



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004051

First-tier Tribunal No: HU/61691/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 19 November 2024**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

EY
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Lee, instructed by Garth Coates Solicitors

For the Respondent: Ms H Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 15 November 2024

DECISION AND REASONS

1. The appellant is a citizen of Turkey born on 19 September 2007. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for entry clearance to the UK.

2. The appellant applied on 6 August 2023 for entry clearance to the UK under paragraph 297 of the Immigration Rules on the basis of her family life with her father who had lived in the UK since 2016 and had been naturalised as a British citizen in

2022. That application followed an earlier refusal decision on 18 July 2023 relating to an application for entry clearance made on 29 June 2023 on the same basis. The appellant's application of 6 August 2023 was refused in a decision of 4 September 2023.

3. The respondent, in refusing the application, noted that the appellant's mother was not deceased and was not present and settled in the UK or applying for settlement, and that accordingly paragraphs 297(i)(a) to (i)(d) did not apply. In addition the appellant had not stated that there were any serious and compelling family or other considerations which would make her exclusion undesirable, such that paragraph 297(i)(f) did not apply. The respondent therefore considered whether the appellant's father had had sole responsibility for her upbringing, in accordance with paragraph 297(i)(e) and concluded that he did not. The respondent noted that the appellant had provided a legal ruling from July 2023 giving her father custody of her, together with evidence showing regular in-person and remote contact with her sponsor, including chatlogs, photos of herself and her sponsor together, and travel bookings showing that they had regularly visited each other. The respondent considered that, whilst that evidence demonstrated that the appellant and her sponsor had a genuine family relationship, there was no evidence which showed that the sponsor had day-to-day responsibility for her. The respondent considered that the legal ruling provided evidence that, while the sponsor had been involved in the appellant's life, her mother had been the parent primarily responsible for her day-to-day care, and that the most recent legal ruling appeared to have been made solely for the purpose of ensuring that the appellant was able to receive an education in the UK, not on the grounds of prior sole responsibility. The respondent was therefore not satisfied that the sponsor had had sole responsibility for the appellant's upbringing and accordingly refused the application under paragraph 297(i)(e) of the immigration rules. The respondent considered further that the decision was not in breach of the appellant's human rights.

4. The appellant appealed against that decision. Her appeal was heard by First-tier Tribunal Judge Moxon on 3 June 2024. The sponsor gave evidence before the judge who accepted that the appellant and sponsor had qualifying family life together but did not accept that the sponsor had sole responsibility for the appellant. The judge noted that the appellant was relying upon the Turkish Court document confirming that custody had been transferred to the sponsor and that she was claiming that her relationship with her mother had deteriorated. It was said that the appellant's mother was about to remarry. The appellant was also relying upon her treatment in Turkey arising from being Alevi. The judge considered that the Turkish court document showed that the transfer of custody was not due to the appellant's mother abandoning responsibility for her, but was a result of a decision made between her parents that education in the United Kingdom would be preferable to education in Turkey. The judge noted that there was no reference within the document to a deterioration of the relationship between mother and child or any difficulty arising from being Alevi. The judge noted that the appellant continued to live with her mother in Turkey and considered that it was not arguable that her mother did not bear some responsibility for her upbringing as she maintained the day-to-day care of the appellant and had a significant role in decision-making. The judge did not accept the sponsor's evidence that the appellant's mother called him whenever a decision needed to be made. He noted the lack of evidence to support the claim that the appellant's mother was due to remarry. The judge found that it was clear from the documentary evidence that the reason for the appellant seeking entry clearance to the United Kingdom was not because the sponsor had sole parental responsibility for her and that her mother had relinquished responsibility or on account of her ethnicity, but that it was because the family had decided that there would be educational advantages to the appellant. He

found that the reasons provided had been fabricated to bolster a weak application and he concluded that the appellant did not satisfy paragraph 297(i)(e) or (f) of the Rules and that the interference with the appellant's family life was proportionate and not in breach of Article 8. He accordingly dismissed the appeal, in a decision promulgated on 4 June 2024.

5. The appellant sought permission to appeal against Judge Moxon's decision on two grounds. Firstly, that the judge had given inadequate reasons for rejecting the evidence of the sponsor as to his sole responsibility for the appellant: specifically that he had given inadequate reasons for rejecting the sponsor's evidence that the appellant's mother called him whenever a decision needed to be made about the appellant; he had wrongly drawn an adverse inference from the absence in the Turkish document to reference to the appellant's problems with the relationship with her mother and arising from her Alevi faith; he had failed to give reasons for rejecting the evidence that the appellant was at risk of harm and discrimination and for rejecting the evidence of the deterioration of the relationship with her mother; and he had erred by downplaying the seriousness of the problems experienced by the appellant on account of her Alevi heritage (inherited through her father). Secondly, that the judge's decision was devoid of any adequate assessment of where the appellant's best interests lay.

