



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

Appeal Numbers: HU/11096/2018
HU/11089/2018 (V)

THE IMMIGRATION ACTS

**Heard at Field House
On 27 April 2021**

**Decision & Reasons Promulgated
On 2 June 2021**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**OYINKASOLA AMINAT OLAJIRE
OLAYINKA TOMIWA OLAJIRE
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Gajjar, Counsel instructed by Axis Solicitors Limited
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Nigeria. They are siblings. Miss Oyinkasola Aminat Olajire's date of birth is 24 May 2002. Mr Olayinka Tomiwa Olajire's date of birth is 20 August 2000. They are both now adults. Their mother, Omolola Mufuliat Razak, is the Sponsor. She came here in 2007. She is settled here. She was granted permanent ant residence on 13 January 2017.

2. The decision of Judge of the First-tier Tribunal Lucas to dismiss the Appellants' appeals against the decision of the ECO on 17 April 2018 to refuse to grant them entry clearance to come to the UK under Appendix FM of the Immigration Rules to join their mother, the Sponsor, a citizen of Nigeria, was set aside by Upper Tribunal Judge Kekic in a decision that was promulgated on 2 June 2020. The salient parts of Judge Kekic's decision read as follows: -

- “9. For ease of reference, I refer to the Appellants' submissions as AS1, to the Respondent's submissions as RS and to the Appellants' response to the Respondent's submissions as AS2.
10. The Appellants' case focuses solely on the issue of sole responsibility and it appears to be the case as pointed out in the RS, and not challenged in the AS2, that it is accepted that Article 8 is not engaged if the requirements of paragraph 297(i)(f) of the Immigration Rules cannot be met.
11. The Appellants argue that the judge based his decision on assumptions of supposition and disregarded key evidence (AS1: 4), although there is no clarification in the submissions what evidence was not taken into account. It is argued that the judge erred in his finding that the Appellants' father was involved in their lives and that he (the judge) wrongly diminished the Sponsor's evidence of sole responsibility.
12. Turning to the grounds for permission, the case is put in more detail. It is maintained that the Sponsor established her sole responsibility by way of money transfer receipts, ticket receipts (presumably airline tickets), school bills and invoices. It is maintained that she made the decision to send the children to boarding school, that she paid the fees and was the only parent to communicate with the school. (The Appellants have since completed their education). It is argued that the fact that the children were left in the care of their aunt supports the claim that their father was not in Nigeria. It is maintained that the fact that he is outside the country means he could not be involved in their lives (although of course the Sponsor is also outside Nigeria). It is maintained that no weight was given to the Appellants' own statements in which they confirmed that their mother was the only parent in their lives. The judge is criticised for his adverse assessment of the Sponsor's oral evidence where he found that she had sought to alter her evidence when she was 'caught out' in cross-examination and it is maintained that he misunderstood her evidence.
13. The Respondent's reply to AS1 is that there was no information at all in the VAF about the Appellants' father's whereabouts or any indication that he had given his consent to their settlement application. It is argued that the judge was entitled to find that the Sponsor had altered her evidence as her initial claim as put in her witness statement as well, was that she had received her former partner's UAE residence card after a call in 2017 and not 2018, after the application as she subsequently claimed. It is also maintained that the account of how they made contact so many years after their alleged separation was implausible and that no

evidence from him about his place of residence or involvement or otherwise in the lives of the Appellants was forthcoming. The Respondent also points out there was no copy of the WhatsApp message in which he was said to have attached his identity card. It is maintained that the judge was entitled to conclude that the Sponsor had not been honest and open about the situation regarding the Appellants' father. With respect to the witness statements of the Appellants it is maintained that the weight that could be attached to them was reduced by the fact that the evidence could not be tested. The fact that the Appellants attended boarding school and that the Sponsor paid the fees did not mean that sole responsibility had been established.

