



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000678

First-tier Tribunal No: HU/52441/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

HARMANDER SINGH
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P. Lewis, counsel, instructed by Waterfords Solicitors
For the Respondent: Mr M. Parvar, Senior Home Office Presenting Officer

Heard at Field House on 17 April 2024

DECISION AND REASONS

Introduction

1. The Appellant is a 14-year-old Indian national who wishes to join his mother, who has been granted leave to remain in the UK as the parent of a British child, the Appellant's brother. His application for entry clearance was refused by the Respondent on 21 January 2023 and his appeal against that decision on human rights grounds was refused by First-tier Tribunal Judge S J Clarke ("the Judge") in a decision dated 10 December 2023 ("the FTT Decision"). He now appeals to this Tribunal with permission of First-tier Tribunal Judge I D Boyes granted on 1 February 2024.
2. At the outset, I note that the Judge made an anonymity order in this case "because this appeal concerns children." It is well established that that is not, of itself, a sufficient basis on which to restrict open justice by anonymising an appellant's identity, so I enquired of Mr Lewis at the start of the hearing whether

he sought for that order to be continued. He took instructions and confirmed that he was not making any such application. I therefore do not continue the anonymity order which the Judge made.

3. Before turning to the substance of this appeal, I should emphasise that the bundle prepared by Waterfords Solicitors fails to comply in a number of respects with the Tribunal's standard directions that were sent to Waterfords on 5 March 2024. In particular, those directions required compliance with the Chamber's Guidance note on CE-File and electronic bundles, yet the index was not hyperlinked, contrary to paragraph 12 of that Guidance, and the significant documents and sections of the bundle were not bookmarked, contrary to paragraph 13. This made finding relevant documents considerably more onerous and time-consuming for the Tribunal that it should have been. No explanation was provided for these failings.

Background

4. The Appellant's parents are both Indian citizens. They married in May 2009. The Appellant was born in India on 25 March 2010. His parents relocated to the UK when the Appellant was around 6 months old (i.e. around October 2010) that year and the Appellant was left in the care of his paternal grandparents.
5. In 2015, the Appellant's parents had a second child, Gursupinderjot, in 2015. It would appear that he would have been entitled to registration as an Indian citizen, but, his parents not having registered him, he was left stateless until he was registered as a British citizen under the statelessness provisions of the British Nationality Act 1981 in 2021.
6. The Appellant's parents divorced in 2017. From 2018 to 2021, the Appellant lived with his father in Portugal, but returned to India to continue living with his grandparents.
7. The Appellant's mother and brother with his maternal aunt, her boyfriend and her two children. The proposal is for the Appellant to reside there also.
8. Since the Appellant's mother left India in 2010, she has seen her son in person once in the intervening years, in November 2023, when, shortly before the hearing before the First-tier Tribunal, she visited him in India.

The FTT Decision

9. The agreed issues before the Judge were whether the Appellant's mother had sole responsibility for him, or the refusal would otherwise be a disproportionate interference with his right to respect for his family life.
10. The FTT Decision is not divided into sections, but the Judge's assessment of the facts and evidence appears to begin at para.7, where he notes that in the Appellant's application for entry clearance he stated that both his parents have shared responsibility for his well-being and that he now wants to stay with his mother and his brother in the UK. The Judge notes that the Appellant states that he depends upon his grandparents and parents and the application form set out infirmities of his grandfather "but is silent upon the father and there is no explanation that he could not care for the Appellant."

