Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: OA/10912/2012

THE IMMIGRATION ACTS

Heard at Newport	**Determination Promulgated**
On 24 July 2013	**On 10 September 2013**

Before

Mr C M G Ockelton, Vice President
Upper Tribunal Judge Grubb

Between

JDR

Appellant

and

ENTRY CLEARANCE OFFICER, MANILA

Respondent

Representation:

For the Appellant: The Sponsor
For the Respondent: Ms Emily Martin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of the Philippines, now aged 13. He applied to the respondent for entry clearance to the United Kingdom as the child of the sponsor, who has indefinite leave to remain in the United Kingdom. His application was refused on 17 May 2012. He appealed to the First-tier Tribunal, and Judge Howard dismissed his appeal. In order to succeed in an application or an appeal, the

appellant needed to show that, at the date of the decision, he met all the requirements of paragraph 297 of the Statement of Changes in Immigration Rules, HC 395. Neither the Entry Clearance Officer nor the judge of the First-tier Tribunal was satisfied that the sponsor had had sole responsibility for the appellant's upbringing, or that the accommodation requirements of the Rules were met.

2. The appellant, through the sponsor, then applied for permission to appeal to this Tribunal. The First-tier Tribunal refused permission. When the application was renewed, Upper Tribunal Judge McGeachy granted permission, on the basis that "it is, just, arguable" that the First-tier Tribunal Judge had erred in his approach to sole responsibility. Judge McGeachy made no reference to the difficulties in relation to accommodation.

3. The sponsor appeared before us, and told us something about the accommodation. She pays rent of £250 a month to a friend, with whom she shares a house. She has her own bedroom, as does the friend, her landlady. We received the clear impression that they share the rest of the premises. When asked where the appellant would live if he came to the United Kingdom, the sponsor asserted that there was a study at the house, which could be converted into a bedroom for him. There had, we think, been no previous reference to this proposed arrangement.

4. The Entry Clearance Officer and the judge of the First-tier Tribunal appear to have been troubled by what they saw as a lack of clear evidence that the rent was in fact being paid. The position is that there are, in the sponsor's bank statements, a number of regular payments to a payee whom she identified as her landlady. The payments are not always of the amount of rent. The sponsor told us that the reason for that is that they also share household expenses, and that there is sometimes a balance due to one or the other of them arising out of shopping trips. We are content for the purposes of this appeal to accept that explanation, and we accept that there is, and has been for some years, an arrangement under which the sponsor pays her friend in order to share her house.

5. That, however, is not the principal question in relation to accommodation so far as we are concerned. We are concerned with whether there will be adequate accommodation for the appellant if he were to come to the United Kingdom. On that point the evidence is, to say the least, less than satisfactory. It seems to us that there would need to be evidence of what the arrangements for the appellant's accommodation would be, and evidence that those proposals could genuinely take effect. In particular, the appellant, presumably through the sponsor, would need to show that he would have access to some part of the house other than his mother's bedroom, for his own purposes (sharing a bedroom with his mother would, at his age, not be adequate accommodation for either of them.)

6. The starting point in assessing the accommodation must be the tenancy agreement between the sponsor and her friend, which, the sponsor told us, was entered into in order to support the present application. It is a document in standard form by which the sponsor's friend lets the house to her. That immediately presents a difficulty,

because the tenancy agreement, clearly binding on both the sponsor and her friend, gives the sponsor exclusive occupation of the entire house as the tenant. In other words, the evidence that has been produced for the present application does not reflect the true situation as described by both the sponsor and, in a letter to the Tribunal, the friend. The friend's letter is dated 26 December 2012. It does not specify the parts of the house that the sponsor occupies or is entitled to occupy. It refers to the two bedrooms and to "one study room, which is to be converted as a spare bedroom". The friend writes "I believe that [the appellant] will be accommodated well in this house". She does not appear to give any undertaking to that effect, she does not specify that the "spare" bedroom will be committed to the appellant's use, and she provides no explanation for the fact that, if the tenancy agreement is to be believed, she is no longer to be regarded as living in the house at all.

7. The letter post-dates the decision, and in our judgement cannot be relied upon as accurately reflecting plans that had already been made before the date of the decision. In any event, it is clear that the sponsor and her friend were prepared to try and mislead the Tribunal by together constructing a document which does not reflect reality but which does, on any reading of it, indicate that the sponsor has an entire house available to her on a legally enforceable lease.

8. In those circumstances it cannot be said that any error made by the Judge in assessing the evidence as to accommodation was one which ought to cause his determination on that or any other issue to be set aside. The evidence is clearly wholly insufficient to establish that, on his arrival in the United Kingdom, the appellant would be adequately accommodated.

9. In those circumstances we need to say little about the judge's approach to sole responsibility, save this. If it had been the only issue before us we might have had some doubts about whether the judge's conclusions on sole responsibility could properly be sustained. If the sponsor still wants the appellant to come and live with her, there will need to be a new application, in which all the requirements of the rules are properly addressed. We do not think that anybody should place reliance upon the conclusions of the judge on whether the sponsor has had sole responsibility for the appellant: it is a matter that will need to be decided anew on the evidence available at the time of any future application.

10. For the reasons we have given in relation to accommodation however, this appeal must be dismissed and we dismiss it.

C M G OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 21 August 2013