14. In AS2, it is accepted that the Sponsor made an error in her evidence and that she corrected herself during cross-examination but that this did not mean that the father was involved in the Appellants' lives. An absence of evidence from him also did not mean that he was involved in some way. The judge had erred by not indicating that the witness statements of the Appellants had been taken into account when reaching his conclusions on the father's position. The Appellants' attendance at boarding school supported the assertion that the Sponsor retained responsibility for making significant decisions as did the fact that she supported them financially.
15. Although there are numerous serious issues arising from the documentary evidence on file (and which I shall come to later in this determination), I am of the view that the judge erred in his interpretation of the Sponsor's evidence as to contact with the Appellants' father, and that this impacted his assessment of the evidence as a whole.
16. I have carefully considered the Sponsor's witness statements which the judge maintained were in line with her initial oral evidence at the hearing, but which contradicted her amended oral evidence in cross-examination. The judge states:

'The Sponsor has got into some confusion with regard to the status and role of the father of the Appellant (sic). Both in her witness statement and, initially in her evidence at this appeal, she stated that she obtained an ID document from him after a telephone call in 2017. It was pointed out to her that she therefore had the information before she (sic) made the application in 2018 but had not included within that application. Clearly caught out, she then corrected this assertion and stated that she was able to contact her ex-husband after the application in 2018 in order to obtain the ID card from the UAE' (at paragraph 28).

This is what led him to conclude that the Sponsor had not been 'open and honest about the role of the father of the children in their lives' (at 31).

17. At paragraph 19 of the determination, the judge summarises the oral evidence of the Sponsor on this issue. He writes: *'She stated that she had met a friend of her former husband in 2017 and obtained his number ... She had corrected her evidence and*

*stated that **she had obtained the number after she made the application**'.*

18. The Sponsor has prepared two witness statements. They are virtually identical apart from a major discrepancy in paragraph 3 and 4 which I shall deal with later. The first statement is dated 15 May 2019 and was sent to the Tribunal on 24 May 2019. The second is dated 23 September 2019 and is contained in the Appellants' supplementary bundle submitted to the Tribunal on 23 September 2019. The passages in both, relating to the issue of contact with the Appellants' father, are identical and state the following: *'It was in 2017 that a common friend gave me his new number. I called him **a few days ago** and luckily he was on the phone and agreed to provide me a copy of his UAE identity card by WhatsApp but no more details and did not provide his residence card for UAE'* (paragraph 2 in both statements; added emphasis).
19. There are problems with the contents of these two paragraphs cited from the judge's determination in that they are contradictory, and a further problem is that the contents of paragraph 28 conflicts with the contents of the Sponsor's written evidence.
20. At paragraph 19 the judge correctly summarises the Sponsor's oral evidence as recorded in the Record of Proceedings. She stated that she had met a mutual friend in 2017 and obtained the Appellants' father's contact details in 2017. When it was put to her that she would have had these details and the ID card at the time of the application, the Sponsor then stated that she had met the mutual friend after the refusal (in April 2018). Had the judge stopped there and relied on that discrepancy in his adverse findings, I would not have found any problem with his finding that the Sponsor had changed her evidence when caught out. However, this is not the discrepancy he relied on in paragraph 28. There he refers to contact being made in 2018 after the application (no reference to when she got the contact details from the friend) and this conflicting with her written evidence that she made contact and obtained the card in 2017. As can be seen, however, from the Sponsor's witness statement, that is not what she had said. While she did state that the meeting with the friend took place in 2017, she also said that she had called her ex-partner 'a few days ago'. Both statements are dated 2019 so that would suggest that contact was made in 2019 if indeed they were prepared when dated. It would appear that the judge himself, got confused about what had been said at different stages and that his own recording of the evidence was internally inconsistent and inconsistent with the Sponsor's written evidence. On that basis, his conclusions are unsafe as he appears to rely heavily on his paragraph 28 to form a view about the Sponsor's evidence.
21. He is also criticised for his finding that the lack of evidence from the Sponsor's former partner was indicative of his involvement in the lives of the Appellants but I cannot see on what basis that assumption was made. His observations on what he considered 'obvious' are similarly poorly reasoned.

22. For these reasons, I set aside the determination in its entirety except as a Record of Proceedings. A fresh decision is required and shall be made”.

3. Judge Kekic made a number of directions including as follows: -

“No later than fourteen days after the decision is served, the Sponsor shall prepare and serve a statement clarifying the following matters arising from the evidence before the First-tier Tribunal:

- (i) whom she left her children with in 2007 as differing accounts are given in her witness statements.
- (ii) when her mother died as differing dates are given;
- (iii) the date of her sixth visit (see paragraph 5 of my determination);
- (iv) why she did not visit her children between 2007 and 2014;
- (v) the date her children were registered at boarding school;
- (vi) when she made contact with her former partner, with evidence from WhatsApp to confirm this.
- (vii) the basis of her entry and subsequent immigration status.

