



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

Case No: UI-2023-003574

First-tier Tribunal No: HU/53076/2022

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 23 February 2024

6th March 2024

Before

**UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY**

Between

**YAHYA SIDAT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellant: Mr Davison, instructed by Kent Immigration and Visa Advice

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

DECISION AND REASONS

1. The appellant is Moroccan and was born on 17 November 2003.
2. This is the decision of the panel and includes the contributions of both judges.
3. There has been no request to anonymise the parties. We asked the parties whether we should anonymise the decision and both confirmed it was unnecessary.

Background

4. The appellant applied on 29 October 2021 for entry clearance as a child seeking to join a parent in the UK. The application was refused on 17 March 2022. The appellant appealed and his appeal was dismissed by First-tier Tribunal Judge Traynor on 15 June 2023. The appellant sought and was granted permission to appeal to this Tribunal and on 10 December 2023 Upper Tribunal Judge Sheridan found there was legal error in Judge Traynor's decision such that it must be set aside so that the decision could be remade. Judge Sheridan retained the appeal in the Upper Tribunal.

Issues

5. At the start of the hearing to remake the decision, the representatives agreed that the issues we are to decide are:
 - (a) Whether the appellant is the sponsor's son,
 - (b) Whether the sponsor has sole responsibility for the appellant's upbringing, and
 - (c) Whether there are there are serious and compelling family or other considerations which make exclusion of the appellant undesirable and suitable arrangements have been made for the child's care.
6. In her closing submissions, Ms McKenzie conceded that it is more likely than not that the appellant is the sponsor's son. We accept the concession and make no further findings on this issue.
7. We note that the appellant has not sought to rely on article 8 of the Human Rights convention, although this was an issue at the time of refusal and when the appeal was first heard. We assume this is no longer in issue because the factors that prevented the sponsor from returning to live in Morocco, which were his new family in the UK, are no longer present as that relationship has broken down. As article 8 is no longer argued, we make no further findings on it.

Evidence

8. The written evidence is contained in the error of law bundle of 405 pages (which includes the original appellant's and respondent's bundles) and the supplementary bundle of 92 pages.
9. The sponsor has provided three witness statements dated 29 October 2021, 18 August 2022, and 3 February 2024, each of which he adopted as evidence in chief.

10. Mr Davison asked the sponsor to clarify who the eight people listed in the affidavit of 17 November 2023 were and he told us they were friends and neighbours who had good knowledge of the family circumstances.
11. Ms Mckenzie sought clarification about the family living arrangements in Morocco. The sponsor explained that the building has three flats. On the ground floor live his brother and family. On the middle floor live his wife and children, including the appellant. On the top floor live his father, the appellant's grandfather. When the sponsor visits Morocco, he stays with his father.
12. Ms Mckenzie questioned the sponsor regarding a number of documents. Some of the challenges were to documents about the relationship between the sponsor and appellant. The sponsor confirmed his first name and was able to clarify that the birth certificate was in the usual Moroccan format, giving the sponsor's first name and then his father's full name. He also clarified that the Family Book had a separate page for each child and the sponsor had only provided the page relevant to the appellant.
13. Ms Mckenzie questioned the sponsor about whether there was a "paper trail" showing that money transferred to the appellant was used on school and college fees, or driving lessons. The sponsor acknowledged there was limited evidence.
14. Ms Mckenzie questioned the sponsor about what decisions he made regarding the appellant's upbringing. The sponsor's examples related to the appellant's English language course and driving lessons. The sponsor also explained how he provides counsel and advice to the appellant about how to behave, who to associate with and such matters, such communication being by phone and text, or when the sponsor visits Morocco.
15. In answering questions, the sponsor confirmed that he discusses matters involving the appellant with the appellant's mother but was clear that the final decision lies with him. The sponsor described how the appellant's mother and sister will regularly call him asking him to intervene in controlling the appellant, for example when he stays out late or mixes with the "wrong people", such as motorcyclists. Mr Davison, at our suggestion, took up some of these matters.
16. The sponsor told Mr Davison that the appellant asks some things only of his mother, such as day to day matters. The sponsor said that the appellant's mother takes no responsibility for him. The sponsor said the relationship between the appellant and his mother started to go bad during the pandemic and the strict lockdown restrictions. As a result, the appellant's mother does not take responsibility for the appellant and instead complains to the sponsor about his behaviour.
17. The sponsor told Mr Davison that things like driving lessons are only between the sponsor and the appellant. The sponsor then said that he

makes 100% of the decisions about the appellant because of difficulties in the relationship between the appellant and his mother. The sponsor said that he pays for the appellant's gym membership as well as his studies and driving lessons.

