



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/15877/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 May 2019**

**Decision &  
Promulgated  
On 7 June 2019**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**ELLEN JOY SUSAN ENRIQUEZ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Slater, Counsel instructed by Douglas Simon Solicitors

For the Respondent: Mr C Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of the Philippines born on 6 August 1999. On 28 July 2017 she applied for entry clearance to join her father, who is a British

citizen, in the UK. Her application was refused on the basis that it had not been demonstrated that her father has had sole responsibility for her within the meaning of paragraph 297(i)(e) of the Immigration Rules and that there were not serious or compelling circumstances under paragraph 297(i)(f). The appellant appealed to First-tier Tribunal where her appeal was heard by First-tier Tribunal Judge Obhi. In a decision promulgated on 3 December 2018 the judge dismissed the appeal. The appellant is now appealing against that decision.

### Decision of the First-tier Tribunal

2. At paragraph 28 of the decision the judge summarised some of the evidence given by the appellant's father. Amongst other things, the judge stated that the appellant's father claimed that the only involvement the appellant's mother has had with the appellant is that she met her sometimes for birthdays and other special occasions.
3. The judge did not accept that the relationship between the appellant and her mother was as limited as the appellant's father claimed. At paragraph 29 the judge found that both of the appellant's parents have played a role in her life, and that the role of her mother had been "played down".
4. The judge found at paragraph 31 of the decision that there was an absence of evidence about the appellant's mother. The judge observed, in this regard, that the appellant had not submitted a statement even though she was clearly capable of doing so; and found that information about the mother had been withheld.
5. At paragraph 32 the judge stated, inter alia, that there was no evidence of any direct contact between the appellant's father and the appellant's school or doctor and that:
 

"The only important decision which he appears to have made are firstly to come to the UK so that he could earn more money and provide for her, but by his own evidence he has not always been able to do that because he has not held employment consistently and to support her application, on the threshold of her attaining her majority to come to the UK. He has prioritised being with her and has, as he invites me to find her mother has, moved away and started a new family. Her mother has moved away in the Philippines and he has moved away to a different country."
6. The judge found that the appellant has lived firstly with her grandparents and then with her uncle. In terms of financial support, at paragraph 30 the judge stated that although there is evidence of the appellant's father providing the appellant with financial support for three years from 29 April 2014, this has been done jointly with his brother. The judge also found at paragraph 30 that there is little evidence of direct decision making by the appellant's father in respect of the appellant.

### Grounds of Appeal and Submissions

7. The grounds of appeal argue, firstly, that the decision contains a factual error. At paragraph 28 the judge stated that the appellant's father said that the appellant meets her mother sometimes for her birthdays and other special occasions. The grounds of appeal assert that there was no evidence to support this finding and it is factually incorrect. The grounds contend that no source is provided for this crucial evidence and that this erroneous factual finding goes to the core of the appeal because it led the judge to treat this as a "two-parent case" rather than then a case where a parent has abandoned the child.
8. The second ground of appeal argues that the judge misconstrued the test of sole responsibility by imposing an excessive requirement as to financial support and that the judge imposed too high a standard by requiring that the appellant's father to demonstrate that he - and only he - cares for and supports the appellant.
9. The third ground of appeal argues that the judge erred by finding that evidence in relation to the appellant's mother's involvement had not been provided fully. This ground states that it is unclear how the judge could have concluded that the evidence had not been presented transparently if she also believed - wrongly - that there was candid evidence of ongoing occasional in person contact between the appellant and her mother that undermined the core of the appellant's appeal.
10. The fourth ground of appeal argues that the judge was wrong to consider that it was not in the appellant's best interests to relocate to the UK and that the judge failed to take into account the views of the appellant and her family.
11. Permission to appeal was granted by Upper Tribunal Judge Kebede on the basis that the judge arguably made a finding of fact that the appellant met with her mother on occasions, which was contrary to the evidence before her.
12. At the error of law hearing Mr Slater acknowledged that there was, in fact, evidential support for finding that the appellant maintained contact with her mother and met her on occasions as at paragraph 9 of his statement dated 24 July 2017 the appellant's father stated:

"I understand that the appellant's mother maintains some form of contact with her daughter. The appellant has told me that they meet sometimes for birthdays or other special occasions."
13. Mr Slater also acknowledged that at paragraph 11 of his statement dated 25 October 2018, the appellant's father stated:

"I know that the appellant has had very limited contact with her mother who has sent her birthday and Christmas cards hence the appellant's mother's involvement in her life can be best described as casual and rare."
14. Mr Slater argued that although the judge did not make a factual error at paragraph 28 of the decision, the level of involvement described by the

appellant's father falls considerably short of undermining the appellant's claim that the appellant's father has sole responsibility for her.