30. The appellant shall serve on the Upper Tribunal, within the same time limits,

- (i) originals of the school receipts, photographs and medical receipts contained in the bundle (given the poor quality of the copies); and on the Tribunal and the Respondent;
- (ii) a clear, legible copy of the Sponsor’s passport showing the dates of her visit to Nigeria;
- (iii) evidence of the Sponsor’s immigration status;
- (iv) a copy of the WhatsApp correspondence between the Sponsor and the Appellants’ father showing the attached UAE identity card as an attachment;
- (v) a skeleton argument identifying all relevant issues and citing relevant authorities.

31. Within 28 days of the date that this decision is served, the Respondent shall file with the Tribunal and serve on the Appellants the Respondent’s skeleton argument”.

The Evidence

4. The decision of the ECO was maintained by the Entry Clearance Manager (ECM) on 15 January 2019. On 27 April 2019, the Appellants’ solicitors emailed a screenshot of a UAE identity card in the name of Ishola Taiwo Olajire showing a photograph and indicating the holder’s nationality is Nigerian.

5. Before the First-tier Tribunal there was an Appellants’ bundle (AB1) containing witness statements from the Appellants and the Sponsor.

6. As identified by Judge Kekic the statements of the Sponsor of 15 May 2019 and 23 September 2019 are more or less identical. The Sponsor's evidence in those two statements can be summarised. She started a relationship with Ishola Taiwo Olajire, the father of the Appellants in 1992. The relationship broke down. He left Nigeria for Dubai in 2001. He was occasionally in contact, but he never financially supported the children or took any interest in them. In 2017 a common friend gave the Sponsor his contact details. She called him a few days ago. He agreed to provide her with a copy of his UAE identity card by WhatsApp group but he did not agree to give her any more details and did not provide his residence card.
7. The Sponsor alone brought up the children. She moved to the UK in 2007. She then left the Appellants with her mother. Her brother then died and her mother died six months after that. The Sponsor put the children in the care of her sister. She sent money to her sister. However, it came to light that the money had been misappropriated. As a result of this the Sponsor moved the Appellants to a boarding school where she took care of them remotely while she remained in the UK working. No one else in Nigeria helped her with the children. She has visited Nigeria on eight occasions.
8. The Sponsor married in the United Kingdom. It did not last. She actively takes part in all the decision making for the children. She is in full-time employment. She has regular contact with the children. She has lots of photographic evidence. She did not provide all the evidence with the application for entry clearance because she was not properly advised by her solicitors.
9. In the Sponsor's witness statement of 23 September 2019, she states that her mother passed away in 2005. In her witness statement of 15 May 2019, she states that she left her children with her mother in 2007.
10. The Sponsor has made a supplementary witness statement dated 29 June 2020 in response to Judge Kekic's directions in which she stated that she contacted her ex-partner, the Appellants' father on 5 May 2019. In 2007 she left her children with her sister. They stayed with her until 2014 when the Sponsor visited Nigeria and discovered that her sister had been misappropriating the money that she had sent to her to maintain the children. She decided to enrol them both into a boarding school. Her mother died on 12 June 2005.
11. There were five stamps supporting that she visited Nigeria before the appeal hearing: on 12 January 2014, 30 October 2014, 16 March 2017, 19 May 2018 and 18 February 2019. There is one stamp which has been stamped twice when she missed a flight. She visited Nigeria again on 1 February 2020. She has submitted evidence of this.
12. She did not visit the children between 2007 and 2014. She was not able to leave the UK as she was regularising her status here. She did not obtain a residence card until September 2013. She was concerned that

without the card despite having become the spouse of a European citizen in June 2010 she would encounter difficulties returning to the UK.

