her recent refusal to permit her daughter to attend a camping trip when, after contacting the school, she learned that some boys would be in attendance also. She had conferred with Juliana and Mr Kamanda after she had spoken to the school and they agreed with her. She accepted that there were discussions between her and Juliana and Mr Kamanda before she reached the decision illustrated by the way in which money was to be dispersed. She got information from them as to the cost of matters in order to decide the appropriate apportionment. A further example related to the appellant's wish to attend another village some three hours away where she would be representing the school in a debate. Ms [S] understood that the parents would need to fund the trip and that the pupils would be accompanied by adults. Neither Juliana nor Mr Kamanda were available to accompany the appellant and so she did not go. As it happened she had also discussed matters with the school. There were not enough teachers to accompany the pupils and the view was expressed that it was best that a member of her family accompanied the appellant.
5. Questioning also related to steps that the appellant's mother would take when discipline was required. If this happened at school, the school would contact Juliana or Mr Kamanda who would then contact Ms [S]. She could not recall any occasion when a big decision had been made by Juliana or Mr Kamanda without first referring to her.
6. Our intervention related to whether the appellant had actually misbehaved at home or outside school and Ms [S] referred to a recent event when the appellant had wanted to go to a party. Mr Kamanda had not given permission. She nevertheless went. He told Ms [S] and her attempts to speak to her daughter were frustrated by her phone being switched off.

7. Ms [S] produced a copy of her passport evidencing a recent journey to Sierra Leone between 28 April and 12 May. It also contained a record of a visit in January this year to Lagos which she explained was work related in connection with her employment in the United Kingdom as a healthcare assistant. A colleague was undertaking a project in Nigeria.
8. By way of submissions Mr Wilding relied on the refusal letter but nevertheless indicated that there were no “credibility features” and without more, invited us to determine the appeal. Before hearing from Mr Coleman, we asked Mr Wilding whether there were any remaining issues in the case and he candidly acknowledged that he did not think there were. He confirmed that he had examined the Whatsapp log which he acknowledged showed the sponsor “being a mum”.
9. We consider that Mr Wilding was correct. Taking account of the preserved findings by the First-tier Tribunal and the evidence before us by the appellant’s mother, we are satisfied that she has had sole responsibility for the appellant’s upbringing since the death of her father (the appellant’s grandfather) in December 2014. We are satisfied that she has had continuing control and direction over the appellant’s upbringing which she has not shared with anyone else. This was the sole basis of refusal by the Entry Clearance Officer and accordingly the appellant met the requirement of the Immigration Rules.
10. The appellant is only able to rely on the ground that the decision was unlawful under Section 6 of the Human Rights Act 1998. The Secretary of State has through the Rules set out her policy reflecting the public interests. Family life is acknowledged between her and her mother and therefore the Human Rights Convention is engaged. It is necessary to consider the proportionality of that interference in the context of the appellant’s ability to meet the requirements of the Rules. In our view following the analysis of the approach to be taken in *Razgar* we are persuaded that the rule having been met, this is positively determinative of the human rights claim.
11. By way of summary therefore the decision of the First-tier Tribunal has been set aside. We remake the decision and allow the appeal on human rights grounds.

Signed

Date 11 July 2018

UTJ Dawson

Upper Tribunal Judge Dawson

Annex



IAC-FH-WYL-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/25376/2016

THE IMMIGRATION ACTS

Heard at Field House
On 18 May 2018

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE DAWSON

Between

PRINCESS [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Jaffar, Counsel instructed by C Smith
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal concerns a challenge to a decision of First-tier Tribunal Rozanski who dismissed an appeal on human rights grounds against a decision of the Entry Clearance Officer in Sierra Leone refusing an application made under paragraph 297 of the Immigration Rules by the appellant to join her mother in the United Kingdom. This was on the basis that appellant's mother had not had sole responsibility for the appellant's upbringing (paragraph 297(i)(e)). Furthermore, the Entry Clearance Officer did not consider that there were serious and compelling family or other considerations that made her exclusion undesirable.
2. In essence, the Entry Clearance Officer noted the evidence of money transfers from the appellant's mother but the absence of evidence that such transfers had been received or that the appellant's mother had been financially responsible for her during a period of separation. The evidence provided did not

confirm that the appellant's mother had provided any emotional support during her upbringing. There was no evidence to support the appellant's statement that her father had no part in her upbringing having left her mother when she was pregnant.

