



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001829

First-tier Tribunal No: HU/06929/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

11th October 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

NGE
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Krushner, Counsel

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

Heard at Field House on 15 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By a decision promulgated on 12 January 2023 a panel of the Upper Tribunal (comprising of Upper Tribunal Judge Rintoul and Deputy Upper Tribunal Judge Grimes) set aside the decision of the First-tier Tribunal (Judge of the First-tier Tribunal Manuell). The case now comes before me in order to re-make the decision of the First-tier Tribunal.

Introduction

2. The appellant is a citizen of the Philippines born in November 2005 who is seeking to join his mother (“the sponsor”) in the UK.
3. This appeal arises out of the appellant’s third application for entry clearance, which was refused on 11 August 2020. The appellant’s first two applications for entry clearance were refused by the respondent and his subsequent appeals were dismissed (in 2017 and 2019).
4. The sole issue in contention before me is whether the sponsor has “sole responsibility” for the appellant such that the conditions of paragraph 297(i)(e) of the Immigration Rules are met. It was not argued by Mr Krushner that the appellant could succeed under any of the other subparagraphs of paragraph 297(i) or that he could succeed under Article 8 if he did not meet the requirements of paragraph 297(i)(e).

The previous decisions of the First-tier Tribunal

5. Judge of the First-tier Tribunal Hodgkinson was the first judge to consider whether the sponsor has sole responsibility for the appellant. In a decision promulgated in May 2017 (“the 2017 decision”), he found, inter alia, that there was contradictory evidence about the role played by the appellant’s father in the appellant’s life and that there was a lack of evidence about the role played by the sponsor (including a lack of documentation from the appellant’s school and as to how his school fees are paid). At the time of this decision it was common ground that the appellant was living with his maternal grandmother.
6. The second judge to consider whether the sponsor has sole responsibility for the appellant was Judge of the First-tier Tribunal Housego. In a decision promulgated in November 2019 (“the 2019 decision”), Judge Housego noted that the sponsor’s evidence was that the appellant’s grandmother was no longer living with the appellant and that the appellant was now living (in the home owned by the sponsor) with his uncle. Judge Housego found that there was insufficient evidence to establish that the sponsor has sole responsibility given the role played by the appellant’s grandmother and uncle in his life. Judge Housego highlighted the absence of evidence about the appellant’s circumstances in the Philippines, noting that this was remarkable given that an adjournment was given to obtain and adduce such evidence.

The appellant’s case

7. The appellant claims that since the decision of Judge Housego his circumstances have changed, because he now lives alone; his uncle having moved out of the home they shared (to a property ten minutes away).
8. In summary, the appellant’s case is that:
 - (a) he lives alone in a house owned by the sponsor and the sponsor financially supports him;
 - (b) he has no contact with (and receives no support from) his father;
 - (c) he speaks to the sponsor four to five times a day and she (with him) makes all important decisions in his life; and

- (d) he receives (non-financial) support from his grandmother and uncle who visit him regularly but they play no role in making significant decisions in his life.

The Respondent's Decision of 11 August 2020

9. The respondent noted that this was the third application the appellant had made and it was made only four months after his last appeal was decided. The respondent accepted that the appellant is related to the sponsor as claimed but not that she has sole responsibility for him. The primary reason given was that there had been no change in the appellant's circumstances since the decision of Judge Housego dismissing his appeal.

The Evidence

10. The appellant supported his case by providing a witness statement along with witness statements from the sponsor, the sponsor's husband, his maternal aunt, his maternal uncle and his maternal grandmother. These statements all, essentially, say the same thing, which is that the appellant now lives alone, his grandmother and uncle having left the family home (which is owned by the sponsor). The maternal grandmother has left the home to live in Manilla, which is several hours away, in order to be close to her husband who is in prison; and the appellant's uncle has moved out of the home in order to live with his partner.
11. The consistent evidence in the witness statements is that the sponsor supports the appellant financially and makes all the important decisions in his life. The appellant's evidence (and that of those supporting his case) is also that the appellant has never had any contact with his father.
12. At the hearing the sponsor gave evidence through an interpreter. The evidence of the sponsor's husband was given without an interpreter.
13. The oral evidence of the sponsor was that she speaks to the appellant five or more times a day and that she regularly speaks to his school. She states that she makes all decisions in his life.
14. Her evidence was that the appellant started living alone approximately three years ago at the age of 15. She stated that her sister has four children and does not have the resources to look after her son; her mother has moved to Manilla to be close to her incarcerated husband; and her brother has his own life with his partner.
15. She stated that her brother (the appellant's uncle) regularly visits the appellant and gives him emotional support and help with day-to-day matters but it was also her evidence that he does not make important decisions in the appellant's life, which is solely a matter for her.
16. During the course of cross-examination by Ms Everett, the sponsor stated that the appellant's father lives approximately 30 minutes away and is the principal of a school. When asked why he has no contact with the appellant, her answer was that although she was married to him when she gave birth to the appellant, he denied that it was his child and he has been consistent in this denial.
17. Ms Everett put to the sponsor that the appellant's father had signed an affidavit in which he described himself as the appellant's father. The sponsor's answer to