6. Permission was granted in the First-tier Tribunal and the matter came before me for a hearing.

Hearing and Submissions

7. Both parties made submissions.

8. Mr Lee relied on his skeleton argument produced for the hearing and submitted, with regard to the first ground, that the judge had made three errors in his findings on sole responsibility, as set out in the grounds. He relied upon the judgment in TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 in submitting firstly that the judge had given inadequate reasons for his findings on sole responsibility. He submitted that it was made clear in TD that it was possible for a person to retain day to day care for a child but not to have sole responsibility for that child, and that it was the sponsor's evidence that that was how it worked in this case. The judge simply rejected the sponsor's evidence at [15] without giving any reasons for doing so, which was an error of law. Secondly, the judge had wrongly drawn an adverse inference from the absence in the Turkish document to reference to the appellant's problems with the relationship with her mother and arising from her Alevi faith, but the sponsor had explained that omission in his statement at [22] and the judge had failed to address that explanation. Thirdly, the judge had rejected the evidence that the appellant was at risk of harm and discrimination on account of her Alevi faith but had failed to take account of the background evidence which supported that claim. As for the second ground, Mr Lee submitted that, whilst the judge had referred to the case of Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 00088, he had failed to make any findings on where the best interests of the appellant lay and had failed to take into account, in that respect, the discrimination faced by the appellant in Turkey as an Alevi.

9. Ms Gilmour submitted, with regard to the first ground, that the judge had given adequate reasons for finding that sole responsibility had not been established. It was an undisputed finding of fact that the appellant lived with her mother. The appellant's mother had stated in her affidavit that she wanted the appellant to live in the UK to

benefit from education. The appellant's mother was involved in the entry clearance application and had set up the Turkish court proceedings. The Whatsapp files were messages between the appellant and sponsor and there was no documentary evidence to support the claim that the appellant's mother would call the sponsor to engage him in decision-making. It was therefore open to the judge to find that the appellant's mother had some responsibility for the appellant and that the sponsor did not have sole responsibility. There was no evidence of discrimination against the appellant and the judge addressed that, as well as the claim about the deterioration in the relationship between the appellant and her mother, at [14], [20], [21] and [23] and [24]. The judge addressed the background evidence at [25]. He considered the issue holistically and fully engaged with the evidence. As for the second ground, Ms Gilmour submitted that the judge had correctly self-directed himself at [7] in regard to the best interests of the child and had undertaken the relevant consideration at [31]. The decision should be upheld.

10. Mr Lee responded and reiterated the points previously made.

Analysis

11. The first point made by Mr Lee was that the judge had erred by at [15] by equating the appellant's mother maintaining day-to-day care for the appellant and having a significant role in decision-making, with the sponsor not having sole responsibility, whereas TD found to the contrary. He submitted that the sponsor's evidence, that the appellant's mother called him whenever a decision needed to be made, was crucial in demonstrating that he controlled the direction of the appellant's life and thus had sole responsibility for her, and that the judge had given inadequate reasons for rejecting that evidence. However, as Ms Gilmour submitted, the rejection of the sponsor's evidence has to be looked at in the context of the judge's overall findings, taken as a whole, rather than isolating one sentence. The tenor of those overall findings, as expressed at [17], was that the true purpose of the application was for the appellant to receive an education in the UK and that there had not been a genuine and complete transfer of responsibility to the sponsor. The judge gave numerous reasons for reaching that conclusion, relying upon a cumulation of factors: namely at [15] that the appellant continued to live with her mother; at [15] and [23] that the appellant's mother's affidavit made it clear that she wanted the appellant to live in the UK to benefit from the education system there, and made no reference in her affidavit to any deterioration in their relationship; at [23] that the only evidence of any issues between the appellant and her mother was a brief reference in her covering letter for the second visa application to "challenges" in their relationship and that the sponsor's evidence at the hearing was simply that teenagers get cross a lot; at [16] that there was no evidence to support the claim that the appellant's mother was due to re-marry, no reference to problems arising from a new relationship, and the sponsor was unable to state when the wedding was due to occur; and at [14] that the Turkish court documents made it clear that the transfer of custody was solely to enable the appellant to receive an education in the UK, with no reference to any difficulties in the relationship between the appellant and her mother or otherwise.

