



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

Appeal Number: OA/15893/2010

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 16<sup>th</sup> July 2013**

**Determination**

**Promulgated**

**On 17<sup>th</sup> July 2013**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MISS KANOKWAN BUASANIT**

Claimant

**and**

**ENTRY CLEARANCE OFFICER - BANGKOK**

Respondent

**Representation:**

For the Claimant: Mr F Khan (instructed by ZSN Immigration Services)

For the Respondent: Mr P Nath (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is a resumed hearing before the Upper Tribunal following a decision by me on 12th October 2011, on the Entry Clearance Officer's application, that the First-tier Tribunal had made an error of law and setting aside its determination.
2. In my decision of October 2011 I found that the Judge had erred in her assessment of paragraph 320(7A) of the Immigration Rules. I noted that

that was the only live ground challenging the decision. The question of sole responsibility was not an issue as the First-tier Tribunal had found in the Entry Clearance Officer's favour on that point. However I said that the First-tier Tribunal Judge's failure to take all the evidence into account in her assessment of paragraph 320(7A) tainted her other findings and set aside the determination in its entirety. Thus the matter came back before me.

3. It is appropriate at this stage to set out the facts and history of this case.
4. On 1st April 2010 application was made by Chailai Buasinet, the Claimant's mother, on her behalf for entry clearance with a view to settlement as the child of a parent present and settled in the United Kingdom. The Entry Clearance Officer refused that application in a decision dated 27th May 2010.
5. The Claimant was born on 5th January 2005 and was thus 4 years of age at the date of application, five years of age at the date of the decision and almost 6 years of age when the First-tier Tribunal promulgated its determination. She is now eight years of age.
6. The Sponsor, the Claimant's mother married the Claimant's father in Thailand on 30th September 2005 after the Claimant's birth. They divorced on 1st June 2007 and in the divorce proceedings custody of the Claimant was awarded to her father.
7. The Claimant's mother moved to Phuket. She met her second husband, a British citizen and they married in the UK on 20th June 2009. Their son, the Claimant's half brother was born in the UK on 24th July 2009.
8. The Sponsor spent six months in the UK as a visitor from 1st July 2008 and she was then given leave to enter to marry her husband valid from 20th March 2009 to 20th September 2009. She was then given leave to remain as a spouse in November 2009 until October 2011 and was thereafter given indefinite leave to remain in January 2012. She has thus been more or less full time in the UK since July 2008.
9. The Sponsor's passport shows that her habit has been to spend six weeks at the beginning of each year in Thailand visiting her daughter.
10. When application was made for the Claimant to join the Sponsor a letter was included from the Claimant's father indicating his consent. That letter also indicated that the Sponsor has always had sole responsibility for the Claimant, that he had never taken care of her and worked as a labourer in different places receiving a small income insufficient to support her. It indicated that he was pleased that she was to live with her mother in the UK and that the mother was a better parent than he.
11. That letter caused the Entry Clearance Officer to contact the father by telephone and that telephone call revealed a different version of events. Father told the Embassy that the Claimant lived with him and her paternal

grandmother and that they cared for all her needs. Her grandmother looked after her during the day and her father in the evenings when he returned from work. He told the Embassy that he had never missed a single day seeing her every morning and every night. He said that he had divorced the Claimant's mother at her request and that he had taken over custody on the day of the divorce. She had always and remained living with her father and since her mother had come to the UK she continued to live with him and his mother.

12. As a result of that conflicting evidence the Entry Clearance Officer invoked paragraph 320(7A). The Entry Clearance Officer also relied on paragraph 297 on the basis that the Sponsor had not had sole responsibility for the Claimant and there were no serious and compelling family or other considerations making her exclusion from the UK undesirable.
13. By the time the matter came before me in April
14. 2012 there was a letter from the Claimant's father giving his consent to her applying for a passport and travelling to England. It was agreed that given the sensitive nature of the case and child protection considerations it was important that the Entry Clearance Officer should have an opportunity to go back to the Claimant's father and interview him again in the light of the second letter.
15. That took place as a telephone interview on 11th June 2012 and the typed transcript of the interview is contained in my bundle. In that interview the Claimant's father said (question 8) that he had written a letter to the Embassy a long time ago, about two years previously and that his next letter was his second letter. When asked the purpose of the second letter he said that he would like his daughter to live with her mother as in Thailand her future is uncertain and she would be better living with her mother. He pointed out that he could not "totally look after his daughter as much" because he is now a monk. He said that his daughter is "big now" and he wanted her to have a good future. He said he was told that she would get a better education and that he was certain she would have a better future in the UK and that as a monk and could not really look after her. He told the Embassy that she lived with her maternal grandmother and grandfather now and that she had done so since she was aged 4 or 5. He said that he been ordained as a monk since 24th April 2011 and explained that before becoming a monk it was more convenient for the Claimant to live with her maternal grandparents given where he worked and it was more convenient for school.
16. That contradicts the evidence of his first interview given in 2010 that his daughter lived with him.
17. He said that he had been aware of the application in 2010 for his daughter to settle in the UK and he explained that his former wife and her mother had gone to see him in Thailand informing him that they were going to apply for the Claimant to move to England. He said that initially he had