3. The evidence indicated that the appellant was being looked after by her mother's friend and that her mother "travels to Ghana [sic] to see to your welfare". The evidence provided did not indicate that this arrangement could continue and thus the Entry Clearance Officer was not satisfied that there were serious and compelling family or other considerations which made the appellant's exclusion undesirable or that suitable arrangements had been made for her care.
4. The judge found family life between the appellant and her mother and furthermore was satisfied that the latter had provided sufficient financial support for the appellant to constitute "real or effective financial support". The refusal decision was of such consequences as to potentially engage the operation of Article 8 and applying the familiar *Razgar* principles, the judge considered the decision in accordance with the law and that the application of the Immigration Rules were necessary in the interests of the various provisions provided for in the Convention. As part of the proportionality assessment it was necessary for her to consider whether the Immigration Rules were met as part of the balancing exercise.
5. With these matters in mind the judge found that the evidence did not suggest that the appellant's father had ever assumed responsibility for his daughter. She thereafter undertook a detailed analysis of the evidence and for reasons set out over a number of paragraphs (49 to 81) concluded that, on the balance of probabilities, the evidence did not establish that the appellant's mother had exercised sole responsibility for the appellant either before or after her grandfather (with whom the appellant had been living) died in 2014.
6. The judge then proceeded to consider paragraph 297(i)(f), undertook a Section 55 analysis and concluded as follows at [101]:

"Insufficient reliable evidence has been provided to indicate that the current arrangements made by the appellant's mother for the appellant's care in Sierra Leone no longer serve her welfare or that alternative arrangements could be made or that there are other reasons why she should be admitted to the UK on Article 8 grounds outside the Immigration Rules."
7. The grounds of challenge are somewhat discursive and I encouraged Mr Jaffar in his submissions to restructure them in order of merit. He acknowledged the only challenge was to the negative credibility findings that had led the judge to reject the case that the appellant's mother had sole responsibility and accepted that if the appellant were unable to succeed under the Immigration Rules she would not be able to succeed on Article 8 grounds.
8. In summary, the challenges by Mr Jaffar can be broken down into three categories:
 - (i) The judge had made inconsistent findings.
 - (ii) The judge had made findings that were not supported by the evidence.
 - (iii) The judge had made findings for which there was no evidential basis. The judge had been procedurally unfair by reaching conclusions on points that had not been put to the appellant's mother.
9. Ms Everett accepted that there were some aspects of the decision which she could not support but taking all the evidence in the round, the judge had come to legitimate conclusions on the evidence.
10. The example of inconsistent findings relates to the financial circumstances. As I have observed already the judge was satisfied the appellant's mother had provided sufficient financial support to the appellant

but further on in the decision appeared to have doubts about the reliability of the appellant's mother on this aspect:

