



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/00830/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 11 July 2018

**Decision &
Promulgated**

On 19 July 2018

Reasons

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

ENTRY CLEARANCE OFFICER (BEIJING)

Appellant

and

Y Z

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the appellant:

Mr D. Mill, Senior Home Office Presenting Officer

For the respondent:

Mr D. Jones, instructed by Forward Legal Services

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity should be granted because the case involves child welfare issues. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent.

DECISION AND REASONS

1. For the sake of continuity, I will refer to the parties as they were before the First-tier Tribunal although the Entry Clearance Officer (ECO), represented by the Secretary of State, is the appellant in the appeal before the Upper Tribunal.
2. The appellant (“YZ”) appealed the ECO’s decision date 07 December 2016 to refuse a human rights claim in the context of an application for entry clearance as the dependent child of a person who is settled in the UK.
3. First-tier Tribunal Judge Oliver (“the judge”) allowed the appeal in a decision promulgated on 29 November 2017. He heard evidence from the appellant’s father and her step-mother. He outlined the evidence before him and considered the level of involvement that the appellant’s mother had in her life since her parents separated. The judge referred to the correct legal framework and relevant case law. He was satisfied that the sponsor had ‘sole responsibility’ for the upbringing of the child.
4. The ECO appealed the First-tier Tribunal decision on the following grounds:
 - (i) The First-tier Tribunal judge failed to give adequate reasons for his findings.
 - (ii) It is not clear what weight the judge placed on the step-mother’s claim that she now had parental responsibility under Chinese law.

Legal framework

5. Paragraph 297 of the immigration rules sets out the requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled in the United Kingdom. Paragraph 297(i)(e) requires an applicant to show that one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has sole responsibility for the child’s upbringing. The usual maintenance and accommodation requirements also apply.
6. In *TD (Paragraph 297(i)(e): “sole responsibility”) Yemen* [2006] UKAIT 00049 the Tribunal summarised its findings 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) 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”.

7. In *FO & ors (children: settlement – OM distinguished) Nigeria* [2006] UKAIT 00089 the Tribunal summarised its findings as follows:

“The Tribunal’s remarks in *OM* about the Immigration Rules relating to the settlement of children (paragraphs 296 to 316 of HC 395) are obiter, and are not to be taken as an authoritative interpretation of those rules. Thus, there is no requirement that when a child applies for a settlement visa, there must be presented a form of lawful consent from the child’s carer or, failing that, a court order. Nor is there a requirement that a child coming for settlement here must be registered with the Social Services Department of the Local Authority where it is to reside.”

Decision and reasons

8. Although the First-tier Tribunal Judge could have given more extensive reasons, I conclude that he gave adequate reasons in the circumstances of this case. The judge set out the evidence in some detail outlining the father’s responsibilities for the child and the extent of the mother’s contact with the child. The facts of the case are not disputed between the parties.
9. The judge summarised the evidence in some detail. It is apparent that the force of the evidence showed that the father has had full custody of the child since he divorced from the appellant’s mother. He takes all the major decisions in relation to her life. He supports her financially, he is the person who decided where she should go to school, he is the person who decided where she should live, he is the person who delegated day-to-day responsibility to his mother in China.
10. In contrast nothing in the mother’s evidence suggested that she had any responsibility for the child’s upbringing. Nothing in the letter she wrote, or the conversation she had with the entry clearance post, suggested that she has anything other than sporadic and occasional contact with the child and in compliance with the court order provides some minimal financial contribution. There was nothing in her evidence to suggest that she had any responsibility for the child’s upbringing within the meaning considered by the Upper Tribunal in the decision of *TD*. There was no evidence to show that she had any responsibility for making decisions in relation to the child’s day-to-day life, choosing where she went to school or any of the other matters that one would normally expect of a parent to be involved in who is exercising some responsibility for a child’s upbringing. In fact, she told the interviewing officer that the child’s grandmother took all those day-to-day decisions.
11. The judge took into account all the different factors that weighed for and against each side. He referred to the decision in *TD* and had those principles in mind. Given that the weight of the evidence clearly pointed towards the father having sole responsibility for the upbringing of the child, this is the kind of case in which the reasons, although brief, were at least adequate. For these reasons, I find that the first ground does not disclose any material error of law in the decision.

12. Insofar as the second ground states that the judge did not make any findings regarding the stepmother's evidence, I cannot see how it would have made any material difference to the outcome of the appeal if the judge had made specific findings about the stepmother's claim to have legal responsibility for the child in circumstances where the mother never claimed to have any legal responsibility for the child since the divorce. After having spoken to the sponsor and his wife, the judge was clearly satisfied that the father had sole responsibility for the upbringing of the child.
13. The First-tier Tribunal decision did not involve the making of an error on a point of law. The decision shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The decision shall stand

Signed  Date 19 July 2018
Upper Tribunal Judge Canavan