13. Although the Sponsor was working throughout that period sending money to the children her income was modest and she could not afford to travel to Nigeria, she had no family that would be able to support her trip or anybody else that could afford to take care of the children. Her focus was on making sure their needs were provided for even if it meant that she could not see them in person. The children were registered into boarding school on 10 November 2014 shortly after her second trip to Nigeria.
14. She came to the UK on a visit visa and overstayed. She was granted a residence document as a family member of a UK citizen. This was granted to her on 12 September 2013. She now has right of permanent residence which was confirmed by the Home Office on 13 January 2017.
15. The Sponsor attended the hearing before me and gave oral evidence. Mr Gajjar indicated that the Sponsor was content to proceed without an interpreter. I understand that an interpreter had been requested but was not in attendance at the remote hearing. Mr Gajjar indicated that the Sponsor could understand the proceedings and the questions asked of her.
16. The Sponsor's oral evidence was that during the hearing before the First-tier Tribunal she was confused. She thought that she had been asked when she was granted permanent residence when she was asked about having been given contact details for the Appellants' father. She said 2017 in answer to the question. In oral evidence she referred to a letter that she said had given her then solicitors which confirmed that her husband was not involved in the Appellants' upbringing. The solicitors were no longer instructed and, but they did not attach that letter with the application.
17. The Sponsor confirmed in her latest statement that she had said she contacted her ex-husband on 5 May 2019, however she was asked why if that were the case in her statement of 23 September 2019, she had stated that she contacted him a few days ago. The Sponsor said that she did not understand. She did not remember. She met a lady in London who gave her the number. Having checked through her contacts, she called the Sponsor and gave her his details. She thinks that this was in 2019. The lady is a childhood friend. At the time the Sponsor had called a lot of people that she knew to try to make contact with her ex-partner. There is no statement from this friend, however, she could obtain one if necessary.
18. The Sponsor said that a problem was her understanding of the English language. Mr Gajjar again confirmed that the Sponsor understood the proceedings and the questions that she was being asked and did not need an interpreter.
19. She said that she obtained her ex-partner's telephone number in 2019. She called him in 2019 (in the same week that she obtained his number).

She told him that she needed his help and that is why he gave her his ID card. She does not know anything about him. She does not have any information about him. She was asked what she spoke about during the conversations which lasted only for minutes. She said that she told him that she wanted to bring the children here.

20. After I heard submissions, the Sponsor was very upset and raised evidence about her children not being safe in Nigeria
21. In the bundle before the First-tier Tribunal there are letters from the Appellants. Their evidence can be summarised. Their mother left Nigeria in 2007 and they were left with their aunt. They were not treated well there. Their mother is very hardworking and taking care of them. Their father was not responsible for them.

The Respondent's Skeleton Argument of 7 July 2020

22. In submissions Mr Tufan relied on the skeleton argument prepared by Mr Chris Howells. The only issue in the appeal is whether the Sponsor has sole responsibility for the Appellants. The Appellants' statements cannot be tested in cross-examination. There is no written communication between the Sponsor and the Appellants' father. The photograph attached to the WhatsApp message shows an undated UAE identity card in the name of Ishola Taiwo Olajire, a Nigerian national. The card is not a UAE residence card as claimed in the Appellants' skeleton argument dated 29 June 2020. Although the telephone code indicates that it was sent from the UAE there is no documentary evidence showing the Appellants' father sent this message from UAE. The date that the message was sent is not evident from the photocopy. The photocopy shows that the message was followed by an exchange of three sound recordings within 45 minutes (each of between three- and four-minutes' duration) between the sender and the recipient of the message. None of these have been produced as evidence.
23. There are credibility issues surrounding the claim that the Appellants' father moved from Nigeria to UAE in 2002 thus abandoning them and abdicating parental responsibility. In the Appellants' entry clearance applications dated 11 January 2018 there is no information or evidence about the whereabouts of their father. At [22] of the decision of 28 May 2020, UTJ Kekic set aside the decision of First-tier Tribunal Judge Lucas except as a Record of Proceedings. This Record of Proceedings shows that the oral evidence of the Sponsor was that she obtained the contact details of the Appellants' father in 2017 after meeting a mutual friend in the same year. When the Home Office Presenting Officer put it to her that she would have had the contact details and identity card of the Appellants' father at the time of the entry clearance applications she then stated that she had in fact met the mutual friend after the refusal of applications in April 2018. It is submitted that the Sponsor changed her evidence when she realised that her first answer was inconsistent with the entry clearance

applications. This undermines the Sponsor's account of the non-involvement of the Appellants' father in their upbringing.