Submissions

18. Ms Mckenzie relied on the refusal decision of 17 March 2022.
19. In respect of paragraph 297(i)(e), Ms Mckenzie asked us to consider the threshold the appellant needed to reach to prove the sponsor was exercising sole responsibility for him.
20. Ms Mckenzie reminded us that having a parental relationship was not enough on its own and that sole responsibility was a factual matter. The question is whether the other parent has abandoned responsibility for the child. Ms Mckenzie said that was not the case here as there was no reliable evidence that the appellant's mother had done so. Ms Mckenzie submitted that the evidence merely shows that the appellant has difficulties with (and does not listen to) his mother, which is different from saying that his mother has abdicated responsibility for him.
21. Ms Mckenzie reminded us that the appellant lives in the same place as his mother. The sponsor's evidence indicates that he discusses matters relating to the appellant with the appellant's mother. She pointed to the limited evidence of the sponsor having the level of continuing control and involvement that he claims. Ms Mckenzie submitted the evidence points to this being a situation where shared responsibility continues, and that this ground falls to be dismissed.
22. In respect of paragraph 297(i)(f), Ms Mckenzie stated that no exceptional circumstances had been established and therefore this ground also falls to be dismissed.
23. Mr Davison relied on his original skeleton argument. At paragraph 9, in relation to the issue of sole responsibility, Mr Davison argued:
 9. It is submitted that in considering sole responsibility the evidence provided supports the Sponsor's contentions. In support of this reference is made to:
 - The Appellant's Mother has spoken of the strain in the relationship and that the Sponsor is 'fully responsible' for the Appellant.
 - In 2019 the relationship between the Appellant and his mother broke down and she 'washed her hands' of him.
 - The Sponsor appears to be the only person the Appellant will listen to and respect his wishes.
 - The Sponsor is attempting to put guidelines around issues such as gaming, but as he is so far away and his ex-wife will not assist this is difficult to enforce.

- When together with the Sponsor the Appellant poses no issues.
 - The Appellant still resides in the same building as the Sponsor's Father and Brother.
 - The Sponsor remits money and has done for many years, the Appellant's Mother is not in a position to financially support him.
 - The Appellant's school confirms the Sponsor is responsible for the Appellant in matters of education.
 - The Sponsor has visited frequently and stayed in touch with the Appellant.
24. Mr Davison reminded us that the letters from the sponsor's mother state that she has abdicated responsibility for the appellant. The evidence also indicates that the sponsor continues to have control over the appellant, such as the decision about driving lessons. The evidence from the appellant's school and college confirms the sponsor's continued support for the appellant's studies.
25. The fact the sponsor asks for the views of the appellant's mother, or discusses the appellant with his mother, is not the same as sharing responsibility for him. Of course, the day-to-day management will fall to the parent the appellant is with.
26. Mr Davison accepts that there is a minor discrepancy about whether the relationship between the appellant and his mother broke down in 2019 or 2020 (that is whether it was before or during the pandemic lockdown) but this does not undermine the evidence.
27. Mr Davison acknowledges that much of the evidence provided during the hearing and in documentary form does not relate to the appellant's upbringing because they relate to events after the appellant turned 18. Mr Davison reminded us of the sponsor's first witness statement and the description it contains of the sole responsibility issues and about exceptional compassionate factors making exclusion undesirable.
28. Mr Davison submitted that the sponsor cares deeply for the appellant and that the appellant faces significant difficulties without his father being close by. The sponsor worries about the appellant dropping out of education, leaving home, or having a serious accident.

Legal Framework

29. The Statement of Changes in Immigration Rules (HC395) includes the following provisions for the entry clearance of children such as the appellant.