- “66. I find the claim to be sending money for Princess to so many different people incredible. I note that in the bundle of documents marked AB-C, in 2009, 2011, 2012, 2013 and 2014 small sums were sent by money transfer to Lansana [S], the sponsor's father, but in those years much bigger sums sent to other people such as Tom Andrew or Andrews, Nancy Andrews, Habib and Habbe Kamara and Hawa Mansary. No cogent explanation was given as to why funds should have been sent to so many different individuals every year if the funds were intended for the appellant's upkeep.
67. Some funds were sent directly to Princess regularly and no explanation was offered for why more of the funds should not have been sent to her when either of her claimed carers could not themselves collect funds. I note that in the application at paragraph 95 is stated that “sometimes” money for the appellant's upkeep and school fees is sent directly by the sponsor to the appellant if “Mr Kamanda is not well and he cannot go to collect it as he is elderly and Juliana is away.” No mention is made in the application of anyone else collecting the money. I consider this a surprising omission as the explanation was offered and it would have been a simple matter to say that sometimes the money was sent to the appellant or another person when neither Juliana nor Joseph Kamanda were able to collect it. I find it is inconsistent that funds for the appellant's upkeep can be sent to the appellant but are claimed often to have been sent to a whole range of individuals.
68. The sponsor also claimed that she has sent additional money with friends to and for the appellant. Her witness, Mrs [B] said that she had taken money and gifts to the appellant on seven occasions. However the sponsor has provided little persuasive or informative detail and provided insufficient credible oral and documentary evidence to support the claimed level of financial provision given in relation to the appellant. If she were regularly meeting most of her daughter's expenses, the sponsor would be expected to know for her own budget the level of her daughter's financial needs. However no indication has been volunteered of the global amount provided to the appellant per month or year or any other period and little information has been provided about the nature and level of expenses incurred by and on behalf of the appellant. I find that the sponsor does provide funds for Princess however I find that there is insufficient reliable evidence for me to determine the level of funding provided or what proportion of the appellant's needs that funding covers.”
11. The point is additionally made in the grounds that the appellant's mother was not asked at the hearing about the extent of the appellant's financial needs. The evidence produced by the appellant included a bundle of evidence of transfers. It is not clear whether the judge rejected this evidence and what was meant by her finding that it was “inconsistent” that funds for the appellant's upkeep could be sent to her but claimed often to have been sent to a range of individuals. In other words, was the judge rejecting that evidence on the basis that the appellant's mother had not been remitting funds, and if so this was inconsistent with her earlier finding at [42] of the provision of sufficient financial support.
12. At the conclusion of [68] the judge finds that the appellant's mother had provided funds for the appellant but nevertheless concluded that there was “insufficient reliable evidence for her to determine the level of funding provided or what proportion of the appellant's needs that funding covers”. If the judge considered it important to know the level of funding that was required in order to assess whether the appellant's mother was in a position to meet that burden, that might well be a legitimate concern but in the context of an earlier finding that she had provided sufficient financial support leads the reader to confusion.
13. Concerns over the funding impact also on the judge's conclusions regarding the school fees. At [71] the judge notes that a letter from the school indicated that the appellant's mother paid the school fees but it was of concern that the letter did not specify how much they were or the means used for payment. The

copies of receipts for school fees indicated that the funds had been received from the appellant. The judge concludes:

“I find it inconsistent that the school would make out such receipts acknowledging the appellant as making the payment yet claim without explanation for how they know it that it is the sponsor who pays the fees.”

14. The letter from the school was a focus of much of the submissions and is in the following terms:

“TO WHOM IT MAY CONCERN

It pleases the administration of Hope Royal College to make the following genuine clarifications in respect of **PRINCESS [S]**, a pupil of the school.

Princess gained admission to the school on the 9th November 2011, in JSS 1 with admission number 410. The admission was sought for her by her mother, Miss **MARIE [S]** who stays abroad.

Princess mother, Marie, usually visits the school each time she happens to be in Sierra Leone to check on the progress of her daughter and her general welfare. Marie is the only parent known to school that mans the all the responsibilities of Princess to the school. She regularly pays all the school charges in full without delay.

Miss Marie [S] is a member of the Parent-Teachers Association (PTA) and always endeavours to attend the PTA meetings when she is in the country. She is often seen driving her daughter to school and picking her up from school any time she is around.

I must confess that the father of Princess is not known to the school administration participating in the welfare of the child but only and only the mother, Marie [S].

Princess is doing very well at the academic work. She is regular and punctual in school, disciplined, respectful and determined. The school is proud of her achievements.

In the light of the above, I shall unreservedly recommend her for any assistance.

Faithfully yours,

Richmond B Junisa
Principal”

I am inclined to agree with Mr Jaffar’s challenge based on irrationality that payment of the school fees by the appellant’s mother was “inconsistent” with receipts being issued in the name of her daughter.