24. There are further inconsistencies about the Sponsor's contact with the Appellants' father. At [2] of her written statement of 23 September 2019 (three days after she gave oral evidence before the First-tier Tribunal), the Sponsor stated that she had called the Appellants' father "a few days ago" and he had agreed to provide his UAE identity card by WhatsApp. Yet at [9] of her statement dated 29 June 2020, she stated that she had contacted him on 5 May 2019.
25. The Sponsor has given four different times concerning when she contacted the Appellants' father; 2017; 2018; September 2019; and May 2019. These discrepancies on a material issue go to the core of the appeals. They undermine the credibility of the claim that the Appellants' father has had no involvement in their upbringing since 2002. Even if he is resident in the UAE, which has not been established, it is feasible for him to have shared responsibility for the upbringing of the Appellants with the UK-based Sponsor.
26. The school letter of 20 January 2018 refers to the Appellants' having attended school for four years, however according to the Appellants' statements of 13 May 2019 they began studying at the school after the Sponsor's return to Nigeria on 30 October 2014. Similarly, in answer to questions 21-22 of their Visa Application Forms dated January 2018 the Appellants stated that they had been living at Fesobeth College for four years [not three years]. It is submitted that these inconsistencies cast doubt on the assertions made in the skeleton argument dated 29 June 2020.

The Appellants' Skeleton Argument of 29 June 2020

27. Whilst there is limited evidence in relation to the father, there is evidence that supports that he does not share responsibility for the Appellants. There is the evidence of the Appellants themselves that they have no involvement with their father. There is the recent communication between the Sponsor and the father and the residence card which shows that he resides in UAE. All of these are indicative that the father has shed his parental responsibility and has abandoned his children. As such, the Sponsor asserts that she took sole responsibility for them.
28. There is evidence in the Appellants' bundle of her having practical control and direction over the Appellants' lives. There are money transfer receipts, school bills and invoices which demonstrate that she has financially provided for her children for years. The school further confirms in their letter that the mother pays the Appellants' schooling and confirms that she is the sole parent on record and is the only person who communicates with the school regarding the children's progress and ongoing welfare.

29. The decision to send the Appellants to boarding school and remove them from the care of their aunt is an important decision in their lives and demonstrates continuing control and direction over their upbringing. They are both in their late teenage years and to a certain degree have autonomy in their day-to-day living, which is natural and expected, however their mother remains their sole provider and responsible for making critical decisions in their lives.
30. The Appellants' evidence makes it clear that they have no support from their father who left them at a young age. Their evidence about the circumstances of their early years support that he abdicated his responsibilities. The abuse of day-to-day decision making by their aunt should not render her rightly responsible for the Appellants' upbringing.
31. The Appellants rely on TD Yemen [2006] UKAIT 00049 and Nmaju & Ors v Entry Clearance Officer [2002] EWCA Civ 505. It is not necessary to have held sole responsibility throughout the life of a child. Periods in which responsibility was shared or held by another in the past do not necessarily invalidate the Sponsor's claim of currently holding sole responsibility.
32. The Sponsor has been solely responsible for the children since at least 2014.

Submissions

33. Mr Tufan submitted that the Sponsor has not been truthful about the Appellants' father. She had given various different accounts. There was no evidence from the person whom she said gave her his details. There is no evidence that the Appellants' father consents to the children settling here in the UK. The total conversation time between the Sponsor and the father from the WhatsApp was ten minutes. The evidence does not establish that the Sponsor has sole responsibility.
34. Mr Gajjar invited me to allow the appeal. The father has an association with UAE. (Mr Tufan conceded that the telephone number shown on the WhatsApp group was a UAE number). The communication is from the UAE. The Sponsor has rectified the error that she made in her evidence before the First-tier Tribunal. The evidence from the Appellants chimes with that of the Sponsor. The relationship between the Sponsor, and the children's father must have broken down. The Sponsor came here in 2007. She was granted permanent residence in 2017 which supports her explanation for having confused the questions that were asked of her before the First-tier Tribunal. There is no evidence that the father has had any contact with the Sponsor or his children since 2002. He is out of the picture; he does not play an active role. Little can rest on the discrepancies in the Sponsor's evidence.

The law

35. The only ground of appeal is under Article 8. If the Appellants meet the requirements of the Rules, their appeals must be allowed under Article 8.
36. Paragraph 297 of the Immigration Rules contains the requirements for indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom. The part of the Rule in issue in this case is 297(i)(e) which reads as follows: “one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the children’s upbringing;”.
37. It is not the Appellants’ case that there are “serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child’s care” namely that paragraph 297(i)(f) applies in the alternative.