11. There was some discussion about para.8 at the hearing before me and it merits setting out in full:
“Since the decision new evidence has been provided. The grandfather has provided some limited evidence regarding the grandfather’s discharge from the heart hospital on 13 January 2023 following his admission on 9 February 2023. There is no medical advice not to look after a child or any suggestion that he could not continue looking after the Appellant with his wife. The only evidence regarding the grandmother having anything preventing her from looking after the Appellant is she has allergies but there is no medical evidence to show she cannot look after/care for the Appellant. There is no medical evidence that the father cannot look after the Appellant. The evidence is what the father states, the evidence of the sponsor that he has heart problems and this is referenced by the grandmother as well. But there is nothing cogent to confirm his inability to continue sharing his parenting as he has done so in the past including until 2021 looking after the Appellant since 2018 in Portugal.”
12. At para.9 the Judge considers a letter from the Appellant’s father, noting that he acknowledged *“the main and sole contributions”* by the Appellant’s mother. He considered that *“there are various contradictions in what has been stated – it is either sole or main not both”* and that *“the father contradicts himself when he goes on to write that the sponsor is the main and sole committed parent to fostering a positive and supportive parenting relationship.”*
13. At paras.10-11, the Judge summarises evidence from the Appellant’s grandmother in relation to the situation in India.
14. At para.12, the Judge notes that the Appellant’s mother has visited her son once in India and the explanation for not visiting sooner was because of delays in obtaining her status in the UK.
15. At para. 13, the Judge considers a letter from the Principal of the Appellant’s school in India, noting that it is silent about the Appellant’s father and grandparents and their respective roles in the Appellant’s life.
16. At para. 14, the Judge draws the strands together and finds that the Appellant’s mother does not have sole responsibility and that she has always shared the decision making with the father. The Judge notes that,
“there is no reliable evidence from independent sources to confirm that the father is now completely not involved in the life of the Appellant as was the attempt to portray him at the hearing. The principal carefully wrote only the role of the sponsor but his silence regarding the father and his role and not expressly stating that the father has no role whatsoever is a large gap in the evidence. There is no plausible explanation as to why the father would change his role in the life of the Appellant so suddenly having cared for him in Portugal from 2018 to 2021 and I find it is simply to try and enhance and bolster the weak case of the sponsor having sole responsibility. The sponsor had not seen the Appellant since 2010 until weeks before the hearing, and there is no explanation as to why it is the Appellant could not have visited her in the UK when he was living with the father in Portugal.”
17. At para. 15, the Judge turned to whether there were compelling circumstances to allow entry clearance and repeated her observations about the evidence

“which is that there are gaps, and I find embellishments simply to suggest that the grandparents cannot continue to care day to day for the Appellant.” He continued,

“The Appellant is now 13 years of age and capable of many aspects of looking after himself such as dressing, feeding, etc, and it is more of a supervisory role that is required. The principal identified the Appellant as well grounded and there is nothing to suggest that he has any unmet needs or special attention which is not being currently provided for. I do not find there are any circumstances let alone compelling requiring entry clearance to be granted. On the contrary, I find that it would be in the best interests of the Appellant to remain with his grandparents and to continue the status quo where he has spent the majority of his life, he had only seen his mother since he was 6 months old until recently, and it would be a large wrench in his young life for him to move to the UK which is a country he has never visited, to live in a household of people he may not or appears not to have met.”

18. At para. 16, the Judge set out various legal propositions relating to Article 8 ECHR when considered outside of the Rules, and noted that he took into account the factors in section 117B of the Nationality, Immigration and Asylum Act 2002. At para. 17, he concluded that *“there is no family life with the sponsor given they have not lived together, and there is no breach of family life because the best interest of the Appellant are [sic] to continue to live with the grandparents with whom he has lived the majority of his life, and both parents have access to see him on visits.”*

Grounds of Appeal

19. The grounds of appeal are dated 31 December 2023, and, as Judge Boyes noted in granting permission, *“[i]t would have been of assistance if the grounds were properly delineated with headings and being properly numbered.”* It is worth reminding the Appellant’s solicitors, who I assume drafted the (unsigned) grounds, of what was said by the President in Nixon (permission to appeal: grounds) [2014] UKUT 368 (IAC):

“It is axiomatic that every application for permission to appeal to the Upper Tribunal should identify, clearly and with all necessary particulars, the error/s of law for which the moving party contends. This must be effected in terms which are recognisable and comprehensible. A properly compiled application for permission to appeal will convey at once to the Judge concerned the error/s of law said to have been committed. It should not be necessary for the permission Judge to hunt and mine in order to understand the basis and thrust of the application... These are elementary requirements and standards.”

