



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
HU/03428/2018**

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 17 January 2019

On: 31 January 2019

Before

Deputy Upper Tribunal Judge Mailer

Between

**ALEX [L]
ANONYMITY DIRECTION NOT MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

**For the Appellant: Ms A Jaja, Counsel, instructed by UK Migration
Lawyers Ltd**

**For the Respondent: Mr C Avery, Senior Home Office Presenting
Officer**

DECISION AND REASONS

- 1.** The appellant is a national of Jamaica, born on 9 July 2001. He appeals with permission against the decision of the First-tier Tribunal Judge promulgated on 5 November 2018 dismissing his appeal against the respondent's decision on 11 January 2018 to refuse his application for

leave to remain in the UK on the basis of his family life in the UK with his parent and sponsor, [CL].

2. In granting permission to appeal, First-tier Tribunal Judge S H Smith found there was an arguable material error of law in that the Judge ascribed great significance to the decision in Devaseelan, arguably overlooking the impact of his mother's residence in the United States (a development which post dated the earlier decision of First-tier Tribunal Judge Thomas, promulgated on 30 March 2016), upon his British father's claimed assumption of sole responsibility for his care.
3. The Judge did not refer to any of the key authorities applicable to the determination of sole responsibility, including TD (Paragraph 297(i)(e): Sole Responsibility) Yemen [2006] UKAIT 0049 and appeared to conclude that because the appellant has regular contact with his mother, his father did not have sole responsibility. Judge Smith noted that more detailed reasons for the Judge's finding are not apparent from the decision.
4. In addition, First-tier Tribunal Judge Smith found that the Judge speculated that the appellant would be able to join his mother in the UK [27], because "... it seems to me that a minor child would have the right to join his mother there". In the absence of evidence as to foreign law, domestic courts are to assume that English law would apply. In circumstances where the Judge held that there was no such "right" for the appellant to remain here with his father, by definition there was no basis to assume that the US approach would be more generous, still less was it appropriate to speculate.
5. First-tier Tribunal Judge Smith stated that the Judge's speculative approach arguably contaminated his Razgar proportionality analysis whereby at [32] he adopted the reasoning of Judge Thomas's decision. It is not clear how the latter's proportionality assessment could properly be applied to the situation that the Tribunal was faced with on this occasion, given that Judge Thomas ascribed significance to the fact that the appellant could return to his mother in Jamaica or the BVI where he had lived previously. That was arguably not a conclusion properly open to the Judge to reach as it relied on the speculative approach outlined above.
6. At the commencement of the error of law hearing on 17 January 2019, Mr Avery indicated that the respondent accepted that there had been "a lot of errors" including the fact that the Judge did not remind himself of sole responsibility and the parental situation in this case. Nor was any case law referred to.
7. He accepted that the Judge made various assumptions relating to matters which were not open to him. Further, there was a disregard of the approach mandated by s.55 of the 2009 Act. The appellant was only now living in a secure and safe environment with his father.

Assessment

- 8.** The appellant, a minor, contended before the First-tier Tribunal that he had a genuine and subsisting relationship with his father who himself is a British citizen and who claimed to be exercising sole responsibility for him since being abandoned in the UK by his biological mother over four years ago.
- 9.** The First-tier Tribunal Judge did not take into account the best interests of the appellant. There were no effective reception facilities available for him either in BVI or Jamaica if he is forced to return to either place. His British father is residing in the UK and his mother is in the USA on a student visa. There are no family members available to receive him in either place.
- 10.** The appellant had previously been abused and abandoned by his mother. That fact had been ignored by the Judge. A letter was produced from the Senior Investigating Officer, Richard Smith, dated 1 June 2018, which confirmed that the appellant whilst living in Jamaica on 1 December 2007 witnessed the murder of his uncle alongside a diary entry which appertains to the same incident.
- 11.** There was thus other evidence which was not challenged by the respondent and which was not taken into consideration. The appellant had moved after that incident to the BVI in order to be with his mother. He then suffered physical and mental abuse at the hands of his mother's new partner, his stepfather, and upon visiting his father in the UK was abandoned by his mother who had moved on to the United States as a student.
- 12.** The evidence before the Tribunal was that the appellant's father could not abandon his ties to the UK and return to Jamaica or the BVI and that the appellant was best placed to continue to reside in the UK with him, where he would be safe and stable. At [9] the Judge incorrectly referred to the sponsor as "a foster parent", whereas he was the biological father. The Judge noted from the respondent's submissions, that there is no challenge to the fact that the sponsor can look after the appellant and has integrated in the United Kingdom [13].
- 13.** As noted by the Judge, the psychology report of Dr Zdaniecki dated 26 June 2018 did suffer from substantial defects and had been poorly prepared. It had not been properly checked and contained material unrelated to the appellant. He nonetheless found that the appellant was suffering from symptoms of PTSD and/or anxiety/depression.
- 14.** The Judge referred to Dr Zdaniecki's report in which he stated that the appellant described a number of traumatic incidents to which he had been subjected, including the murder of his uncle and abuse from his mother's partner in BVI. The Judge went on to state at [20], that despite referring to other traumatic incidents there is no description of them and he had no evidence of them elsewhere. The report described the

appellant having ongoing panic attacks, hyper vigilance and other symptoms but did not indicate when these started.

- 15.** However, as noted, there was evidence that following the witnessing of his uncle's murder there the appellant moved after the incident to the BVI to be with his mother. He then suffered physical and mental abuse at the hands of his mother's new partner, his stepfather, and upon visiting his father in the UK he was abandoned by his mother who herself had moved on to the United States as a student.
- 16.** Moreover, as noted by the First-tier Tribunal Judge Smith, in the absence of evidence as to foreign law there was no basis to assume that the US approach would be more generous than English law. That was unsubstantiated speculation.
- 17.** The speculative approach was applied to the proportionality assessment. In addition, it ignored the fact that the sponsor had sole responsibility for the appellant from 2014 until the present.
- 18.** Nor was there a proper assessment of the appellant's private life. He was a minor who was abandoned and who has now forged a private life with his father, a British citizen. There has not been a proper assessment of his private life.
- 19.** In the circumstances, I am satisfied that Mr Avery's concession was properly made.
- 20.** I set aside the decision of the First-tier Tribunal Judge. The parties agreed that in the circumstances, the matter should be remitted to the First-tier Tribunal for a fresh decision to be made. There will be a de novo hearing with no findings preserved. I am satisfied that the extent of judicial fact finding which is necessary for the decision to be re-made is extensive.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal, Birmingham, for a fresh decision to be made by another Judge.

Anonymity direction not made.

Signed

20 January 2019