



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
OA/15937/2014**

APPEAL NUMBER:

THE IMMIGRATION ACTS

**Heard at: Field House
On: 14 June 2016**

**Decision and Reasons Promulgated
on 01 July 2016**

Before

Deputy Upper Tribunal Judge Mailer

Between

[J C]

~~NO ANONYMITY DIRECTION MADE~~

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation

**For the Appellant: Mr H Kannangara, counsel (instructed by Law Direct
Immigration Advisors)**

**For the Respondent: Mr S Walker, Senior Home Office Presenting
Officer**

DETERMINATION AND REASONS

1. The appellant is a national of Nigeria, born on [] 2000.
2. On 19 April 2016 the Upper Tribunal set aside the decision of the First-tier Tribunal Judge who dismissed the appellant's appeal against the respondent's refusal of his application for entry clearance to the UK pursuant to paragraph 301 of the Immigration Rules. The First-tier Judge had overlooked various documents including letters relating to his

mother's (sponsor's) communications with, and her attendance at his school in Nigeria.

Remaking the decision

3. For this appeal to succeed, I must be satisfied on the balance of probabilities, the burden being on the appellant, that he satisfies the relevant requirements under paragraph 301 of the Immigration Rules. The single live issue is whether the appellant's mother has had sole responsibility for the appellant's upbringing.
4. I have had regard to the bundles of evidence produced by the appellant and the sponsor.

The appellant's case

5. The appellant's mother, [MF] of [], Thornton Heath, attended the hearing and gave evidence. She adopted the contents of a joint witness statement made with her husband, [GE], in support of his appeal.
6. [MF] is the biological mother of the appellant who was born on [] 2000. His biological father's name is [GC]. She was not married to him, but had a relationship with him. When he heard that she was pregnant, he ended the relationship. She did not have any contact with him after that and she does not know his whereabouts.
7. She gave birth to the appellant at home. She only registered his birth in August 2001. A DNA report showed that she is his mother.
8. The appellant has never seen his biological father. Whilst she was still living in Nigeria, [MF] brought him up without the benefit of a father. She was living with her mother and grandmother.
9. After she left Nigeria in 2003, her mother moved closer to her sister so it would be easier for her to look after the appellant.
10. [MF] could not travel back to Nigeria on account of 'immigration issues'. She claims that she still maintained full responsibility for her son. Her mother consulted her regarding decisions to be made concerning the appellant, including his schooling and his health. She has also been financially supporting him by sending money, as her mother did not have a regular income to meet his expenses.
11. There was limited documentary proof of money transfers for the period August 2013 to July 2015 which was produced in the bundle before the First-tier Tribunal.

12. The appellant is living with her mother in the same household/compound as her sister. Her mother is now elderly and cannot look after him. Accordingly, her sister, [JU], looks after him. Her sister attends school meetings for the appellant "... on my advice and request as my mother cannot attend to those events". She referred to a school letter confirming that arrangement.
13. She and her husband have made important decisions in her son's life. It is she who made the decision about his primary school. She instructed her mother to send him to the school that he attended.
14. When he reached the age of attending secondary school it was she who made the decision to send him there. She asked her sister to recommend a few schools and after checking their reputation she selected the secondary school which the appellant subsequently attended for three years. After that, he has attended a science specialist school. It was her decision to send him there.
15. They pay his expenses and school fees. She sends money regularly to her sister for his expenses.
16. [MF] stated that she visited her son in Nigeria during March 2013 and spent nearly three weeks there. Her visits are reflected in her passport.
17. Her mother is not now physically fit to cook food; she used to prepare her son's meals when she was able to do so. It is mainly her sister who currently prepares food for everyone.
18. [MF] said during her oral evidence that she visited the appellant in 2015 but has not 'gone' in 2016.
19. She was referred to the supplementary bundle at B. At page 4, there is a letter from the Principal of [] College, dated 24 May 2016, certifying that the appellant sat a recent Senior School Certificate examination. This was conducted by the West African Examination Council. She explained that she wanted him to have extra classes at that college. He accordingly needed to write his exams there. She spoke to the headmaster herself, after which her son took his exams there.
20. She said that the appellant is still staying with her sister and mother, who is not well.
21. In cross-examination she was referred to a letter at B1, from the Principal of the [] Science School dated 17 May 2016. That "attests" that the appellant was a student at that school, having been admitted there in the 2013/14 academic session. He was promoted to 'Senior Secondary three (SS3)' on 14 September 2015. He has written examinations. However, he

left the school to register for the West African Senior School Certificate Examination elsewhere.

