Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/18943/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 March 2021	**On 26 March 2021**
Extempore	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MISS ISATA KABBA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Jaquiss, Counsel
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal promulgated on 20 November 2019 dismissing her appeal against a decision of the respondent to refuse her entry clearance to the United Kingdom to settle with her father as a dependent child pursuant to paragraph 297 of the Immigration Rules and also to refuse her human rights claim based on that decision.

2. The appellant says that she was born on 24 May 2000 and she applied shortly before her 18th birthday for entry clearance to join her father who is settled in the United Kingdom. It is not in dispute that the appellant's father ("the sponsor") has been living in the United Kingdom since 2001 nor that her mother has remarried.

3. The appellant's case is that she was left first with the maternal grandmother and then with a maternal aunt, Fatmata. who had care of her subject to the sponsor providing funds and taking an active part in her upbringing such that he met the test to show that he had sole responsibility for her. It is the appellant's case that there has been little or no contact with the mother who plays no real part in her life. It is also said by the appellant that she is at risk from her maternal aunt who is pressurising her to join the Bondo Society in Sierra Leone and that in consequence there are serious and compelling reasons why she should be allowed to enter the United Kingdom and overall it is said that as a result it would be a breach of her rights pursuant to Article 8 to refuse her entry clearance. It is I consider notable that it is said that being forced to undergo induction into the Bondo Society would require female genital mutilation ("FGM").

4. The Entry Clearance Officer refused the application on two discrete bases. The first is that the appellant had failed to provide a valid medical certificate confirming she had undergone screening for pulmonary tuberculosis and therefore that her application failed to be refused under paragraph A39 of the Immigration Rules.

5. The second basis for refusal, and the focus of the appeal in the First-tier Tribunal, is that the applicant did not meet the requirements of paragraph 297 of the Immigration Rules. The first reason given is that the respondent was not satisfied that the appellant and her father were related as claimed, the respondent attaching little weight to the birth certificate which he noted was not issued until 27 December 2017 more than seventeen years after her birth. He was also not satisfied that the documents provided that the mother had abandoned her and was not satisfied that the evidence of money transfers and the other evidence satisfied him that there was sole responsibility. The respondent also concluded that there were not any serious and compelling other or family reasons which makes her exclusion undesirable, noting that there would be agencies in Sierra Leone which could assist her with her resisting FGM and noting also that she was legally an adult and capable of living an independent life. He also considered pursuant to Article 8 that there was no reason why her exclusion was disproportionate.

6. On appeal, the judge heard evidence from the sponsor and submissions from both representatives. The judge concluded that the appellant and sponsor were related as claimed given the evidence of the Cellmark DNA report but concluded that the appellant had not shown that her father had sole responsibility for her or that there were serious and compelling family or other considerations such as she should not be excluded. The judge

also concluded pursuant to Article 8 that there were no reasons having had regard to the facts as set out in Section 117A to Section D of the 2002 Act that the refusal of entry clearance was disproportionate.

7. The appellant sought permission to appeal on what are characterised by Ms Jaquiss today as three principal grounds:

   (i) a failure properly to apply TD Yemen [2006] UKAIT 49

   (ii) a failure to provide reasoning for the conclusion that the appellant had not shown that the sponsor has had sole responsibility for her;

   (iii) a failure to attach weight to the birth certificate the reasons given for that being insufficient but failure properly to resolve the issue of whether or not the appellant was at risk of FGM which relates to the issue of whether there are serious and compelling reasons why she should not be excluded.

8. Permission to appeal was granted by Upper Tribunal Judge Pickup on a renewed application on 24 June 2020. Although the judge granted permission on all grounds he did conclude that there was no merit in the challenge to the judge's assessment of the weight to be attached to the birth certificate.

9. Subsequent to that there was a hearing before me on 27 November 2020 at which I drew to the parties' attention the fact that there had been a failure by the judge to address paragraph A39 and I adjourned for evidence to be produced and submissions to be made. In consequence the appellant has now produced a valid TB certificate which would appear to meet the requirements of the Rules and submissions were made as to the materiality of that error which I will turn to in due course.