20. The grounds fail to comply with these elementary requirements.
21. Helpfully, Mr Lewis, in his skeleton argument, distilled the Appellant’s case into three numbered grounds of appeal, which he confirmed represented the totality of the Appellant’s case. These can be summarised as follows:

- a. Ground 1: Failure to properly consider the evidence;

- b. Ground 2: Failure to consider whether sole responsibility had been exercised for a limited period of time;
- c. Ground 3: Failure properly to consider the existence of 'compelling circumstances'.

22. Judge Boyes granted permission to appeal on all grounds.

23. There was no rule 24 response from the Respondent.

Ground 1: Failure properly to consider the evidence

24. This ground asserts that the Judge omitted to take account of evidence relating to the inability of the Appellant's grandfather to continue to care for him.

25. It is important when considering an allegation that a judge has failed to take account of evidence before him or her to have well in mind that on an appeal it is to be assumed that a judge has taken account of all of the evidence before him, unless there is a compelling reason to the contrary. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it. See Volpi v Volpi [2022] EWCA Civ 464 at [2(iii)].

26. The ground is put on two bases.

27. First, it is submitted that, whereas the Judge said (para. 8) that "*[t]here is no medical advice not to look after a child or any suggestion that he could not continue looking after the Appellant with his wife*", there was in fact such evidence, by way of a letter of 20 October 2022 from a Dr Kapoor, which stated, "*This is to certify that Dharamjit Singh, 65years, residence of # 137, Preet Nagar, Opposite Aam Khas bagh, Sirhind, Fatehgarh Sahib, Punjab- 140406 is under my treatment since 2 years and is suffering from CAD, T2DM with BHP and is old enough and unable to take care of his grandson due to his chronic ailments.*" Mr Lewis also relied on the sentence in para.8 of the FTT Decision that "*There is no medical evidence that the father cannot look after the Appellant*", which he submitted had to be a reference to the grandfather, not the father.

28. In my judgment, this aspect of ground 1 is predicated on a misreading of para. 8 of the FTT Decision. The sentence "*There is no medical advice not to look after a child...*" has to be seen in the context of the previous two sentences of that paragraph. The Judge is here referring to new evidence provided since the decision taken, and, in particular, to the evidence regarding the grandfather's discharge from the heart hospital on 13 January 2023. In noting that there is no medical advice not to look after a child, the Judge was in my view referring to the contents of the discharge evidence. Mr Lewis did not suggest that there was any advice not to look after a child, or suggestion that he could not continue to look after the Appellant with his wife, in that evidence.

29. As to the sentence "*There is no medical evidence that the father cannot look after the Appellant*", I do not accept that this is a reference to the grandfather. In para. 8, the Judge considers each of the relevant family members in turn. First, he considers the grandfather, then notes the position of the grandmother and then turns to the position of the Appellant's father. It is right to note that the next sentence is somewhat confused as the Judge appears to have thought that there was evidence of the father, rather than the grandfather, having a heart condition, but it is obvious from the final sentence of para.8, referring to him having looked

after the Appellant in Portugal, that this is all intended to relate to the father, not the grandfather. Given that there was no evidence of any medical problems on the part of the father, this confusion on the Judge's part as to whether he also had heart problems cannot assist the Appellant.