22. He goes on to state that the appellant's mother has always shown concern by calling the school regularly to know about his welfare and conduct there. She has also physically visited the school.
23. [MF] said that her son started at the [] Science School in 2013. He did his pre-exam (mocks) there. She wanted him to take the exam at the [] College.
24. She said that she attended that school on two occasions, in 2013 and 2015. She also spoke to the principal over the phone. The last time she called him was a few weeks ago.
25. She said that she told her sister that she wanted him to do extra tuition. She then recommended the school. It was she, [MF], who then spoke to the headmaster, who was situated in the River State.
26. There was no re-examination.
27. I have also had regard to the other documentation, including a joint letter in the respondent's bundle dated 15 July 2014 from two of his class teachers at the [] Science School. In that joint letter, they "confirmed" that the sponsor and her husband are known to them "as they do communicate with the school to find out [JC]'s welfare and the update on [JC]'s studying." They know the appellant's mother as [M] and his stepfather as [G], "who also thanks us too."
28. I have also had regard to further evidence of transfers of monies by the sponsor, including payments referred to at B5-7.
29. I have also had regard to details of calls made using Lycamobile telephone cards between May and October 2015. There are numerous calls made for that period set out at pages 10-60 of the bundle.

Submissions

30. On behalf of the respondent, Mr Walker submitted that it is evident that the First-tier Tribunal Judge erred in not taking into account all the evidence available. This included the letters dated 15 July 2012 and the letter dated in August 2015.
31. He accepted that there has been further evidence that has been produced. The appellant's mother has maintained contact with the schools continuously. She has found a new school where he would further his education. She also found a school on the internet where he could take his latest examinations.

32. Mr Walker also accepted that [MF] she had shown a continued interest in his wellbeing. That he conceded went strongly towards the fact that she had been solely responsible for his upbringing.
33. Mr Walker invited the Tribunal to make a decision accordingly.
34. On behalf of the appellant, Mr Kannagara submitted that the appellant's mother had been a credible witness. She has explained everything including why she wanted him to attend an exam conducted by the West African Examination Council.
35. He submitted that all 'relevant decisions' were made by the sponsor. She went to Nigeria to see the appellant when she could. She has been to the school. He referred to the letter in the respondent's bundle dated 15 July 2014.
36. In submitting that [MF] has had sole responsibility, he noted that it was she who has effectively brought up the appellant. Although she left him with her mother, it has been she who 'overall' has maintained sole responsibility for the appellant's upbringing.

Assessment

37. The meaning of “sole responsibility” has given rise to a body of case law, including decisions from the Court of Appeal. In TD (paragraph 297(i)(e)): “Sole Responsibility” (Yemen) [2006] UKAIT 00049, the Tribunal examined in considerable detail the case law relating to the notion of “sole responsibility”. It concluded that “sole responsibility” is a factual matter to be decided upon all the evidence.
38. 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.
39. 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 would be exceptional that one of them will have “sole responsibility”.
40. The Tribunal noted at [30] that the Court of Appeal saw “sole responsibility” as a practical rather than an exclusively legal exercise of “control” by the UK based parent over the child's upbringing and whether what is done by the carer is done “under the direction” of their parent.
41. At [46] of the determination the Tribunal held that in order to conclude that the UK based parent had “sole responsibility” for the child, it would

be necessary to show that the parent abroad had abdicated any responsibility for the child and was merely acting at the direction of the UK based parent who was otherwise totally uninvolved in a child's upbringing.

