



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/06107/2013

THE IMMIGRATION ACTS

Heard at Field House
On 1 July 2014

Determination Promulgated
On 8 August 2014

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MISS SYRIUS ODOI-ANIM

Appellant

and

ENTRY CLEARANCE OFFICER - ACCRA

Respondent

Representation:

For the Appellant: Mr S Westmaas, Counsel

For the Respondent: Ms J Isherwood, HOPO

DETERMINATION AND REASONS

1. The appellant appeals with leave against the decision of First-tier Tribunal Judge Moore dismissing her appeal against the decision of the respondent made on 24 January 2013 refusing her application for entry clearance to enter the UK as the child of a parent present and settled in the UK under paragraph 297(i)(e) of HC 395, as amended. The respondent was not satisfied that the appellant's sponsor and mother has had sole responsibility for her upbringing.

2. The appellant is a citizen of Ghana born on 30 June 1995. She is the only child of her mother Ms Jane Bus-Kwofie, the sponsor.
3. In her witness statement the sponsor said that she came to the UK in February 1998 with a visitor's visa. She applied for an extension of her stay after she met a man and married him. The application was refused. The marriage broke down. She graduated from university in 2003 and at that time became an overstayer since she had no visa to study. She was granted indefinite leave to remain in 2010. He was given a naturalisation certificate in January 2010 and granted a British passport in October 2012.
4. At the time the sponsor came to the UK the appellant would have been about 3 years old. The sponsor left the appellant in the care of her mother, who brought her up. The appellant saw her father for the first time in 2011 in Accra. He visited her and the grandmother at the family home in Takoradi. He has seen the appellant less than ten times. This is partly because he was posted to Holland to the Ghana High Commission and he worked there. Since he saw the appellant, he has given the sponsor about £100 a month to support the appellant. He knows about the application for the appellant to come and live with the sponsor. He does not object and has promised that should the appellant be granted permission to live in the UK, he would give the sponsor £400 a month to support her.
5. The sponsor said in her witness statement that although over the years her mother has looked after the appellant, she has been the one who has made all the major decisions as regards her life. She sent money to her mother for the appellant's school fees, doctor's fees, food and clothing, and birthday parties. It was because of her lack of visa in the UK she could not go and visit her. She has been the parent with sole responsibility for the appellant. Her mother, the appellant's grandmother, has always asked first before taking any decisions about the appellant.
6. The sponsor's mother's health was failing. A medical certificate was submitted in support of her failing health. The sponsor's mother needs a wheelchair and is not able now to take responsibility for the appellant.
7. The judge considered the sponsor's claims to have regularly sent monies to Ghana for the welfare of the appellant ever since she was in the UK, and that meant since 1998. He found that the sponsor had failed to provide reliable evidence corroborating this claim. The sponsor accepted that for a number of years preceding 2003, she was studying and had little money herself, since her studies were paid for by her family in Ghana. The sponsor added that her own mother stopped sending her money before 2003 and before she graduated. The judge found it inconsistent and to be implausible that the sponsor was relying on money sent to her from her family in Ghana when she was at university, but at the same time was sending money to her mother in Ghana. There was no reliable documentary evidence from the sponsor's sister, or any friends, or other relatives that on any occasion the sponsor had ever given them any monies to take to Ghana for the welfare of the

appellant. He found such a claim to be a convenient one and not supported by reliable evidence.

8. The judge noted that a number of money transfer receipts had been provided in support of the appellant's claim that the sponsor had sent monies regularly to Ghana for her. Notwithstanding that the money transfer receipts were fairly recent, the judge found that the named receivers of those monies all have different names and none related to the appellant or the appellant's grandmother, with whom the appellant lives. The sponsor claimed that the reason for this was that her mother was unwell and it would not have been sensible to have forwarded the money directly to her. Bearing in mind the age of the appellant, the judge saw no reason why the monies could not have been sent directly to the appellant over recent years. There was no reliable evidence showing that even if the appellant's grandmother was unwell, that she would not have been in a position to have used such monies for the day-to-day care of the appellant.
9. The judge considered that there was clear evidence that for at least the last two years, the appellant's father has been providing financially for the appellant.
10. The judge considered the sponsor's claims that she has paid all the school fees in respect of the appellant. The appellant in her witness statement also stated that her mother had paid the school fees. However, the sponsor had no letter from the school confirming who paid the school fees, but according to the sponsor she would give money to friends who were returning to Ghana to give to the appellant's grandmother for the grandmother to pay the school fees. The judge did not believe this evidence. On the one hand the sponsor was claiming that she would not send any money transfer to her mother, the grandmother, because she was not capable and was unwell, but on the other hand, the sponsor was willing to give cash to people who were returning to Ghana and for those people to give those monies to the appellant's grandmother for the grandmother to pay the fees. The lack of any evidence from the school satisfied him that the sponsor had not been responsible for paying school fees.
11. The judge found that whilst he was satisfied that there had been regular telephone contact between the appellant and the sponsor over many years, this on its own did not constitute sole responsibility. He was not satisfied that the sponsor has regularly financially provided for the appellant and he was not satisfied that she is the person who has exercised control and direction over her daughter.
12. The judge was satisfied that the sponsor has only had limited involvement, mainly by telephone and two visits to Ghana, with the appellant. He was not satisfied that the sponsor has exercised the relevant direction and control over the appellant, who has lived with her grandmother since the sponsor came to the UK when the appellant was 3 years of age.