10. The issue of whether sole responsibility has been demonstrated (and it is for the appellant to show that her father has had sole responsibility for her upbringing), is a factual matter to be decided on all the evidence the test being set out in TD Yemen. As was noted by the Tribunal at [7], some responsibility for the child's life must rest with the carer in the country of origin. It is accepted that a parent who has settled in the United Kingdom may retain sole responsibility for a child where the day-to-day care and responsibility for that child is necessarily undertaken by a relative abroad.

11. At [13] the Tribunal noted that the central part of the notion of sole responsibility is the UK based parent's continuing interest and involvement in the child's life including making or being consulted about and approving important decisions, and at [15] the Tribunal identified the core issue which is who makes significant decisions about the child's upbringing and whose obligation is it to make those decisions. Financial support is of course relevant but as the Tribunal noted where, as is claimed to be the case here, there are two parents involved, it is more difficult to show that one of the parents has had sole responsibility: at [42] the Tribunal said it is merely a factually unusual indeed exceptional case in terms of the very

particular findings of the judge concerning non-involvement of her father in the child's upbringing despite the fact that the appellant was living with him.

12. In TD (Yemen) [46] the Tribunal held:

> In order to conclude that the UK based parent had sole responsibility for the child it will be necessary to show that the parent abroad had abdicated any responsibility for the child and was merely acting with the directions of the UK based parent who was otherwise totally uninvolved with the child's upbringing. That possibility clearly cannot be ruled out.

13. Equally at [49] where one parent has disappeared from the child's life and so relinquished or abdicated responsibility the starting point must be that it is the remaining active parent who has sole responsibility for the child.

14. It is evident from these passages that what is required is a proper factual analysis of the situation particularly where two parents are involved or still alive.

15. In this case challenges are made to the findings made about the appellant and discrepancies that arise in the evidence. But it has to be borne in mind that it is still for the appellant to prove her case. What the judge says at [38] is:

> taking into account all of the above factors I am not satisfied on the evidence before me that the appellant's mother has no involvement in the appellant's life.

16. That, taken at its face, would appear to be contrary to the test set out in TD Yemen. But, the judge goes on to say:

> I do not consider that the appellant and sponsor have been transparent regarding the appellant's circumstances either at the date of application or decision or now. I consider the sponsor's credibility is damaged by the contradictions that have arisen in his evidence and that the transfer receipts clearly place the appellant's mother at the same address as the appellant from 2008 until 2014. The appellant's and sponsor's claim that nothing is known about the appellant's mother is contradicted by the prediction of a letter of 2018 from the appellant's mother.

17. The judge did accept the sponsor had been sending funds to the appellant. It is also of note that although this is under the heading serious and compelling family or other considerations, the judge did at paragraph [41] say that she did not accept that the appellant's circumstances were as claimed and considered the fact that she has been living with or has contact with her mother and that her mother has shared parental responsibility for her with the sponsor whilst she was a minor.

18. I consider it is artificial to separate that finding out from the rest of the findings which are based on the evidence and the findings made in the previous paragraphs. That then leads to a consideration of the findings.

19. I consider that the judge was entitled to reach adverse findings regarding credibility and as to the actual circumstances of where the appellant was living given the inconsistencies identified properly in the evidence and which are set out at paragraphs [22] to [24]. I consider also that the judge was entitled to draw inferences adverse to the appellant and sponsor from the apparent inconsistency of their saying there had been no contact with the mother yet a letter from her is produced and which telling me makes reference to circumstances in which the appellant finds herself.

20. The judge was I consider entitled to conclude in the light of that letter that there had been contact and that the position that was being presented was not accurate. I consider also that the judge was entitled to draw inferences from the fact that the financial receipts are addressed to Kadijatu Kamara which is the name given for the mother and at an address where it is said the appellant has been living.

21. It is only today said that Kadijatu Kamara referred to in the receipts is in fact the appellant's daughter that is the aunt with whom she lives daughter making it her first cousin. This is not addressed in the evidence before me nor has it been shown to me that this point was put to the judge. It is not I consider inappropriate or unfair for a judge when faced with evidence which shows that the mother is named Kadijatu Kamara and money receipts in that they were produced to conclude that this is anything other than appears at face value. If there was a difficulty and bearing in mind that the issue here was whether or not the mother had had any contact at all, it was for the appellant to make the point it is not for a judge to point out defects in an appellant's case which were that clear on the face of the evidence.

