



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

Appeal Number: HU/21835/2016

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre**

**Decision & Reasons**

**On 13<sup>th</sup> November 2018**

**Promulgated**

**On 27<sup>th</sup> February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**A F A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Jaghdesham (Counsel)

For the Respondent: Mr C Bates (HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Durrance, promulgated on 7<sup>th</sup> December 2017, following a hearing in Manchester on 22<sup>nd</sup> November 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of the United States, and was born on 17<sup>th</sup> March 2002. He appealed against the decision of the Respondent Entry Clearance Officer, dated 9<sup>th</sup> June 2016, refusing his application to join his father in the UK, who is a US national by birth, but who had established himself in the United Kingdom with his four children, having married a British national in this country. At the date of the decision, the Appellant was living in New York.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that he had lived in Yemen for the majority of his life. When his parents divorced, he was a toddler. He cannot remember having lived with his natural mother at all. She would visit him sparingly during his school term breaks. He sees his mother occasionally now. He lived with his grandmother, although his natural father had 'sole responsibility' over his care, and provided him with financial support and moral guidance. His sponsoring father had lived in the United Kingdom for many years now. He was established there. He had met and married his current wife in 2005. However, he was prevented from bringing the Appellant to the United Kingdom at the time. In 2013 he attended the US Embassy and obtained a US passport on behalf of the Appellant. Within the Grounds of Appeal, it is stated that the Sponsor's ex-wife had attended the US Embassy in Yemen and had answered questions and signed documents to confirm that she was not the person with custody of the Appellant, ever since her divorce from the sponsoring father in 2005. The conditions in Yemen had deteriorated and so the Appellant had travelled to the United States in January 2016. It was from there that he is applying to join his sponsoring father in the UK.
4. The Respondent ECO rejected the Appellant's claim on the basis that his biological mother lived in Yemen. The Appellant could easily have been resident with his biological mother in Yemen. There was very scant evidence in respect of sole responsibility by the sponsoring father. The decision of the ECO was upheld by the ECM on 19<sup>th</sup> August 2016.

## **The Judge's Findings**

5. The judge held that it was entirely unclear why the Appellant's father had not taken action at an early juncture to bring his son to the UK. In any event, there was no reason why he could not have sought US citizenship on behalf of his son in 2005 when he moved to the United Kingdom (see paragraph 30(a)). The judge also held that, although the Appellant had left Yemen with a number of family members including his cousins with whom he had been raised, this was on account of the worsening security situation in that country (paragraph 30(c)). The judge did not accept that the Appellant left Yemen due to reasons of family life, and for such family life to being restored with his father (paragraph 30(d)). Most importantly, the judge held that the evidence in respect of the Sponsor exercising sole

responsibility for the Appellant's son was "scant" and that "there is little evidence of the moral guidance that the Appellant refers to in his witness statement. I accept that the Sponsor sends money and gifts such as chocolate but this does not equate to sole responsibility. The letters in support indicate that money and gifts are sent but are silent on the messages from which sole responsibility might be inferred (paragraph 30(e))." The judge also held that the Appellant had lived in Yemen with extended family members and "was, in essence, under the supervision and control of his grandmother, uncle and aunt" (paragraph 30(f)). The Appellant's family members had cared for him since 2008 and that, "I equally can see no reason why the Appellant's aunt and uncle cannot look after the Appellant if there are issues with age and infirmity of the grandparent" (paragraph 30(g)).

6. The appeal was dismissed.

### **Grounds of Application**

7. The grounds of application state that the judge failed to examine the relevant evidence before coming to those conclusions (particularly at paragraph 30(a)). The Appellant's witness statement (at paragraphs 3 to 4) makes it clear that his father played a central role in his life. He took the decisions with respect to any medical treatment required for the Appellant as he was growing up. He made arrangements for the Appellant to be enrolled in school. Furthermore, the mother's own statement (at page 33 of part A) made it clear that since the divorce in 2005 it has been the father who has had full custody of the Appellant and been instrumental in managing his life.
8. For his part, Mr Bates submitted that the only issue was whether the grandmother played a sufficiently central role in the Appellant's life. The judge made a mistake about two cousins being in Yemen because this is not true. The judge also made a mistake that the aunt and uncle of the Appellant could look after him. Nevertheless, the grandmother was in Yemen and the Appellant could be looked after by the grandmother. At paragraph 30(e) the judge had taken a clear view with respect to the Sponsor's role in exercising sole responsibility for the Appellant and had concluded that there was "little evidence of the moral guidance that the Appellant refers to in his witness statement".
9. In his reply, Mr Jaghdesham submitted that "moral guidance" was no part of a requirement of "sole responsibility" which had to be considered as a whole in relation to the needs of the Appellant child. What was a requirement was who provided control and direction for the Appellant and in this respect there could be no doubt that it was the Appellant's father.
10. In any event, at paragraph 30(e) the judge is not referring to any evidence (even with respect to the grandmother in Yemen) to demonstrate that the sponsoring father could not have played any role of importance in the Appellant's life. The grandmother was actually active on the wishes of the

sponsoring father. The sponsoring father's statement makes it quite clear that with respect to core activities such as the provision of medical treatment and the Appellant's schooling, it was the sponsoring father that gave the direction to the carers in this respect. At page 22 (of part A) the grandmother makes it clear that she is acting at the behest of the sponsoring father. She also makes it clear that she is no longer able to provide the care needed because of her health. Indeed, at paragraph 30(g) the judge appears to acknowledge that the grandmother can no longer carry on providing the requisite care for the Appellant when he refers to the fact that the Appellant's uncle and aunt can look after the Appellant, quite forgetting the fact that there is no uncle and aunt to look after the Appellant at all. The grandmother alone was in a position to provide care in Yemen and she was now told to do so.