13. The grounds asserted that the judge erred when he linked financial responsibility to sole responsibility, in the parental sense. The judge concentrated on the father's financial contribution, which is not evidence of sole responsibility and ignored evidence of the appellant's mother. The evidence of the appellant's mother was not accepted as regards finances, but there were no findings on the evidence of contact, changing health of the mother, the mother's witness statement and the statement from the appellant, referring to her father: "He has never been there for me or my mother. He did not see me when I was a child and he did not send me any financial support either. I don't really know him very well." Further, even if the grandmother did have responsibility for the appellant when she was younger, the situation changed in the light of the ill health of the grandmother. The statement of the mother that her mother had helped her, that any decisions were checked with her first, was consistent with the mother having sole responsibility.
14. I accept the argument that most of the judge's decision was based on who was making financial contributions towards the child's upbringing. I also accept Counsel's argument that financial contribution while important is not the determinative factor. Accordingly, I find that the judge erred in law for the reasons set out in the grounds. The judge's decision should be set aside and remade.
15. Mr. Westmaas said I could determine the appeal myself on the basis of the evidence before me, which is what I shall now do.
16. In **TD (Paragraphs 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049**, the Upper Tribunal analysed all the leading Tribunal decisions, Court of Appeal cases and held as follows in its head note:
- "Sole responsibility" is a factual matter to be decided upon all the evidence. Where one part 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. 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 will be exceptional that one of them will have "sole responsibility".*
17. On the evidence I find that the father's recent provision of financial support does not amount to sole responsibility or even shared responsibility for the care of the appellant. I accept the appellant's evidence as contained in her statement and relied on in the grounds that her father has never been there for her or her mother. She did not see him when she was a child and he did not send her any financial support either and that she does not really know him very well.
18. The appellant was left with her grandmother from the age of 3. The UT in **TD** said that as a matter of common sense, some responsibility for the child's life must rest with the carer in the country of origin. The sponsor in her witness statement accepted that her mother has brought up the appellant, which chimes with what the UT said in **TD**.

19. The sponsor said that she has been the one who has made all major decisions as regards the appellant's life. She said that her mother helped but she always asked her first before making any decisions about the appellant. Her evidence is supported by the appellant's evidence in her witness statement that the sponsor chose her school and everything else. Her mother sent money to her grandmother to support her and pay schools fees. On the question of financial remittances, I do not hold against the appellant that the remittances were sent through different people as I take judicial notice of the fact that this is how many Ghanaians in the UK send monies to their relatives in Ghana.
20. In light of the documentary evidence, I find that the sponsor has been in regular telephone contact with the appellant. This is supported by the appellant's evidence that the sponsor was always on the phone, sometimes three times a day. I find that this is strong evidence which indicates that the sponsor has exercised the relevant direction and control over the appellant. There is was no evidence before me as to why the sponsor did not make the application for the appellant to join her in the UK when she visited the appellant in 2010. By then she had been granted indefinite leave to remain. Nevertheless the sponsor's two visits, six weeks in August 2010 and seven weeks in July 2012 establish the sponsor's desire to have physical contact with the appellant once more, after a long absence.
21. The appellant was 17 years old when she made the application for entry clearance. I accept in light of the letter dated 18 November 2013 from Dr Otubuah that the appellant's grandmother is hypertensive and diabetic. She is 80 years old and is currently immobile and goes about her daily chores in a wheelchair. The grandmother stated in her letter of 23 October 2013 that due to old age and poor health which has left her wheelchair bound, she could not continue to fulfil the role of an active parent in her granddaughter's life. I do not find that this evidence adds much to the appellant's claim because at the age of 17 at the date of the ECO's decision, the appellant was old enough not to require the kind of care the grandmother would have given to her when she was much younger. This finding does not detract from my positive findings.
22. I find on the evidence before me that the sponsor did not abdicate responsibility for the appellant. She sent money to her mother when she could for the care of the appellant. Through her regular telephone calls she exercised continuing control and directions over the appellant's upbringing, including making all the important decisions in the appellant's life.
23. I allow the appellant's appeal.

Signed

Date

Upper Tribunal Judge Eshun