12. In addition, as Ms Gilmour submitted, there was no documentary evidence of any communication between the appellant's mother and father to support the claim that she called him every time there was a decision to be made about the appellant, but rather all the Whatsapp communications submitted were between the appellant and the sponsor. Although not a point made by the parties, I also note that the Turkish court documents make it clear that following the appellant's parents' divorce, custody rights were solely given to the appellant's mother and the application to transfer

custody to the sponsor was made only at the time of the first entry clearance application. For all of these reasons it seems to me that, on the evidence available, it was entirely open to the judge to find that the transfer of custody was simply an arrangement put in place to enable the appellant to travel to the UK to benefit from the education system here and that there was never any genuine abandonment of responsibility by her mother or transfer of responsibility to the sponsor. It is clear from [11] of his decision that the judge was fully aware of the relevant test for demonstrating 'sole responsibility' and that he followed the guidance in TD. I find nothing inconsistent in the judge's findings with the guidance in that decision and find no merit in the challenge to the judge's decision in that respect.

13. There is, likewise, no merit in the second challenge in relation to the judge's approach to the Turkish court document. Mr Lee submitted that the appellant, at [22] onwards of his witness statement, had given an explanation as to why he and his ex-wife cited educational reasons for the transfer of custody to himself and did not mention the discrimination the appellant suffered as an Alevi, the family problems arising from her mixed heritage and her mother's plans to re-marry. That explanation was that mention of such matters would give rise to problems and possible legal repercussions with the Turkish authorities. Mr Lee submitted that the judge had failed to consider that explanation. However the judge clearly addressed that explanation, at [22], noting that the claimed fear that mention of these matters would cause problems with the Turkish authorities did not explain why none of the other documentary evidence provided details of these concerns. As mentioned above, the judge noted at [16] the absence of any reference by the appellant's mother in her affidavit or letter of problems arising out of a new relationship and plans to marry, at [20] he noted that the sponsor gave no examples of his daughter being mistreated owing to her ethnicity other than receiving some unpleasant comments and at [22] he noted the absence of any reference to discrimination in the documentation from her mother and within the visa application and covering letter. Further, at [24], the judge referred to the appellant having willingly returned to Turkey after her past visits. In the circumstances it seems to me that it was entirely open to the judge to draw the adverse conclusions that he did from the omissions in the court documents and to take what he did from the documents.

14. As for the assertion that the judge failed to have regard to the background evidence which supported the appellant's claim to have experienced discrimination as an Alevi, it is clear that the judge did have regard to that evidence, referring to it at [25] of his decision. Although Mr Lee, in his skeleton argument at [15], relies upon one article before the judge, it was not a requirement for the judge to address each and every document before him. In any event the point made by the judge, at [25], was that the evidence relied upon by the appellant in relation to her own situation was very limited and that the evidence produced from her school showed that she was thriving there. The judge was accordingly perfectly entitled to reject the argument that the appellant was at risk of significant discrimination as a result of her Alevi faith and to reject that as a reason for custody being transferred to her father.

15. In the circumstances there is no merit in the assertion in the grounds that the judge erred in his assessment of the 'sole responsibility' issue or that he failed to give adequate reasons for his findings on the issue. On the contrary, the judge clearly had full regard to the evidence before him and provided cogent reasons for concluding that the evidence did not demonstrate that the sponsor had sole responsibility for the appellant. The judge was fully and properly entitled to reach the conclusion that he did.

16. The second ground asserts that the judge's assessment of 'serious and compelling family or other considerations' failed to include any consideration of, or findings on, where the appellant's best interests lay. Again, there is no merit in this ground. The judge, at [7], properly directed himself on the need to consider the best interests of the child in accordance with the guidance in Mundeba (s.55 and para 297(i) (f)) Democratic Republic of Congo [2013] UKUT 88 and in concluding, at [32], made clear that he had considered the matter. At [20] to [25] he rejected the claimed difficulties experienced by the appellant in Turkey in terms of discrimination and a deterioration in her relationship with her mother and, at [31], he conducted what is clearly a best interests consideration. Although the judge did not state, in terms, that the appellant's best interests lay in remaining with her mother in Turkey, it is clear that that was what he found at [31], in particular in the first sentence. Having regard to that finding in the context of his overall findings about the appellant's education and her life in Turkey with her mother, the judge was perfectly entitled to conclude as he did.

17. For all of these reasons I do not find the grounds to be made out. The judge's decision was based upon a full and careful assessment of all relevant matters, with clear and cogently reasoned findings. He reached a conclusion which was fully and properly open to him on the basis of the evidence. Accordingly, I uphold his decision.

Notice of Decision

18. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Anonymity

The Anonymity Order made by the First-tier Tribunal is continued, at Mr Lee's request and with Ms Gilmour's agreement.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 18 November
2024