30. As noted, Mr Lewis pointed to a letter provided in 2022, which stated that the Appellant's grandfather is unable to take care of his grandson. As to this however, as noted above, it cannot be assumed simply because that letter was not referred to in the FTT Decision that it was not taken into account. Moreover, if that is wrong, and this letter has been omitted from the Judge's consideration, in my judgment that is immaterial. The letter from Dr Kapoor, the totality of which I have set out above, is thin in the extreme and no explanation is given by Dr Kapoor as to what it is about the grandfather's chronic ailments that means that he is unable to take care of his grandson. Moreover, as the Judge noted, there was nothing in the evidence to suggest that the Appellant's grandmother is unable to take care of the Appellant, particularly given that, as the Judge also recognised at para.15, the Appellant was 13 and more of a supervisory role is therefore required. As such, I cannot see that this letter could have properly made any difference to the assessment of the Appellant's situation in India.
31. I therefore do not accept the first basis on which Ground 1 is put.
32. The second basis for suggesting that the Judge omitted to consider all of the evidence in relation to the Appellant's grandfather's position is the lack of reference to the Appellant's mother's oral evidence. The grounds contain an extract from the note of the hearing made by the Appellant's solicitors, which was not referred to. However, as noted above, the lack of reference to this evidence is not a compelling reason to assume that the Judge has left it out of account and no other reason is put forward to suggest that it was left out of account.
33. I therefore reject ground 1.

Ground 2: Failure to consider whether sole responsibility had been exercised for a limited period

34. The essence of this ground is that the Judge wrongly failed to have proper regard to the evidence of the change in circumstances that led to the Appellant's mother assuming sole responsibility more recently and the evidence of the inability of the Appellant's grandparents to provide the required care for the Appellant.
35. A number of older authorities were referred to by Mr Lewis in his skeleton argument. These were all considered by the Asylum and Immigration Tribunal in TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049, which decision continues to set out the approach to be taken to the question of whether a parent has (or has had) sole responsibility for a child seeking entry clearance. In particular, the Tribunal held that although there is no temporal restriction on how long sole responsibility is required to have been exercised by the relevant parent, an appellant's burden of showing sole responsibility may be more difficult to discharge when there is only a short period to point to (see para.28).
36. I do not consider that the Judge failed to have regard to the claimed change in family circumstances. The Judge, in para. 14 found that the Appellant's parents have always shared the decision making and that there was no reliable evidence

from independent sources to confirm that the father was “*now completely not involved*” in the life of the Appellant, as the Appellant had sought to portray the situation. The use of the word “*now*” in this passage indicates that the Judge was well aware that the Appellant’s case was that there had been a significant change of circumstances in recent times. She did not fail to have regard to this aspect of the appeal, or evidence in support of it; she rejected it.

37. This ground of appeal therefore fails.

Ground 3: Compelling circumstances

38. Under this ground, the Appellant submits that the Judge failed to give adequate weight to the evidence of current circumstances when assessing the existence of compelling circumstances, including that the Appellant had left Portugal on account of his unhappiness in living there with his father, the fact that the Appellant’s mother had taken on a greater role in providing both material and emotional support and the impact of separation upon the Appellant’s brother. It is said that the Appellant’s mother’s oral evidence described this in detail. In the Grounds themselves, it is said that “*[o]ne of the key parts of the Mother’s oral evidence centred upon the emotional bond both siblings have and how they both were desperately holding on to each other when it was time for the Mother to depart for the UK.*” However, there is no evidence of what precisely was said in this respect, no witness statement has been provided by either the Appellant’s mother or the Appellant’s solicitor as to what was said and Mr Lewis could not give evidence of this from the Bar (to the extent that that is permissible) because he did not appear below.

39. What weight to give to evidence is quintessentially a matter for the fact-finding tribunal. As to the Appellant’s reason for leaving Portugal, the Judge refers to this in para. 5. Likewise, the Judge refers in para.9 to the fact that the Appellant’s father’s evidence was that the Appellant’s mother was the main contributor. I do not accept that the mother’s oral evidence was left out of account simply because it is not referred to. The Judge came to conclusions she was entitled to reach for the reasons she gave. There is nothing to suggest that weight she gave to the various strands of evidence on which the Appellant relied was perverse or otherwise outside the wide range of what is rationally supportable.

40. Ground 3 is therefore also rejected. It follows that the appeal is dismissed.

Notice of Decision

The decision of First-tier Tribunal Judge Clarke dated 10 December 2023 does not involve the making of an error of law and shall stand.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 May 2024