this was that her mother had approached him at the school where he is the principal to ask him to sign the document and that he had agreed to do so. With respect to why he would agree to sign a document stating he was the appellant's father when he had consistently denied being his father, she initially stated that he might have done so in order to avoid having responsibility for the appellant. However, when questioned why that would be the case if he had never taken any responsibility in the past for the appellant, she stated that she did not know why he signed it.

18. The sponsor's evidence was that she last visited her son about two years ago and had not visited more recently because of financial constraints.
19. The evidence of the sponsor's husband was broadly consistent with that of the sponsor. It was put to him by Ms Everett that in the 2017 First-tier Tribunal decision his evidence is recorded as being that the appellant rarely sees his father, which is not consistent with his current position that they have never seen each other. The sponsor's husband was unable to explain this and was adamant that the appellant has no contact with his father.
20. It was also put to the sponsor that the appellant's birth certificate records her ex-husband as the appellant's father. She stated that this was because they were married at the time and in the Philippines he would automatically be recorded as the father because of this.
21. In addition to the witness evidence (including those who did not attend the hearing) I have considered the bundle of documents that was before me. The documents that Mr Krushner identified in his submissions are the following:
 - (a) A letter from the appellant's school dated 27 February 2020 stating that the sponsor "is contacting us every week about her son progress here in our school". It is also stated in the letter that the appellant is suffering from depression and that he "keep telling us why he born in this world without parents, far to my brother and mom".
 - (b) A brief letter that appears to be from a psychiatrist, although this is unclear as it is not on headed notepaper and there is no information about the author. The letter, which is dated 27 February 2020, states that the appellant has poor sleep, appetite and episodes of depression and that the "root cause of the patient's disorder appears to be his feeling of being rejected and neglected by his parents, especially his mother who is at present staying overseas".
 - (c) A document headed Medical Certificate which states that the appellant has a diagnosis of major depressive disorder with the root cause being a feeling of rejection and being neglected as a result of being away from his mother. It is also stated that he is "poorly compliant to medication".

Submissions

22. Ms Everett's submissions focused on what she characterised as inconsistencies in the evidence about the involvement of the appellant's father in the appellant's life. She referred to the affidavit (which is considered in the 2017 decision) which had been signed by the appellant's father. She submitted that this was inconsistent with the claimed absence of any contact with the appellant. She highlighted paragraph 28 of the 2017 decision, where the following is stated:

“However, at page 28 of the appellant’s bundle is an affidavit from NE, dated 28 March 2017. In that affidavit he confirms that he is the appellant’s father, which presents as inconsistent with the sponsor’s evidence that he has never accepted that the appellant is his son. NE’s affidavit is consistent to an extent with the evidence of the sponsor, in that NE then indicates that the appellant has been living with his grandmother, DB, and that he, NE, was unable to look after, or care for, the appellant due to his busy life and work commitment. He adds that he also has a new family and does not object to the appellant travelling to live in the United Kingdom”.

23. Ms Everett also highlighted paragraph 29 of the 2017 decision, where it is stated:

“There is a further discrepancy in the evidence before me; namely, at section 2 of Mr Krasniqi’s statement, he does not state that the appellant has had no contact with his biological father; rather, he states therein, and that statement was adopted by him at the hearing, that the appellant’s father *rarely* sees the appellant. Thus, Mr Krasniqi’s statement is inconsistent with the evidence of the sponsor, which is to the effect that the appellant has never had any contact with his father”.