42. Decisions from the Court of Appeal make it clear that the touchstone of "sole responsibility" is the continuing control and direction by the parent in the UK in respect of "the important decisions" about the child's upbringing. If the UK based parent has allowed the carer abroad to make some important decisions in the child's upbringing, then it may readily be said that the responsibility for the child has become "shared" - [50].
43. The Tribunal set out at [52] the proper approach to questions of sole responsibility under the relevant rule. It emphasised that the term "responsibility" in the Immigration Rules should not be understood as a theoretical or legal obligation, but rather as a practical one which, in each case, looked 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. Wherever the parents are, if both parents are involved in the upbringing of the child, it would be exceptional that one of them would have sole responsibility.
44. At paragraph [52(ix)] the Tribunal stated that 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".
45. I have also had regard to the Court of Appeal's judgment in Nmaju v Entry Clearance Officer [2001] INLR 26. At paragraph 9 of the judgment, the Court concluded that while legal responsibility under the appropriate legal system would be a relevant consideration, it will not be a conclusive one. One must also look at what has actually been done in relation to the child's upbringing by whom and whether it has been done under the direction of the parent settled here. That paragraph has been adopted and included by the Tribunal in TD.
46. I find that [MF] has given credible and reliable evidence. Apart from her own assertions she has produced substantial documentary evidence corroborating her claims.
47. The evidence points to the fact that it was the sponsor, sometimes with her husband, who has made all the important decisions relating to the appellant's life. It is she who made the decision about his primary school. She instructed her mother to send him to the school which he attended.
48. When the appellant reached the age of attending a secondary school, she decided to send him there. She had initially asked her sister to

recommend a few schools. She then checked the reputation of the school and thought that it would be best for him to go to the secondary school which he attended for three years. After that he joined the current school which he attended prior to taking his recent examinations. That was a science specialist school to which she decided to send him as it specialises in science.

49. It was [MF] who made the recent decision regarding the appellant's extra tuition to enable him to take the Senior School Certificate examinations in 2016, which were conducted by the West African Examination Council.
50. I have referred to various letters produced both in the respondent's and the appellant's bundles from class teachers, in which it was confirmed that it was the sponsor and her husband who were known to the school and who have communicated with the school to find out about the appellant's welfare.
51. It is the sponsor who has over the years sent money regularly to her sister for the appellant's expenses as well paying his school fees.
52. I have also had regard to the joint "letter of consent" from the appellant's aunt and uncle dated 9 June 2015 in which they state that they had been responsible for the appellant's day to day upkeep over the past few years "due to his grandmother's ill health." On account of the present economic conditions of her family, since her husband lost his job, his aunt stated that it is necessary for the appellant to live with his mother.
53. There is also a letter dated 6 August 2015 from the Director of the school that the appellant attended. The Director stated that his mother is always in contact with the school through telephone calls to know about his conduct and welfare in school. She has also physically come to visit the school to ascertain his activities and performance. I have also had regard to the substantial amount of contact between the appellant and his mother as evidenced from the Lycamobile call record history.
54. None of this evidence has been challenged in any way.
55. Mr Walker has very fairly accepted that the appellant's mother has had a continuing interest in the appellant's upbringing. He accepted that this goes "strongly towards the fact of sole responsibility" for the appellant.
56. I am satisfied on the evidence as a whole that it is the appellant's mother (and sponsor) who has been solely responsible for the appellant's upbringing. It is she who has made major decisions in his life including his attending school. It is she who has given directions to her relatives who are responsible for the day to day care of the appellant.

57. In the circumstances, I am satisfied that the appellant has shown on the balance of probabilities that he has met the relevant requirements under paragraph 301 of the Immigration Rules.
58. There is no dispute that the other requirements under that paragraph in respect of maintenance and accommodation are satisfied.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. Having set the decision aside, I re-make it and substitute for it a decision allowing the appellant's appeal under the Immigration Rules.

No anonymity direction is made.

Signed

Date 30 June 2016

Deputy Upper Tribunal Judge C R Mailer