Immigration Directorate Instructions of July 2012

38. The Appellants’ bundle contains the Immigration Directorate Instructions of July 2012 which gives general guidance in relation to sole responsibility. Mr Tufan address me on this. It reads as follows: -

4. **Sole responsibility - paragraphs 297(i)(e), 298(i)(c) and 301(i)(b)**

Where a child’s parents are not married, or his parents’ marriage subsists but they do not live together, or where the parents’ marriage has been dissolved, a child may qualify under these paragraphs to join or remain with one parent, provided that parent has had ‘sole responsibility’ for the child’s upbringing.

The phrase ‘sole responsibility’ is intended to reflect a situation where parental responsibility of a child, to all intents and purposes, rests chiefly with one parent. Such a situation is in contrast to the ordinary family unit where responsibility for a child’s upbringing is shared between the two parents (although not necessarily equally).

- 4.1 **Establishing that a parent has had ‘sole responsibility’**

A parent claiming to have had ‘sole responsibility’ for a child must satisfactorily demonstrate that he has, usually for a substantial period of time, been the chief person exercising parental responsibility. For such an assertion to be accepted, it must be shown that he has had, and still has, the ultimate responsibility for the major decisions relating to the child’s upbringing and provides the child with the majority of the financial and emotional support he requires. It must also be shown that he has had and continues to have care and control of the child. For example:

‘A non-British citizen child born to a British citizen and a foreign national living abroad. The couple then separate

and the UK national wishes to return to the United Kingdom to live with the child. The UK parent has chief responsibility for the child, and the foreign parent does not object to the child living in the United Kingdom. In such a case the UK parent could be considered to have sole responsibility.

Two foreign nationals living abroad have a child, then separate. One parent comes to the United Kingdom and obtains settlement. The child remains with the parent abroad for several years, then at the age of 13+ wishes to join the parent in the United Kingdom to take advantage of the educational system. There is no reason why the child should not remain with the parent who lives abroad. In this case the parent who lives in the United Kingdom would not be considered to have sole responsibility'.

4.2 Where the child and the parent claiming sole responsibility are separated

Where the child and parent are separated, the physical day-to-day care of the child must be entrusted to others, and it is expected that where the child is being looked after by relatives, they should be the relatives of the parent claiming 'sole responsibility' rather than those of the other parent. Should this be the case, the parent claiming 'sole responsibility' must still be able to show that he has retained the ultimate responsibility for the child's upbringing and provides the majority of the emotional and financial support needed.

If it is established that the child is being cared for by the relatives of the father, but it is the mother who has applied for the child to join her in this country (or vice versa), the application should normally be refused.

4.3 Where it is not clear which parent has established 'sole responsibility'

Cases may arise where even though one parent has taken no share of responsibility, or so small a share that it can effectively be disregarded, the other parent cannot claim to have had 'sole responsibility'. This may be where more than the day-to-day care and control of a child has been transferred to another person due, perhaps, to the sponsoring parent being in this country and not maintaining a close involvement in the child's bringing etc.

There are a number of factors which should be taken into account when deciding whether, for the purpose of the Rules, a parent has established that he has had the 'sole responsibility' for a child to the exclusion of the other parent or those who may have been looking after the child. These may include:

- the period for which the parent in the United Kingdom has been separated from the child;

- what the arrangements were for the care of the child before that parent migrated to this country.
- who has been entrusted with the day-to-day care and control of the child since the sponsoring parent migrated here;
- who provides, and in what proportion, the financial support for the child's care and upbringing.
- who takes the important decisions about the child's upbringing, such as where and with whom the child lives, the choice of school, religious practice etc;
- the degree of contact that has been maintained between the child and the parent claiming 'sole responsibility'.
- what part in the child's care and upbringing is played by the parent not in the United Kingdom and his relatives".

39. The case of TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 0049 considered sole responsibility and concluded as follows: -

"'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) has abandoned or abdicated responsibility, 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 decisions in the child's life. However, where both parents are involved in a child's upbringing, it will be exceptional that one of them will have 'sole responsibility'".