24. Ms Everett submitted that these inconsistencies in the evidence have not been adequately addressed and undermine the appellant’s claim to have had no contact with his father. She submitted that sole responsibility is a stringent test to protect family relationships and, as made clear in *TD*, where a parent living in the same country as their child is involved with the child it will rarely be the case that the parent in the UK can establish sole responsibility.
25. She also argued that there had not been a significant change since the 2019 decision because at that time the appellant’s grandmother had already moved away but it was still found that the grandmother and brother take responsibility for the appellant.
26. Mr Krushner’s argument with respect to the appellant’s contact with his father was that there is consistent evidence that the appellant does not have any involvement or contact with his father. He noted that the respondent was relying on an affidavit that they had not submitted and therefore he stated that little reliance could be placed on it.
27. He argued that there had been a significant change in the appellant’s circumstances since the 2019 decision, which is that he now lives alone. He submitted that there is strong evidence of the sponsor taking responsibility for the appellant and no evidence indicating that anyone else in the appellant’s life had taken on that role. He argued that the medical certificate, letter from psychiatrist, and letter from the school - as well as photographs and social media screenshots that were in the bundle of evidence - considered together are sufficient to establish that, on the balance of probabilities, it is the sponsor (and nobody else) who takes responsibility for the appellant.

Analysis

28. There was no dispute about the applicable legal test for sole responsibility, which is set out in paragraph 297(i)(e) of the Immigration Rules and provides as follows:

"297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

(i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:

...

(e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing".

29. The leading authority on the meaning of sole responsibility is *TD (paragraph 297(i)(e): "sole responsibility") Yemen* [2006] UKAIT 00049. This states in the headnote:

"'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 decisions 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'".

30. In addressing the question of whether the sponsor has sole responsibility for the appellant my starting point, in accordance with *Devaseelan* [2002] UKIAT 702, is the previous two First-tier Tribunal decisions, where it was found that she did not have sole responsibility. However, as is made clear in *R (on the application of MW) v SSHD (Fast track appeal: Devaseelan guidelines)* [2019] UKUT 411, the previous decisions are not a "legal straitjacket" and it is necessary to have regard to up-to-date evidence. As was noted in *Nmaju v SSHD* [2001] INLR 26, there can be changes in a child's circumstances and it is the position at the time of the hearing that matters.

31. The first factual question to resolve is whether the appellant's father has a role in his life. This is, as emphasised by Ms Everett, highly significant because, as made clear in *TD*, it will be unusual for sole responsibility to be established where both parents are involved in a child's life.

32. Having carefully considered the evidence I am satisfied that the sponsor and her husband are being truthful when they state that the appellant's father has no involvement in his life. The sponsor gave clear and direct answers on this issue when answering questions posed by Ms Everett, including in particular about the circumstances in which the affidavit from the appellant's father was obtained. I accept her evidence, as clarified during Ms Everett's cross examination, that she does not know why the appellant's father agreed to sign the affidavit and that it was her mother who obtained his signature. I have taken into account that the appellant's husband, in a previous hearing, stated that the appellant meets his father rarely. This is inconsistent with what he now says: that they had never seen each other. Although I am troubled by this inconsistency, stepping back and considering the evidence as a whole, I have reached the conclusion that, on the balance of probabilities, I have been told the truth about the absence of contact between the appellant and his father.

33. This is a case, therefore, where the father has abdicated responsibility for the child and therefore the question of sole responsibility turns on the respective roles of the sponsor, on the one hand, and the appellant's grandmother and uncle, on the other.
34. Ms Everett argued that the circumstances of these relationships are essentially unchanged since the previous hearing. I am not persuaded by that argument. The evidence of the sponsor (which I accept) is that the appellant lives alone, and has been doing so for almost three years. I consider this to be a significant change in circumstances since the 2019 decision, when the appellant was still living with his uncle.
35. The key question when addressing sole responsibility where only one parent is involved in the child's upbringing is who makes the important decisions in respect of the child. In the past, when the appellant lived with his grandmother and uncle, it may well have been the case that responsibility for important decisions was shared between them and the sponsor. However, at the present time, and for the last several years, the appellant has been living on his own. I am satisfied that, in these circumstances, the appellant's grandmother and uncle no longer have the role in the appellant's upbringing that they had previously and that, at the current time, the only adult making significant decisions in the appellant's life is the sponsor.
36. Accordingly, I find that the sponsor has sole responsibility for the appellant's upbringing and therefore that the condition of paragraph 297(i)(e) is met. As the appellant falls within the scope of the Immigration Rules, the public interest in effective immigration controls does not weigh against him. See paragraph 34 of *TZ (Pakistan) and PG (India) v The Secretary of State for the Home Department* [2018] EWCA Civ 1109. I therefore allow the appeal under Article 8 ECHR.

Notice of Decision

37. I allow the appeal.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 October 2023