



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/02393/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13<sup>th</sup> May 2019**

**Decision & Reasons Promulgated  
On 30 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**CRISTEL [E]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr O Ogunbiyi, Counsel

For the Respondent: Miss K Pal, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of a First-tier Tribunal (Judge Shanahan) promulgated on 6<sup>th</sup> March 2019 in which the judge dismissed the Appellant's appeal on human rights grounds.

**Background**

2. The Appellant is a national of the Philippines who, aged 17 years, applied for entry clearance to settle in the UK as the dependent child of her mother, Mrs [CE] "the Sponsor". The Sponsor became a British citizen in

2013. The application was refused on 19<sup>th</sup> December 2017 against which the Appellant appealed on human rights grounds.

3. The Sponsor, who appeared before the First-tier Tribunal, confirmed that the application for entry clearance was submitted in September 2017 at which time, the Appellant was aged 17 years 4 months.
4. Having considered the evidence before her, the FtTJ set out her findings of fact and conclusion in [13 to 22] of her decision.
5. The basis of the application for entry clearance was that the Sponsor had sole responsibility for her upbringing and therefore the Appellant met the requirements of paragraph 297(1)(e) of the Immigration Rules. The judge noted the evidence given with regard to the Appellant's arrangements in the Philippines. She considered firstly that part of the Respondent's refusal centred on concerns in relation to the involvement of the Appellant's natural father. She made a finding however which accepted that the Appellant's natural father had abandoned the Sponsor before the Appellant was born, and therefore played no part in the Appellant's life.
6. The FtTJ then considered the evidence and made the following findings. The Sponsor left the Appellant in the Philippines when the Appellant was a very young child (aged 2 or 3 years old) and went to work in Dubai. The Appellant was left in the care of her grandmother and she has remained living with her grandmother since that time.
7. The judge accepted that there was evidence of financial remittances which covered a period of December 2016 to October 2018. She also considered photographic evidence and was satisfied that the Appellant's mother visited the Philippines on an annual basis to see her family and her daughter.
8. However, when weighing the evidence before her, the judge noted that there was a lack of evidence to establish that the Sponsor had had sole responsibility for her daughter's upbringing and indeed made a finding that the evidence showed at its highest, there was shared or joint responsibility with the Appellant's grandmother.
9. The judge then looked at Article 8 outside the Rules. She noted that the Appellant had grown up in the Philippines, had remained there all her life and was now almost 19 years of age. There was no evidence from the Appellant herself giving her views about the appeal, and the FtTJ found any family life which the Appellant had with her mother had been conducted from a distance. She noted that there were annual visits and communication over social media but also noted that no reason had been put forward as to why these could not continue. There was no evidence put forward of any difficulties that the Appellant faced in the Philippines. It was said that her grandmother was aged, but the evidence from the Sponsor's husband who also attended the FtT hearing, was that this lady is 55 to 56 years of age. There was no evidence to justify any finding that

the Appellant's grandmother has any health or other problems which would adversely impact upon the Appellant's care. The judge therefore concluded that the Respondent's refusal was not disproportionate in the context of Article 8 ECHR.

10. The Appellant sought permission to appeal asserting that the judge erred in failing to adequately or at all apply the guidance in **TD (paragraph 297(i)(e): sole responsibility) Yemen [2006] UKAIT 00049**. It was asserted that the judge had failed to adequately engage with the evidence before her, because she had discounted 278 pages of messages provided as evidence of contact between the Appellant and the Sponsor because they were not translated [19]. It was further claimed that the FtJ had taken into account an extraneous matter when looking at Article 8 outside the Rules, because she had noted that the Appellant is now almost 19 years of age and there was no evidence from her giving her views on the matter [24]. It was asserted that the FtJ should have confined her decision making to considering the Appellant's age at the date of application (when the Appellant was still a minor).
11. Permission having been granted the matter comes before me to determine whether the FtJ's decision discloses such error that it must be set aside and remade.

### **Error of Law Hearing**

12. Before me Mr Ogunbiyi appeared for the Appellant and Miss Pal for the Respondent. Mr Ogunbiyi's submissions followed the lines of the grant of permission. He submitted that the judge had accepted that the Appellant's mother was responsible for financial support of the Appellant [14] and accepted that the Appellant made annual visits to the Philippines since 2004.
13. With regard to the evidence that was not translated, he submitted that the judge had taken the wrong approach. Even if the contents were not translated, the judge should have noted the volume of communication and thereby accorded it some weight of showing contact.
14. He added that the Sponsor's evidence had been that she had chosen her daughter's school and that if her daughter had problems at school she called her. He submitted that the Sponsor's evidence was that when she visited the Philippines she would go to the school to see her daughter's teachers. Altogether there was overwhelming evidence that the Sponsor had sole responsibility for the Appellant. The appeal should be allowed.
15. Miss Pal on behalf of the Respondent served a Rule 24 response. She emphasised that the grounds were essentially a reasons challenge. The judge had adequately considered the evidence before her. She had rejected the Sponsor's evidence that she had sole responsibility for the Appellant. The judge properly directed herself on the case of **TD Yemen** and came to the conclusion that responsibility for the Appellant rested

primarily with the Appellant's grandmother. That finding was open to her. So far as the evidence was concerned, the letters from the school did not demonstrate that the decision making was taken by the Sponsor's mother.

16. The judge properly directed herself on Article 8 outside the Rules. The reasons are sound and the grounds amount to no more than a disagreement with those reasons and therefore fail to demonstrate any error of law on the part of the FtTJ.

### **Error of Law Consideration**

17. In **TD (paragraph 297(i)(e) "sole responsibility") Yemen [2006] UKAIT 00049**, the Tribunal said that "sole responsibility" is a factual matter to be decided upon all the evidence. Where one parent is not involved in the child's upbringing because he (or she) had abandoned or abdicated responsibility (as in this case), the issue may arise between the remaining parent and others who have day-to-day care of the child abroad. 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. The guidance in **TD** was that the decision should be made on the basis of all the evidence. The assessment of whether a parent had sole responsibility would include a consideration as to the nature of the relationship between parent and child in a given case, and the decision maker would be able to assess whether particular decisions were or were not important ones in the context of the evidence as a whole.
18. What the case law shows is that the question of sole responsibility is one of fact. In the present case, the judge analysed the facts including the degree of involvement in the Appellant's life by both her mother and her grandmother. Whilst finding that the Sponsor played a significant part in her daughter's life in terms of providing elements of financial support and visiting the Appellant's school on her annual return to the Philippines, nevertheless it was the Appellant's grandmother who exercised the day-to-day care and control of her. The judge assessed the nature of that involvement and concluded that it was of a degree that prevented the Sponsor establishing that she exercised sole responsibility for the Appellant. It has not been shown that this conclusion is perverse, irrational or outside the range of findings available to the judge on the evidence.
19. The judge considered Article 8 outside the Immigration Rules having accepted that the fact that the Appellant and Sponsor are related as claimed, they have a family life together. She accepted therefore that the decision to refuse entry clearance is an interference with their wish to enjoy family life in the UK. However she found that she was satisfied that the proposed interference with the family life was in accordance with the law on the basis that the Appellant could not satisfy the requirements of the Immigration Rules.



Deputy Upper Tribunal Judge Roberts