15. At paragraph 73 of her decision the judge made these observations:

“Finally in relation to the school, the sponsor claims that she has contact with the school by telephone and that the school also telephones her. However she states that none of the numbers shown on AB-B are the number of her daughter’s school and she provides no other documentary evidence that shows calls she has made to the school. She stated she did not have any documentary evidence of calls made to her by the school and the school letter makes no reference any such calls. Regarding her daughter’s school report cards, the sponsor said that she obtained them from her father who had collected the report card from the school and kept them. Questioned about the report card dated 2015, the sponsor said her daughter had sent it to her. The reason no report card had been sent directly to her by the school was said to be because the school lacked the facility to send them to her. I find that a school that is unable to send or email a report card to a parent who is thought to have sole responsibility for a pupil is unlikely to have

the facility to telephone abroad to speak to that parent. I further find that the sponsor's credibility is damaged in light of this especially in light of the unexplained failure to provide documentary evidence of any telephone contact between the sponsor and the school."

16. I accept this challenge is made out. In particular the observation regarding the legitimacy of the conclusion that because the school was unable to send or email a report card it is unlikely that the school would have the facility for someone to call from abroad. As Mr Jaffar pointed out the appellant produced a bundle of calling cards as evidence of the calls that she had made to the school and the judge was wrong to observe an explained failure to provide documentary evidence.
17. The judge also expressed concern about the medical evidence at [75]:

"The sponsor has provided no details of her daughter's medical history that would suggest the sort of detailed knowledge of that history that would be expected in a person with sole responsibility for a child. However as part of the evidence of her sole responsibility for the appellant, the sponsor has also provided a letter said to be from her daughter's doctor's surgery. It states that the appellant has "been with us in this treatment center for a very long time". Also stated is that the sponsor is "responsible for paying the bills for her daughter, as she is the only person we know." No details are provided and no copies of receipts attached. There was also no money transfer identified by the sponsor as having been made to the surgery."

18. The letter from the pharmacy is in these terms:

" I hereby write to affirm that princess [S] the Daughter of Marie [S] has been with us in this treatment center for a very long time.

Her mother Marie [S] has been the one responsible for paying the bills for her daughter, as she is the only person we know. Madam, Marie [S] is also aware of her daughter princess [S] who has been a member of the Fatimel treatment center, we are doing our best to give her the treatment she needed to protect her life.

Sir/Madam am always ready to give an attestation of her to the best of my knowledge.

Please feel free to contact us for any enquiries much regards."

A point made in the grounds of challenge is that the appellant's mother was not asked to give details of her daughter's medical history at the hearing. The evidence before the judge was of visits by the appellant's mother to see her in Sierra Leone in 2007, 2009/2010, 2011, 2012, 2015, 2016 and 2017. Mr Jaffar reminded me of the restriction on travel during the ebola crisis during 2014. It is not the evidence that the appellant was suffering from a particular medical condition that might have been specified. Regular visits to a pharmacy/doctor are a routine aspect of a child's life and I do not consider the absence of this detail which was not sought at the hearing should undermine the account in the manner described by the judge.

19. A surprising feature of the judge's decision is an absence of any reference to *TD (paragraph 297(i)(e)) "sole responsibility" Yemen [2006] UKAIT 00049*. This decision sets out the following guidance:

"'Sole responsibility' is a factual matter to be decided upon all the evidence. Where one parent is not involved in the child's upbringing because he (or she) had abandoned or abdicated responsibility, the issue may arise between the remaining parent and others who have day-to-day care of the child abroad. The test is whether the parent has continuing control and direction over the child's upbringing, including making all the important decision in the child's life. However, where both parents are involved in a child's upbringing, it will be exceptional that one of them will have 'sole responsibility'."

20. This is the approach required. In my view the errors demonstrated above by the judge in reaching certain credibility findings are such that decision cannot stand. Accordingly, I set aside the decision of the First-tier Tribunal.
21. The findings of the First-tier Tribunal as to the absence of any role by the appellant's father in her life, the acceptance of family life between the parties and the acceptance of the provision of financial resources by the appellant's mother stand. That being so the decision may be remade in the Upper Tribunal on further evidence from the appellant to address the points identified in the guidance in *TD*.

No anonymity direction is made.

Signed

Date 1 June 2018

UTJ Dawson

Upper Tribunal Judge Dawson