40. In Nmaju & Ors v Entry Clearance Officer [2000] EWCA Civ 505 the Court of Appeal expressed that it is not necessary to have held sole responsibility throughout the life of the child or that periods in which responsibility was shared or held by another in the past will invalidate the Sponsor's claim of currently holding sole responsibility. At paragraph 15 the Court of Appeal said: -

"... that paragraph of the Rule makes no mention of any time condition which has to be fulfilled. It does not mention any minimum period, nor does it indicate whether there is any terminal date of any such period".

Findings and reasons

41. While I appreciate the difficulty of establishing that another parent has abdicated their responsibility, I am not satisfied that the Sponsor has provided a coherent account on which I can rely, and which establishes that she has sole responsibility for the Appellants. The evidence does not establish that the Appellants' father is not involved in their lives. I am

satisfied that he has been at some time in the UAE; however, this is not sufficient to establish he has abdicated responsibility for his children and/or that the Sponsor has sole responsibility. While there is nothing inherently implausible about a father abandoning his children, the Sponsor is not a credible witness. Her evidence is not reliance.

42. I do not expect the Sponsor to have produced a letter from her ex-partner confirming that he has abdicated responsibility. With reference to Mr Howell's skeleton argument, a letter confirming that he consents to the children coming to the United Kingdom to live with their mother live, could in my view support that he has involvement in their upbringing. I understand that there may be reasons why an absent father may not wish to cooperate with an such an application. The Sponsor said that he did not agree to give her more information over and above providing a copy of an UAE identity card. While there is nothing inherently implausible about this, it is undermined by the Sponsor being unable to provide a coherent account explaining when and how she made contact with him.
43. The Sponsor has not been consistent about when she was given her ex-partner's contact details (2017 or 2018). I have taken into account her evidence that she was confused about the question asked before the First-tier Tribunal. This may explain why she said that she was given his details in 2017 which is the year she was granted a residence card; however, at the same hearing she then said 2018. To muddy the waters in evidence before me she said that the lady, a childhood friend, gave her the details in 2019. I understand that she may have asked for the details and received them on different dates, but no where in her evidence before the First-tier Tribunal did she say that she was given the details in 2019. Furthermore, the Sponsor in her statements of 15 May 2019 and 23 September 2019 says that a common friend gave her the contact details in 2017. The Sponsor has also failed to give a consistent account about when she spoke with her ex-partner. In a statement of 23 September 2019, she said she made contact a few days ago. However, in her most recent statement she said that she made contact on 5 May 2019. The Sponsor has raised issues regarding her understanding of the English language; however, Mr Gajjar twice confirmed that she did not need an interpreter at the hearing before me.
44. There is no evidence from the family friend who gave her the details. Moreover, I was also concerned by the Sponsor's evidence about a letter which she says that she gave her then solicitors to attach to the application. This has not been previously raised and indeed Mr Gajjar was unaware of it. I was concerned that recordings of the short conversations that she had with the Appellants' father were not disclosed in evidence. It does not assist the Sponsor that her evidence has not been consistent about the timing of her mother's death or that at the conclusion of the case, she raised issues relating to the safety of the Appellants which is not a matter that has been previously raised. The Appellants have been represented throughout the proceedings.

45. I accept that there is evidence capable of corroborating sole responsibility; namely, the evidence from the school and of money transfers and of course the Appellants' own evidence. The Sponsor was clearly upset at the hearing. I have no doubt that she has worked hard here to provide for her children. She has been separated from them for economic reasons and is desperate to be reunited here. However, there are so many problems her evidence. While it is plausible that there could be problems with contacting the father and obtaining evidence about abdication of responsibility, it is reasonable to have expected a more coherent and consistent account from the Sponsor. The failure to provide this undermines the evidence that she has sole responsibility. The Sponsor clearly has a degree of responsibility for the Appellants, but I am not satisfied that their father is not involved in their lives or that his involvement is so minimal that it can be reasonably inferred that the Sponsor has sole responsibility. Thus, the burden of proof has not been discharged. I am not satisfied that the Sponsor has sole responsibility for the Appellants.
46. Taking into account the totality of the evidence I conclude that the Appellants have not established on the balance of probabilities that the Sponsor has sole responsibility. The appeal is dismissed under Article 8 ECHR. The Appellants' case was not advanced on the grounds that should they not meet the Rules, the appeal should be allowed outside the Rules.

No anonymity direction is made.

Signed Joanna McWilliam

Date 18 May 2021

Upper Tribunal Judge McWilliam