15. Mr Slater referred to the distinction drawn in the case law on "sole responsibility" (notably in *Buydov v Entry Clearance Officer Moscow* [2012] EWCA Civ 1739 and *TD (Paragraph 297(i)(e) 'sole responsibility') Yemen* [2006] UKAIT 00049) between "two parent cases" and "one parent cases" and highlighted that even where there is a degree of contact with a second parent the other parent can nonetheless have sole responsibility. He noted in particular the reference to *Buydov* to *Alagon v ECO, Manila* [1983] Imm AR 336, a case where a mother was found to have sole responsibility even though the child's father occupied the same house as the child. The mother in that case was found to have sole responsibility on the basis that even though the father lived in the same house, he had only a passive role and was not consulted in and took no major decisions about the child.
16. Mr Slater's central argument, in sum, was that although the judge did not factually err by stating that there is some degree of contact between the appellant and her mother, he erred in-law by treating that limited contact as being inconsistent with the appellant's father having sole responsibility for the appellant.
17. Mr Slater also argued that the judge appears to have misdirected herself as to the required level of financial support from the father. He maintained that it was not necessary to show that the father has always provided financial support, or that he makes day-to-day decisions. He also argued that the judge failed to take into account the evidence of the appellant's father's involvement with the appellant's school.
18. Mr Avery argued that the judge accurately described the factual evidence about the involvement of the appellant's mother in the appellant's life and was entitled to reach the view that the appellant's father had tried to downplay it. He argued that the judge was entitled to find that the appellant had not discharged the burden of showing that her father had sole responsibility for her.

### Analysis

19. The first ground of appeal argues that it was factually incorrect for the judge to find – and there was no evidence to support the finding – that the appellant's mother maintains contact with the appellant and meets her on special occasions.
20. This argument is plainly wrong. Firstly, if the judge had made this finding (which she did not) there would have been a clear evidential basis to do so because the appellant's father stated in his witness statement that his understanding was that there was contact of this type between the appellant and her mother.

21. Secondly, this ground is misconceived because it is based on a misconception that the judge made a finding of fact that the level of contact between the appellant and her mother was as described by the appellant's father (and as summarised by the judge at paragraph 28 of the decision). But that is not what the judge found. The judge did not accept the appellant's father's claim that the only contact between the appellant and her mother was that they met on special occasions. Rather, the judge found that the appellant's father had downplayed the level of the mother's involvement and that she was involved, to a far greater extent than claimed, in the appellant's life.
22. The written evidence of the appellant's father - where a degree of contact between the appellant and her mother was acknowledged - is inconsistent with his oral evidence where, according to the grounds of appeal (at paragraph 8 of the grounds), when asked about contact between the appellant and her mother he denied there had ever been any in-person contact and said that the appellant's mother had only sent birthday cards when the appellant was a baby. A statement by the appellant (who is clearly the person best placed to give evidence about her contact with her mother) would undoubtedly have assisted the judge in forming a view about the appellant's relationship with her mother but, as highlighted by the judge, she did not submit a witness statement.
23. In these circumstances, I have no hesitation in finding that the judge was entitled to conclude that the involvement of the appellant's mother was downplayed and that the evidence before her did not establish that the appellant's father has had greater responsibility for, or involvement with, the appellant than her mother.
24. Based on the judge's findings of fact (which, as I have explained, she was entitled to make), it follows that this is a case where both parents are involved in the appellant's upbringing and therefore, as set out in the headnote to *TD*, it would be "*exceptional that one of them will have sole responsibility*".
25. Once it is recognised that this is a "two-parent case" it becomes clear that the appellant cannot succeed on any of the grounds of appeal. The other grounds of appeal presuppose that this is a "one parent case" where the judge was considering the extent of the responsibility the appellant's father took for the appellant in the context of him being the only responsible parent who was relying on his family in the Philippines to provide a home and day-to-day care for the appellant. However, this is a case where the judge found that the appellant's father did not have sole responsibility within the meaning of paragraph 297(i)(e) because he, more likely than not, has not taken any more responsibility for the appellant than has her mother.
26. I am satisfied that the judge, for the reasons she gave, was entitled to find that the appellant did not discharge the burden of showing that on the

balance of probabilities her father has had sole responsibility for her upbringing. The appeal is therefore dismissed.

Signed

A handwritten signature in black ink, appearing to be 'SH', followed by a long horizontal line extending to the right.

Deputy Upper Tribunal Judge Sheridan Dated: 5 June 2019