agreed with the proposal but then changed his mind but has now changed his mind again on the basis that she “is big now” and it would be better for her.

18. He was asked about the letter that he had written to the Embassy and whether he had written it himself. He said he that he had only given the main idea and someone else wrote it; he thought his ex-wife’s solicitor. He had gone to the temple with his ex-wife to see him. Initially he asked a lot of questions and made notes and then came back with a letter that he asked him to read and then sign. It was pointed out to him that part of the letter said that he had relinquished his duties and responsibilities for his daughter and left all burden to her mother and her extended family and that she had lived with her mother and maternal grandparents ever since she had been born. He then said that part was not true and that he must not have paid much attention to what the letter said.
19. The father was asked where the family had been living prior to the divorce and he said they had lived at the maternal grandmother's. After the divorce he left the family and then brought his daughter to stay with him and his mother although he occasionally took her to stay with her maternal grandmother as well. He said that his ex wife had gone to Phuket where she met the man who is now her husband. He was asked why he was granted custody of his daughter on the divorce and said it was because she did not have a job, did not have a lot of things and was living in Phuket with her new partner. He was asked where his daughter had been living after his ex-wife came to the UK until he joined the monastery and he said between his own house and that of the paternal grandmother.
20. Following that interview the Entry Clearance Manager reviewed the original decision and a copy of that review is also in the bundle. The Entry Clearance Manager points out that it was quite clear from the first interview with the Claimant’s father, conducted in May 2010 that he was wholly unaware of the contents of the letter purportedly signed by him or of his daughter's application for settlement. It points out that with the appeal a further letter was submitted also purportedly written by him but that in the recent interview he had contradicted himself on whether he had written it or not, suggesting someone else had written it; but again he seemed ignorant of its contents. The Entry Clearance Manager indicates the letter appeared to have been written by mother’s legal representative and suggests that the letters sought to fabricate the Claimant’s previous circumstances in Thailand. The Entry Clearance Manager points out that the father had repeatedly asserted during both the interviews that the Claimant had lived with him, his parents and later with her maternal grandparents since he and his former wife divorced. He had been consistent in that and thus mother had signally failed to demonstrate sole responsibility for her daughter.
21. The Entry Clearance Manager acknowledges that father’s most recent responses indicate a change of heart as regards his daughter’s emigration

to the UK but that was not the test. It was not just a question of where she may achieve a better education or standard of living.

22. Mother, in her statement refers to her former husband (statement of 4th October 2011, paragraph 8) as someone with drinking, drugs and gambling addictions. I simply do not accept that to be the case; particularly given that the mother did not dispute the father having custody of her two-year-old daughter on divorce and came to the UK to start a new life leaving her in his care. If her former husband had been the type of person she now portrays him, as a caring mother she would have acted to have her returned to her care years ago. Furthermore, the evidence adduced; the only evidence adduced attacking father's character is a document from the police in Thailand of May 2010 indicating that father had been arrested in possession of one tablet of Methamphetamine. There is no evidence that he was charged, convicted or imprisoned. There is no evidence that he was a drug addict nor is there any evidence that he has a drink or gambling problem. Thailand is not known for its lenient treatment of drug offenders. It is true that the father himself refers to the drugs issue in his most recent interview with the Embassy suggesting that he was told to obtain medical treatment and that he has become ordained as a monk for his mother's sake.
23. There is no evidence that he has ceased contact with his daughter notwithstanding his being in a monastery and no evidence suggesting that is to be permanent.
24. That then is the background.
25. On mother's behalf Mr Khan argued that, so far as paragraph 320(7A) is concerned, given that the Claimant is a child she should not be held accountable for the actions of the adults in the case and that in any event mother was unaware because it was her legal representative who prepared the letter.
26. I accept of course that a young child cannot be held responsible for the actions of its parents or other adults. However, I do find that the Sponsor was aware and knowingly put forward a letter accompanying the application which misstated the background facts. Given that her ex-husband was granted and indeed still retains custody of the Claimant and his reaction during the first interview, it is quite clear that the letter was put in for the sole purpose of seeking to show to the Entry Clearance Officer that mother had sole responsibility for her daughter when quite clearly the evidence is she did not. I have no difficulty in finding that this was a deliberate attempt at deception by the mother and that father was ignorant of it. The first interview with the father I find to be the most revealing, unexpected as it was. It is quite clear that mother, members of her family and indeed her representatives met with her former husband since and I have no doubt pressure was brought to bear upon him to change his attitude.