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

(ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and

(v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and

(vi) holds a valid United Kingdom entry clearance for entry in this capacity; and

(vii) does not fall for refusal under the general grounds for refusal.

30. There is no dispute other than in respect of paragraphs 297(i)(e) and 297(i)(f).

31. The question of sole responsibility specified in paragraph 297(i)(e) can be summarised in the following way (see headnote of TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049):

"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".

and at paragraph 52:

52. Questions of "sole responsibility" under the immigration rules should be approached as follows:
- i. Who has "responsibility" for a child's upbringing and whether that responsibility is "sole" is a factual matter to be decided upon all the evidence.
 - ii. The term "responsibility" in the immigration rules should not to (sic) be understood as a theoretical or legal obligation but rather as a practical one which, in each case, looks to who in fact is exercising responsibility for the child. That responsibility may have been for a short duration in that the present arrangements may have begun quite recently.
 - iii. "Responsibility" for a child's upbringing may be undertaken by individuals other than a child's parents and may be shared between different individuals: which may particularly arise where the child remains in its own country whilst the only parent involved in its life travels to and lives in the UK.
 - iv. Wherever the parents are, if both parents are involved in the upbringing of the child, it will be exceptional that one of them will have sole responsibility.
 - v. If it is said that both are not involved in the child's upbringing, one of the indicators for that will be that the other has abandoned or abdicated his responsibility. In such cases, it may well be justified to find that that parent no longer has responsibility for the child.
 - vi. However, the issue of sole responsibility is not just a matter between the parents. So even if there is only one parent involved in the child's upbringing, that parent may not have sole responsibility.
 - vii. In the circumstances likely to arise, day-to-day responsibility (or decision-making) for the child's welfare may necessarily be shared with others (such as relatives or friends) because of the geographical separation between the parent and child.
 - viii. That, however, does not prevent the parent having sole responsibility within the meaning of the Rules.
 - ix. The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child's upbringing including making all the important decisions in the child's life. If not, responsibility is shared and so not "sole".

32. We also have regard to paragraph 13 of DR (Immigration Rules - Rule 297 (e) (sic) :sole responsibility) Philippines [2003] UKIAT 00109.

13. In Nmaju v Entry Clearance Officer [2001] INLR 26, the Court of Appeal considered the case of a mother whose children were looked after by their father when she came to the United Kingdom in 1988 until September 1996 when the father refused to continue to look after the children and left them. Thereafter, from September 1996 until November 1996 when entry clearance was refused, the children were

looked after by a maid paid for by the mother. The Court of Appeal focused upon the period of 2 ½ months when the mother indisputably had sole responsibility for the children's upbringing. During this crucial period, there could only be two contenders for the role of the person with sole responsibility. It was the mother's paid employee, acting under the mother's express directions, or it was the mother herself. Not surprisingly, the Court of Appeal decided that it was the mother who had sole responsibility, rather than the maid. The Court of Appeal emphasised that the period of sole responsibility, although short, did not disqualify the mother.

33. The question of exclusion undesirable specified in paragraph 297(i)(f) can be summarised in the following way (see headnote of Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 88(IAC)):

i) The exercise of the duty by the Entry Clearance Officer to assess an application under the Immigration Rules as to whether there are family or other considerations making the child's exclusion undesirable inevitably involves an assessment of what the child's welfare and best interests require.

ii) Where an immigration decision engages Article 8 rights, due regard must be had to the UN Convention on the Rights of the Child. An entry clearance decision for the admission of a child under 18 is "an action concerning children...undertaken by...administrative authorities" and so by Article 3 "the best interests of the child shall be a primary consideration".

iii) Although the statutory duty under s.55 UK Borders Act 2009 only applies to children within the UK, the broader duty doubtless explains why the Secretary of State's IDI invites Entry Clearance Officers to consider the statutory guidance issued under s.55.

iv) Family considerations require an evaluation of the child's welfare including emotional needs. 'Other considerations' come in to play where there are other aspects of a child's life that are serious and compelling for example where an applicant is living in an unacceptable social and economic environment. The focus needs to be on the circumstances of the child in the light of his or her age, social backgrounds and developmental history and will involve inquiry as to whether:

- a. there is evidence of neglect or abuse;
- b. there are unmet needs that should be catered for;
- c. there are stable arrangements for the child's physical care;

The assessment involves consideration as to whether the combination of circumstances are sufficiently serious and compelling to require admission.

v) As a starting point the best interests of a child are usually best served by being with both or at least one of their parents. Continuity of residence is another factor; change in the place of residence where a child has grown up for a number of years when socially aware is important: see also SG (child of a polygamous marriage) Nepal [2012] UKUT 265 (IAC) [2012] Imm AR 939.