22. Turning next to the birth certificate, whilst it is not clear that the Secretary of State took issue with the age or date of birth of the appellant, it is evident that the respondent did consider that it was not reliable evidence.

23. In fairness to the appellant the judge did not reach any conclusion on this basis, and it cannot be said that the judge has made a finding that the appellant is not the age claimed but rather that the document is unreliable. I consider that the judge was entitled to reach the conclusion that the birth certificate was unreliable and gave adequate and sustainable reasons for doing so. At [28] the judge observed that the document was issued seventeen years after the birth and is not a contemporaneous record. That is in itself a sufficient reason to attach less weight to it, as indeed is the reference to the appellant apparently studying at the age of 15 and the evidence which relates to another daughter is material because it indicates that it is possible to register an incorrect date of birth on the basis of information by a third party, that is the point. The fact that it was possible to do so and what happened in the case of Zainab (the other daughter) is evidence that it is possible to do, does not mean necessarily that incorrect evidence was provided on this case, but it is a factor which the judge was rationally entitled to take into account.

24. Drawing all these strands together, it is evident that the judge for adequate and sustainable reasons, reached the conclusion that she was not being told the truth about the circumstances in which the appellant was living or indeed the contact with the mother. That, bearing in mind that it was for the appellant to show sole responsibility, is sufficient to show that the decision on this issue was sustainable; the judge did not accept the account of decisions being taken or indeed the other indicators which were pointed in favour of there being no sole responsibility. It was open to the judge and she gave good and adequate reasons for this to conclude that the appellant's mother was involved in her life and that they had been living together.

25. Viewing the evidence as a whole and taking the decision as a whole I am satisfied that, and bearing in mind that the judge heard the evidence, the judge was entitled to conclude for the reasons given that sole responsibility had not been established.

26. With regard to the submission that the judge acted irrationally in concluding that the appellant was not at sufficient risk of FGM such that there were serious reasons for her exclusion that she should not be excluded, Ms Jaquiss was unable to take me to any evidence showing that membership of the Bondo Society necessarily involved undergoing FGM although she did submit that that was implicit and in effect common ground before the Tribunal.

27. It is difficult to discern how that is so although the judge does note that the appellant claimed that was the case at paragraphs [43] and [44], but again it was for the appellant to show that this was so and that what she said about the aunt was true but it has to be borne in mind that for adequate and sustainable reasons the judge had not accepted what had been presented to who about the circumstances.

28. Accordingly, I conclude that on the facts before her and in light of the findings of fact properly reached the judge was entitled to conclude that there were not in this case serious and compelling circumstances such that paragraph 297(i)(e) or (f) were met.

29. In the circumstances and given that the appellant had not met the requirements of the Immigration Rules, it cannot be argued that the conclusion with regard to Article 8 was one vitiated by an error of law on the basis it is not sufficiently reasoned or otherwise involve the making for an error of law. The judge was entitled to conclude that it was not a disproportionate interference with the appellant's right to an Article 8 family or private life to refuse entry clearance.

30. Finally, it was a requirement of the Immigration Rules that the appellant had a relevant TB certificate. Although this issue was not considered by the judge, as is accepted appellant did not have a certificate which met the requirements of the Immigration Rules and Appendix T of the Immigration Rules although she does so now. On that basis alone the

appellant would have failed to meet the requirements of the Immigration Rules in which case despite Ms Jaquiss' submissions, the errors with regard to sole responsibility and serious and compelling reasons are not material. No proper basis is given to show why the necessity of having that certificate could be outweighed by any Article 8 interest but in any event it is unnecessary for me to consider that in any great detail given the findings that I have already made.

31. Accordingly, for these reasons I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

No anonymity direction is made.

Signed Jeremy K H Rintoul Date 18 March 2021
Upper Tribunal Judge Rintoul