27. Paragraph 320(7A) does not require the Claimant to be personally responsible for any deception practised. There does have to be deliberate intent on the part of someone and that clearly was the case here, that person being her mother. Paragraph 320(7A) requires only that false representations are made or information submitted whether or not material to the application and whether or not to the applicant's knowledge. The applicant's knowledge in this case is of course absent due to her age. However, there was clearly a deliberate attempt to mislead the Entry Clearance Officer into believing the situation in Thailand was other than what it was and for that reason the application falls to be refused under paragraph 320(7A).
28. However, as I indicated at the hearing that is not the end of the matter. Even if I had not dismissed the appeal under paragraph 320(7A), having found mother did not have sole responsibility for her daughter I would still have to consider whether there were serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the her care n accordance with paragraph 297(i)(f). That encompasses many of the same principles as consideration of Article 8.
29. The evidence makes clear that mother has not had sole responsibility for her daughter.
30. I find this case far from easy as I have been given very little evidence as to the situation in Thailand. The argument on mother's behalf seems to be no more than that she is the child's mother, she has maintained contact with her since her divorce and has visited the child annually in Thailand and that she would be better living with her mother. She now adds the evidence that father is unwilling or incapable of looking after her, something which I view with reservation. So far as serious and compelling family or other considerations are concerned, it seems clear that the child is well looked after, she is well fed, clothed and nurtured and is in education. She has good relations with both sets of grandparents and her father and lives in the country of her nationality, the country in which she has lived all her life. Her culture and heritage is in Thailand, her first language is not English and I am given no reason to find that there is anything untoward in her situation in Thailand such as to allow me to find that there are serious and compelling family or other considerations making her exclusion from the UK undesirable.
31. In considering Article 8 I have to consider as a primary consideration the Claimant's best interests. For the same reasons I recite at 29 above, I am given very little information to assist me in that decision. However in the absence of any evidence that she is in any difficulties or is anything other than well cared for and happy in Thailand I cannot find that it would be in her best interests to wrest her from the only life she has known and move her halfway across the world to live with her mother whom she has only seen for six weeks each year since the age of two, a stepfather who she has only met the same number of times and a half brother who she hardly

knows. That would prevent regular face-to-face contact with all the other members of her family with whom she has had a close relationship thus far, namely both sets of grandparents and her father and no doubt other extended family also.

32. It is clear from the fact that this couple went through divorce proceedings in which custody of the Claimant was dealt with, that Thailand has an established family and divorce law. The fact that the Sponsor and her husband went through that process indicates that they are prepared to use the law. There is no reason therefore why they could not properly go back to the court in Thailand for a transfer of custody on a legal basis from father to mother. They have chosen not to do so. As it is, on the evidence I have before me I am unable to find it in the child's best interests to remove her from her settled and established life. As I have indicated, there is no evidence that she is suffering either physically or emotionally and she can continue to enjoy the family life that she currently enjoys with her mother and her half-brother in the form of the annual visits. The fact that mother has formed this regular pattern of visits and the absence of any other visits at short notice suggests that mother has no concerns over the welfare of her daughter in Thailand. Accordingly refusing the Claimant entry to the UK for settlement does not represent a disproportionate breach of her right to a family life. Indeed to allow it would do so. I do not find any merit in a consideration of her half-brothers best interests. The two are virtual strangers, he is very young and in any event his best interests must be a secondary consideration behind those of the Claimant.
33. Having previously found that the First-tier Tribunal made an error of law in its determination and having set that determination aside I now remake the decision and allow the Entry Clearance Officer's appeal to the Upper Tribunal which means that the Claimant's appeal against the Entry Clearance Officer's decision is dismissed.

Signed

Date 17<sup>th</sup> July 2013

Upper Tribunal Judge Martin