34. Of course, these are only some of the jurisprudence about paragraphs 297(i)(e) and (f) but they are sufficient for our purposes.
35. We recall that the burden of proof lies on the appellant and that the standard of proof is a balance of probabilities. In other words, it is for the appellant to prove that it is more likely than not that he satisfies one or both of the provisions in dispute.

Discussion

36. Having examined the evidence and considered the arguments, we have decided that the sponsor has not exercised sole responsibility over the appellant's upbringing.
37. We recall that the appellant turned 18 on 17 November 2021 and thereafter neither parent was responsible for his upbringing as he was an adult.
38. There is sufficient evidence in terms of message transcripts, fund transfers and visits to establish that the sponsor has provided financial support and advice and guidance throughout the period.
39. The sponsor admits that when he left Morocco in 2013, the appellant's mother was exercising parental responsibility over the appellant. The sponsor says this changed from when the appellant turned 15 or 16, from when the relationship between the appellant and his mother deteriorated to the point where she refused to take responsibility for him. The respondent disputes this.
40. Before we look at the sponsor's written and oral evidence, we examine the other evidence provided.
41. The appellant provided an affidavit on 27 July 2021, which includes the following:

I have the honour to submit my application for joining my father [the sponsor] in order to live with him and pursue my studies there. Besides, I am very attached to him as he the only one who supports me in everything, especially after the way my mother treats me changed. Since two years, I have been in need for care and attention. I am sure that living with my father would be better and would make me feel happier and safer. Please help me achieve my dream of living with my father.
42. We recognise that this affidavit was by the appellant when he was still a child but nevertheless accept that it records his wishes. However, it tells us little about the relationship between the appellant and his mother. It identifies that the relationship is strained. However, it does not tell us why the relationship changed in 2019 or why the appellant believes he needs care and attention.

43. The appellant's mother provided an affidavit on 27 July 2021, which includes the following:

I [the appellant's mother's name and address] hereby grant approval to my son [appellant's name] in order to travel outside the Kingdom of Morocco with his father. He is in the stage of adolescence and his relationship with me has become tough. He has become nervous and does not abide to me orders or answer my calls He befriends unwanted people, especially motorcyclists. Besides, he is strongly attached to his father. His life with me has been difficult since 2019- I informed his father about tills fact on said date and he is the one fully responsible for him. Out of my fear for his safety and in view of his attachment to his father [the sponsor], I grant full approval to my son [the appellant] in order to travel and live with his father outside the Kingdom of Morocco.

44. We draw two matters from this document. First, the mother is part of the decision-making process for the appellant to travel to the UK. This is evident by the fact that she is approving the proposal that he moves to the UK to live with his father. We find this is an indication that she shared responsibility for the appellant at that time. Second, the fact that she was having difficulty managing a teenage son is not enough to show that she had abdicated responsibility for her son. Many parents have difficulties controlling young adults, which is what we draw from the examples given by the mother.
45. The appellant's mother provided a further affidavit dated 2 January 2024, in which she stated:

I [the appellant's mother's name and address] hereby declare while I am in full possession of my mental faculties, that my son [the appellant], given that he is currently in his adolescence, his relations with me have become difficult and he is beginning to refuse to obey me and is not answering my telephone calls, just as he ahs begun to associate with unsavoury people, particularly motorcyclists, especially as hie strong attachment to his father has made it difficult for me since 2019 to have the necessary ascendancy to continue his education under good conditions, I informed his father of this and he is now in charge of supervising and guiding him, under his own responsibility. With a view to ensuring his safety and good education, and because of the strong attachment he has to his father [the sponsor], I declare that I am discharging myself of all responsibility in this regard.

