IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002446
First-tier number: HU/57193/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 8th of November 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

JN (Kenya)
(anonymity order made)

Appellant

and

Entry Clearance Officer, Sheffield Hub

Respondent

Representation:

For the Appellant: Ms M. Cleghorn, Counsel instructed by Latif Solicitors (remote)
For the Respondent: Ms Z. Young, Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 1 November 2023

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

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1. The Appellant is a national of Kenya. She was born in 2005, and she seeks permission to enter the United Kingdom in order to live here with her father, S. The Respondent refused the application and on the 23rd March 2023 the First-tier Tribunal (Judge Fisher) upheld the ECO's decision. The Appellant was granted permission to appeal to this Tribunal on the 14th August 2023.

2. The following facts have been found in the Appellant's favour or are otherwise uncontested. When she was born she lived with both of her parents in Kenya. After her parents separated she continued to see her father on a regular basis. He took an active part in her upbringing, seeing her regularly, taking her to school etc. He has provided for her financially throughout her life. After he came to live in the UK he maintained contact with her by telephone, video calls and visits. He continued to pay for her education and upkeep. The Appellant's living arrangements changed in 2020. Her mother took a job which required her to travel out of Kenya. The Appellant was left to live with her grandmother and older sister J. J has now herself left Kenya and is living in Finland. The Appellant's grandmother is responsible for her day to day care. Her father has continued to pay for everything and is consulted about major decisions. The Appellant's mother has not returned to Kenya since December 2020, no one has heard from her since June 2021 and she has abdicated all responsibility for her daughter.

3. The parties are in agreement that the only legal issue outstanding is whether it can be said that S has "sole responsibility" for his daughter, that being a requirement of the immigration rules.

4. The core of the First-tier Tribunal's reasoning on that matter is expressed at its paragraph 12:

> 12. In paragraph 4 of her affidavit, the Appellant's grandmother states that she makes "few decisions affecting her (the Appellant's) life. She goes on, in paragraph 8, to state that the Sponsor makes "almost all'' decisions affecting his daughter including the provision of schooling, accommodation, clothing, food and religious activities. In my judgement, this evidence is proof that responsibility for the Appellant is, as a matter of fact, shared between the Sponsor and her maternal grandmother, as there was no satisfactory evidence to prove that the decisions made by the Appellant's grandmother were taken under the direction of the Sponsor. Shared responsibility, of course, precludes a finding of sole responsibility.

5. The Appellant now argues before this Tribunal that in so finding the Tribunal has misunderstood/misdirected itself to the test of sole responsibility.

Discussion and Findings

6. Paragraph 297(i) of the Immigration Rules reads:

> "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:
(a) both parents are present and settled in the United Kingdom; or
(b) both parents are being admitted on the same occasion for settlement; or
(c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or
(d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or
(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; or
(f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and...”

7. The lead case on what is meant by ‘sole responsibility’ is TD (Paragraph 297(i)(e): “sole responsibility”) Yemen [2006] UKAIT 00049. In that appeal the headnote reads:

> *“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”.*

8. In the body of its decision Tribunal further emphasised that the central consideration is who has “authority” or “control” over a child’s upbringing. Whilst others (for example, relatives) may, look after the child’s day to day needs, it may be that they are doing so only on behalf of the child’s parent. Citing with approval a 1972 decision of the Immigration Appeals Authority, the Tribunal said this:

> 10. As the IAT stated: “sole responsibility” cannot sensibly be read in an absolute or literal way. The IAT rejected the argument that “sole responsibility” was only an issue between parents. It could also arise where the child lived with a relative. Significantly, the IAT accepted that a parent who has settled in the UK may retain “sole responsibility” for a child where the day-to-day care or responsibility for that child is necessarily undertaken by a relative abroad. That day-to-day responsibility may include seeing that the child attends school, is fed and clothed and receives medical attention when needed. The IAT identified the mother’s financial support and the retention of a close interest in and affection for the child as important to its decision. One final point: the fact that the appellant’s father lived nearby did not affect the IAT’s decision, presumably because, in its words, “he takes no interest in his daughter and has never played any part in her life” (at p 70).

9. It goes on:

> 13. A central part of the notion of "sole responsibility" for a child's upbringing is the UK-based parent's continuing interest and involvement in the child's life, including making or being consulted about and approving important decisions about the child's upbringing. In Sloley v ECO, Kingston [1973] Imm AR 54 the appellant, aged 13, lived in Jamaica and sought entry clearance to settle with his mother in the UK. His mother came to the UK when he was 5 years old and since that time he had lived with his maternal grandmother. The mother alone provided financial support for the appellant. Although the appellant's father lived in Jamaica, the appellant had only seen him on three occasions and he had given money to the appellant on only one occasion. When the appellant was 10, his mother and her husband brought their son (the appellant's half-brother) to Jamaica to live with the appellant and his grandmother so that they could grow up together prior to them both coming to the UK. There was evidence of correspondence between the appellant's grandmother and his mother in which she was consulting and seeking approval in respect of the appellant's upbringing. The evidence was that his mother made decisions about his schooling and that she gave the grandmother instructions and approved holidays. Referring with approval to Emmanuel, the IAT approached the issue of "sole responsibility" as follows (at p 56):
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> > *"The decision in every case will depend on its own particular facts, and this will involve consideration, inter alia, of the source and degree of financial support of the child and whether there is cogent evidence of genuine interest in and affection for the child by the sponsoring parent in the United Kingdom."*

14. Relying on these passages Ms Cleghorn submits that the First-tier Tribunal took an impermissibly restrictive reading of the test. Having heard the oral evidence of the Sponsor, whom it found to be wholly credible about his daughter's circumstances, and having accepted without criticism all of the written evidence, it honed in on the single remark by the Appellant's grandmother that S takes "almost all" of the decisions in respect of the Appellant. Ms Cleghorn submitted that in doing so the Tribunal appears to have misunderstood, or overlooked, the guidance in TD (Yemen).

15. Having heard Ms Cleghorn's submissions, and having had regard to the decision in TD (Yemen), Ms Young indicated that she would not be opposing the appeal.

16. I accept that the grounds are made out and Ms Young's concession was properly made. Having accepted that S, as the Appellant's father, has had responsibility for her throughout her life, that he had a continuing interest and involvement in her welfare, and importantly that he makes or is consulted about all the important decisions, it was an error for the Tribunal to dismiss the appeal apparently on the basis that if the grandmother makes *some* of the decisions that necessarily defeats the claim under 297(i)(e). The Tribunal did not stop to consider what those decisions – Grandma's decisions – actually were. Had she said, for instance, that she is the person who decides what A levels the Appellant

should do, that might undermine the claim. I accept Ms Cleghorn's submission that it is clear from the evidence that in fact what the Grandma does is take the normal, day-to-day household decisions like what they are going to eat for dinner or whether the Appellant can watch television. That kind of day-to-day responsibility – which may include seeing that the child attends school, is fed and clothed and receives medical attention when needed – should not defeat an application under this rule if it is the parent in the UK who retains overall control and responsibility for their child. That is the effect of the Tribunal's findings on the facts, and the appeal is therefore allowed.

Decisions

11. The decision of the First-tier Tribunal is set aside.

12. The decision in the appeal is remade as follows: the appeal is allowed on human rights grounds.

13. There is an order for anonymity in this case involving the application of a minor.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
2nd November 2023