### **Error of Law**

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows. First, it is not the case that the evidence with respect to sole responsibility exercised by the father is "scant" (see paragraph 30(e)). The witness statement makes it clear (at paragraphs 8 to 11) that the sponsoring father has exercised sole responsibility with respect to the Appellant, including taking decisions on any medical treatment required, together with making telephone calls with respect to this, as the Appellant was growing up. He also made arrangements for the Appellant to be enrolled in school. He explains how the school refused to accept the Appellant (at paragraph 9) until the sponsoring father sent an email allowing the child to register at the school. Moreover, when the Appellant flew from the USA to the UK, the airline required a letter from the father granting permission for him to fly to the UK, and this the sponsoring father was able to do because he had flown back and forth from Yemen on various occasions to visit the Appellant son (see paragraph 6 of his statement). It matters not that the Appellant's father did not apply at an early juncture to bring his son to the UK, or not to have registered him for US citizenship, because none of these matters go to the question of whether, as a factual matter, the sponsoring father had exercised 'sole responsibility' for his son. That involves the giving of direction and exercising control over his life. The evidence shows that the sponsoring father was principally the adult doing so.
12. Second, the Appellant is now a teenager, and living with his father in the United Kingdom, and under Section 55 of the BCIA 2009, his wishes are important to any administrative decision taken with respect to his life. His witness statement (at pages 12 to 14) makes it clear that he wants to live with his father and his siblings in this country. He mentions the fact that he had been separated from his father for too long and wants to settle with him. He makes it clear (at paragraph 11) that, "I was able to regain lost time and to live a regular childhood again", at the prospect of being in the UK with him. He is at a critical stage in his life as a teenager, and his

best interests are to be cared for by his father, in circumstances where his mother has been separated from him since 2005, and is given legal custody over to the sponsoring father. The evidence before the judge was that the Appellant had minimal contact with his mother. In the United States, he was simply living with extended family members.

### **Re-Making the Decision**

13. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am allowing this appeal for the reasons given above. In **TD (paragraph 297(i)(e) (“sole responsibility”)) Yemen [2006] UKAIT 00049**, the Tribunal made it clear that the proper basis of approach to a case such as this is that, “where one parent has disappeared from the child’s life, and so relinquished or abdicated his (or her) responsibility for the child, the starting point must be that it is the remaining active parent who has ‘sole responsibility’ for the child” (paragraph 49). The sponsoring father in this case is the remaining active parent who has sole responsibility for the Appellant. This is a “one parent case”, and whilst the starting point of sole responsibility is that with a single parent, this may be negated where there is evidence that the carer abroad has shared responsibility for decisions with others, respect to the child’s life, in this case the evidence is that this has been done expressly at the behest of the sponsoring father.
14. Second, there is Section 55 of the BCIA 2009 and in this respect **Ndebe [2013] UKUT**, makes it clear that the focus of Section 55 cases is on the circumstances of the child in the light of his or her age, social background, development or history. It requires an enquiry into whether there is (a) evidence of neglect or abuse; (b) there are needs that should be catered for; and (c) whether there are stable arrangements for the child’s physical care. The assessment involves consideration as to whether the combination of circumstances is sufficiently serious and compelling to require the admission of the Appellant into the UK. In this case, there are stable arrangements for the child’s physical care in the UK, although there is no evidence of any neglect or abuse in Yemen or in the USA, but that said, there are needs of the Appellant in that he is the teenage son of his sponsoring father, from whom he has been separated, together with the resulting separation from the rest of his siblings, who are now in the UK.
15. Moreover, in **JO (Section 55 duty) Nigeria [2015] UKUT 00517**, it was made clear that the decisionmaker must be properly informed of the position of the child. Being properly informed and conducting a scrupulous analysis is a prerequisite of identifying the child’s best interests, and thus balancing them with the other essential considerations. Performing these duties will be an intensely fact-sensitive and contextual exercise. In a case, where the sponsoring father can already demonstrate that he has had “sole responsibility” for the Appellant, I find that the balance of considerations falls in the Appellant’s favour with respect to the wishes of the Appellant being taken into account in an effective manner with a view

to determining that his best interests lie in remaining with his father and his siblings.

**Notice of Decision**

16. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.
  
17. There has been a delay in sending out this Determination to the parties concerned, because although it was dictated on the day of the Hearing, and typed up shortly thereafter, it appears to have been held up in the system, before promulgation.

An anonymity direction is made.

The appeal is allowed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Juss

25<sup>th</sup> February 2019

**TO THE RESPONDENT  
FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have made a fee award of any fee which has been paid or may be payable.

Signed

Date

Deputy Upper Tribunal Judge Juss

25<sup>th</sup> February 2019