46. We draw a further two matters from this document. First, there has been no change in the reasons why the appellant's mother says she is unable to manage and control him. Second, by the date of this affidavit, the appellant was 20 years old. There was no longer a need to give permission to him to leave Morocco. In fact, there was no need for the appellant's mother to be involved in the appellant's upbringing as he was by this time an adult.

47. We turn to the sponsor's evidence. The sponsor's written evidence indicates tensions between the appellant and his mother from 2018 and claims that by 2019 the relationship had broken down such that the appellant's mother was no longer responsible for him. The sponsor admits in his written and oral evidence that the appellant continues to live with his mother and that she provides his basic needs such as meals. The sponsor alleges that the fact the appellant has been locked out of the house at night is evidence of a severance in the relationship with his mother.
48. We disagree. The sponsor's accounts do no more than confirm that the relationship between the appellant and his mother is strained and has been tense since 2018 or 2019. The sponsor and the appellant's mother attribute this to a variety of reasons, including adolescence, immaturity, and lack of a father-figure. In oral evidence, the sponsor confirmed that he is in regular contact with the appellant's mother about his behaviour, and that he seeks to provide advice and guidance. The sponsor also confirmed that the appellant will also consult his mother. We have nothing to show that the appellant's mother stopped trying to exercise her responsibility over the appellant at that time up until the appellant turned 18.
49. When we look at the evidence, we can see that many of the issues about whether the appellant's mother has exercised control over the appellant relate to after the appellant turned 18. The appellant's mother became less confrontational with the appellant and stopped exercising control over him once he turned 18. It was after this time that he left school without gaining qualifications. The appellant's mother became less concerned if the appellant is late home, or who he associates with, after this time. In addition, the examples given by the sponsor of when he has been the sole decision maker, relate to the period after the appellant turned 18. The sponsor's evidence indicates that he discussed plans with the appellant, which is understandable as the appellant was by this time an adult.
50. We draw these different evidential threads together. Because the evidence does not establish that it is more likely than not that the sponsor exercised sole responsibility for the appellant's upbringing at any time whilst the appellant was a child, we reject the appeal under paragraph 297(i)(e). We agree with the respondent that throughout the appellant's childhood, his parents shared responsibility for his upbringing.
51. We turn to the second limb of the appeal and examine whether there are serious or compelling family or other considerations that make exclusion of the appellant undesirable.
52. The sponsor relies on an allegation that on one occasion in 2018 the appellant's mother restrained him whilst his sister beat him. Without condoning such action, it is a one-off incident in the evidence and was not repeated. We do not have a contemporary or first-hand account of the incident. It is not described by the appellant or his mother, or by any other testimony. The sponsor was not present and therefore is relying on

what he was told. We have no background to the incident, such as whether there was reason for the mother to restrain the appellant or for there to be such chastisement. We can see from the accounts that the incident was not treated as so significant by the sponsor that he arranged for the appellant to live elsewhere.

53. The sponsor also relies on occasions where the appellant was locked out of the house because he returned late. On the occasions described, the appellant went to stay with friends. The fact the appellant was locked out cannot be regarded as neglect or abuse because the appellant was of an age where he had personal responsibility for the situation, and the situation was resolved such that he was not endangered.
54. We conclude that overall, there is insufficient evidence to amount to negligence or abuse such as to trigger the provisions of paragraph 297(i)(f).
55. The other factors relied on by the sponsor are speculative. At the time of the application, the sponsor was concerned that the appellant might be involved in a serious accident because of his associating with motorcyclists. There was also concern that the appellant might engage in drugs. We note that at the time of the first appeal hearing and the sponsor's second statement, the same fears were expressed despite nothing having occurred in the intervening period. The same concerns are raised for this appeal, but again there is nothing other than speculation. Speculation cannot reach the high threshold to engage the provisions of paragraph 297(i)(f).

Decision

56. Because the appellant has not discharged the burden of proof to show that he satisfied the conditions in paragraphs 297(i)(e) or (f) of the immigration rules, his appeal falls to be dismissed.

Notice of Decision

We remake the decision.

The appeal is dismissed.

Judge John McCarthy

Deputy Judge of the Upper Tribunal

Date: 27 February 2024