



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006639

First-tier Tribunal Nos: HU/51853/2021
IA/07145/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18th April 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**Y.S.D.
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Raja Rashid (Counsel), Ahmad & Williams Solicitors
For the Respondent: Ms Mahdi Parvar, Senior Home Office Presenting Officer

Heard by remote EOL hearing from Field House on 29 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of the panel of the First-tier Tribunal comprising IJ Parkes and IJ C. Taylor, at Birmingham on 1st April 2022, which promulgated its determination on 8th April 2022. In the determination, the panel dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan and who appeals against the decision of the Respondent dated 18th April 2021, refusing his application for entry clearance to the UK as the child of the Sponsor, ND.

The Appellant's Claim

3. The essence of the Appellant's claim is that he was born on 27th July 2011 in the UK, as the younger son of his sponsoring mother, ND, who is a citizen of Pakistan. She, the Sponsor, whilst also being a citizen of Pakistan, has currently been able to obtain limited leave to remain in the UK, in line with the grant of leave to her older son, who is the Appellant's brother. The Appellant bases his application on grounds that his sponsoring mother has had sole responsibility for him in his care and upbringing. The Respondent disagrees on the basis that the sponsoring mother has not seen the Appellant for over nine years since January 2012. There was evidence in the application itself that the Appellant's father lived at the same address as the Appellant, and that they had both lived with the Appellant's paternal grandparents, until his grandfather died in March 2021. It could, therefore, not be accepted that the sponsoring mother had sole responsibility for the Appellant.

The Panel's Findings

4. The evidence before the panel was that the Appellant's sponsoring mother had clashed with her husband and left him to come to the UK, where she had left the Appellant behind as he did not have a visa, and that this was on account of domestic violence by her husband towards both herself and the children, who were young at the time. She gave evidence before the panel that her husband's behaviour was such that she had no option but to leave him in order to protect her life. There was also evidence that "her husband had shown no interest in the Appellant's upbringing", because "although he had given the same address as his parents he is away from the home for lengthy periods", and he had "no interest in the household" and did not care about whether the Appellant's child remained in Pakistan or came to the UK (paragraph 11).
5. There was a letter from the grandmother who had raised no objection to the Appellant's son leaving the family home. The evidence before the panel was that the sponsoring mother "makes all the decisions regarding his school, health and everything including his Koran lessons". She also gave evidence that "in January 2021 she was in Pakistan and saw her husband at his father's funeral but they did not speak" (paragraph 11).
6. In cross-examination, the sponsoring mother was also able to produce a picture of a document on her mobile phone confirming that the paternal grandmother "had been granted Guardianship of the Appellant" (paragraph 12). There was also "the seal of the Family Court in Jhellum" in a document dated the 25th

October 2021. The sponsoring mother gave evidence in re-examination that the document was obtained “so that the grandmother could obtain the Appellant a new passport, his father had been asked and had said do what you like, he had no objection” (paragraph 13).

7. The panel found that the appeal stood to be dismissed for two reasons. First, the Appellant had argued that his grandmother was now physically not well and yet her name on the court document indicated that she “was able to engage in the court process undermining a suggestion that she has mobility and other difficulties”. Second, that the grant of guardianship rights upon her was “indicating that the Sponsor does not have sole responsibility” (paragraph 14). The panel went on to conclude that “the evidence does not show that the grandmother is immobile or incapable and does address difficulties that might arise in looking after the Appellant” (paragraph 18). The panel also decided that, “the Appellant's mother and brother live in the UK and have had little contact with the Appellant” (paragraph 20). The appeal was dismissed.

Grounds of Application

8. The grounds of application state that whilst the judges of the panel at the outset stated (at paragraph 6) that the best interests of the child, was a consideration that had to be applied to the Appellant’s application to join her sponsoring mother, nevertheless they failed in the body of the determination to apply these considerations.
9. On 17th August 2022 IJ Brewer granted permission in the First-tier Tribunal on the basis that the judges’ reasoning do not make any findings on arguably material and relevant evidence in two essential respects. First, the Sponsor’s evidence was that she was the sole decision maker on key aspects of the Appellant’s care and upbringing and yet no findings were made on this. Second, the evidence was that the grandmother had only secured the special guardianship order to enable her to obtain a passport for the Appellant so that he could travel to the UK. This could not therefore simply be interpreted as pointing to fact that it was the grandmother who had the care and upbringing of the Appellant on a day-to-day basis.

Submissions

10. At the hearing before me on 29th November 2024, Mr Raja Rashid of Counsel went carefully through the grounds of application and pointed out that it had never been the Appellant’s case that the grandmother was immobile. The claim was that she was unable to look after the Appellant child. Furthermore, the clear evidence has been that the Special Guardianship Order had been obtained specifically in order for the Appellant to join the sponsoring mother. This had been done at the behest of the sponsoring mother, with the Appellant’s father not being involved because he did not care as to what happened, and the grandmother herself having expressly given her consent to do so. All of that pointed to the fact that the sponsoring mother in the UK was the person who had the day-to-day care for the upbringing of the Appellant.
11. For her part, Ms Parvar submitted that the Tribunal had given clear reasons for why this appeal stood to be refused. The fact was that the Appellant had not seen his mother for over nine years. He lived at the same address as his father and paternal grandparents, although the grandfather had died in March 2021,

and it could not be inferred from this that it was the sponsoring mother in the UK who cared for the Appellant in the way that was now being contended.

Error of Law

12. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. My reasons are as follows. First, it is well-established that the concept of “sole responsibility” under paragraph 297 of HC 395 is one which cannot be subjected to a literal interpretation as that would defeat all claims, because responsibility can never be “sole” in circumstances where a child abroad is being looked after by somebody else (see **Emmanuel [1972] Imm AR 69**). In this case, the clear evidence before the Tribunal was that the sponsoring mother “makes all the decisions regarding his school, health and everything including his Koran lessons” (paragraph 11). That evidence was not contested or undermined before the Tribunal. Second, it is equally well-established that whilst, “Sole responsibility is a factual matter to be decided upon all the evidence”, it is nevertheless the case that, “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” (see **TD (paragraph 297(i)(e) (“sole responsibility”) Yemen [2006] UKAIT 00049**). The fact that the Appellant’s own father takes no interest in the Appellant (and this was not undermined as a matter of evidence before the Tribunal below) is all to the favour of the Appellant, rather than being against him. It is a matter, nevertheless, that needs further probing. Finally, under Section 55 of the BCIA 2009 consideration needs to be given to whether the child has unmet needs currently which cannot be catered for and whether there is a lack of stable arrangements currently for him in Pakistan (see **Mundeba [2013] UKUT 88**). For all these reasons, the matter needs to be reconsidered by a Tribunal or fact again.

Notice of Decision

13. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the panel below and remit the appeal back to the First-tier Tribunal on the basis of Practice Statement 7.2.(b) because the nature or extent of any judicial fact-finding, which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

17th April 2024

