



**Upper Tribunal
(Immigration and Asylum Chamber)**
OA/05504/2013

Appeal Numbers:

THE IMMIGRATION ACTS

**Heard at Field House
On 10th September 2014**

Determination
Promulgated
On 17th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

AVA-MARIE ARLENE COMRIE

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr A Burrett, instructed by A.J.A. Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting
Officer

DETERMINATION AND REASONS

The Appellant

1. The Appellant is a citizen of Jamaica born on 16th December 1994. She appeals against the determination of the First-tier Tribunal dated 17th April 2014 dismissing her appeal against the Respondent's decision of 22nd January 2013 refusing entry clearance to settle in the UK with her father [the Sponsor] under paragraph 297 of the Immigration Rules.

2. Permission to appeal was granted by Upper Tribunal Judge Kebede on 1st August 2014 on the grounds that it was arguable the Judge failed to make clear findings on the Appellant's circumstances at the date of the Respondent's decision to refuse entry clearance including her relationship with her mother and, in concentrating on the issue of where she was living, failed to make findings on the Sponsor's evidence as to his level of responsibility.
3. At the hearing, Mr Burrett submitted that the issue in this case whether the Sponsor had sole responsibility. However, the Judge failed to make findings in respect of the Sponsor's responsibilities having confused the issue with where the Appellant was living. The Judge had failed to make findings on who was making decisions about the Appellant's welfare.
4. Ms Everett submitted that the Judge was entitled to attach weight to the issue of the Appellant's residence. The Appellant had lived with her mother all her life and the Sponsor's evidence (paragraph 17) was that he still discussed matters relating to the Appellant with her mother. The Judge did not accept that the Appellant had moved in with her aunt until very recently. He made favourable findings that the Sponsor had some responsibility at paragraph 29, but with the evidence that the Appellant had lived with her mother for most of her life and gave her mother's address in her application form, there would have to be overwhelming evidence to demonstrate that the Sponsor had sole responsibility.
5. Mr Burrett submitted that the Judge took into account that the Appellant was now over 18, which was irrelevant to his decision. The Judge failed to make findings on who was making decisions about the Appellant's education and who paid the school fees. The Judge accepted that the Appellant was living with her aunt and the fact that she had given her mother's address on the application form did not show sole responsibility. The Judge's approach was too simplistic.

Discussion and conclusions

6. The evidence before the Judge was that the Sponsor had come to the UK in 2000 and, in connection with a visit visa application in 2010, he had not seen the Appellant for some time. The Appellant was living with her mother. The Sponsor had sent money to the Appellant's mother and her aunt. The Sponsor claimed that the Appellant's relationship with her mother had deteriorated and the Appellant had gone to live with her aunt in 2010. It was the Sponsor's decision that the Appellant should move in with her aunt, but he had discussed the matter with her mother. He still discussed matters relating to the Appellant with her mother who had been involved in the application made in November 2012.

7. The Sponsor had decided that the Appellant should study at the University of The West Indies and he had funded her studies. He had no contact with the Appellant's school whilst in the UK but he had visited when he went to Jamaica and he met the teachers. The Sponsor stayed with his mother when he visited and the Appellant would stay with him. The Sponsor spoke to the Appellant by telephone nearly every day using telephone cards.
8. The Judge found that the Appellant was still living with her mother. He rejected the Sponsor's claim that the Appellant had gone to live with her aunt in 2010 because the evidence in the aunt's witness statement suggested that the Appellant was only living there on a temporary basis and the Appellant gave her mother's address on the application form dated 13th November 2012.
9. The Judge accepted that the Sponsor had played a part in the Appellant's upbringing, visiting Jamaica and keeping in contact by telephone. However, he found that the Appellant was still living with her mother and, although they may not be enjoying a good relationship now, the Sponsor had failed to show that he had sole responsibility. The Judge found that the claimed recent difficulties in the Appellant's relationship with her mother were not determinative in the assessment of sole responsibility.
10. I find that the Judge's conclusions at paragraph 29 of the determination were open to him on the evidence. The Judge rejected the Sponsor's claim that the Appellant had been living with her aunt since 2010 and he gave cogent reasons for coming to that conclusion. The Appellant had given her mother's address on the application form dated 13th November 2012 and stated that she had been living there for 17 years. It was accepted by the Sponsor that the Appellant's mother was still consulted in matters relating to the Appellant, including the application for entry clearance.
11. The Judge found that the Sponsor had a close interest in the Appellant's welfare and he made decisions about her education and provided financial support. I find that the Judge's approach was not too simplistic and he did not fail to make findings on the Sponsor's responsibilities or the Appellant's circumstances at the date of decision, 22nd January 2013. The Judge looked at the matter in the round and concluded that the Sponsor had not shown that he had sole responsibility for the Appellant. This finding was open to the Judge on the evidence, which showed that responsibility was jointly shared between mother and father.
12. The Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated 17th April 2014 shall stand.

Deputy Upper Tribunal Judge Frances
16th September 2014