



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: HU/19293/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

On 26 July 2021

Sent to parties on

On 12 August 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

AGYEMANG GABRIEL OPOKU

(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr S Tampuri of Tamsons Legal Services

For the Respondent: Mr A Tan, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote

hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Ghana with date of birth given as 9.8.04, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 15.2.21 (Judge Hone), dismissing his appeal against the decision of the Secretary of State, dated 8.11.19, to refuse his application made on 9.7.19 for entry clearance to the UK to join his sponsoring mother pursuant to paragraph 297(e) of the Immigration Rules.
2. The First-tier Tribunal found at [16] of the decision that the sponsor did not have sole responsibility for the appellant's upbringing and failed to demonstrate that she financially supported him. At [17] the judge concluded, "I find that there is no credible evidence to show that she is solely responsible for the major decisions in the appellant's life."
3. Permission to appeal was granted by the First-tier Tribunal on 24.3.21, on the basis that the grounds disclosed arguable errors of law but for which the outcome of the appeal might have been different. "The judge arguably had regard to irrelevant considerations in deciding that the sponsor did not have sole responsibility for the appellant." The judge granting permission noted that at [17] the judge stated "the sponsor's claim is not supported by any phone records or messages. This is of course a pre-requisite, but there is no evidence to support her assertion that she contacts her son every day and has had control over his life since 2004". The judge granting permission observed that the sentence "reads uneasily but on its face is arguably suggestive of the proposition that the judge regarded the making of telephone calls and the dispatch of messages as either a requirement of the Rules or a consideration so important as to be decisive of the issue whether the sponsor had had sole responsibility for the appellant or not. For the same reasons the judge's assessment of the proportionality of the decision under appeal was carried out against a backcloth which included an arguably irrelevant consideration."
4. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
5. It is abundantly clear that the primary error of law relied on is an attempt to take advantage of what was undoubtedly no more than a typographical error at [17] of the decision. I am satisfied that the judge fully intended to state that phone records or messages are not a pre-requisite. Indeed, that is the only way in which the entire sentence can make any sense. It was for that reason that the judge went on to state, "but there is no evidence to support her assertion that she contacts

her son every day..." It follows that whilst there was an error, it was not material and fully explicable as an error of typing.

6. With regard to the complaint that the judge failed to apply Section 55 of the Borders, Citizenship and Immigration Act 2009 and take the best interests of the child into account as a primary consideration, I am satisfied that on a reading of the decision as a whole, the judge did take all due account of the appellant's best interests. As Mr Tan pointed out, by their nature, the requirements of paragraph 297 of the Immigration Rules incorporate the best interests of the child. However, if the appellant cannot demonstrate that she has had sole responsibility for her son, or that there are "other considerations which make exclusion of the child undesirable," the child's best interests are for the status quo to remain. As Mr Tan also pointed out, the appellant has been looked after by his uncle for some 15 years and refers to him as 'Dad', as the judge noted at [23] of the decision, suggesting a close relationship.
7. It is beyond challenge that in considering whether the sponsor had established sole responsibility, the judge was entitled to point to the absence of evidence, including documentary evidence supporting the claim of daily communication with the child. Mr Tampuri submitted that the mother has always been involved in the child's life but, with respect, that is not the test of sole responsibility as opposed to shared responsibility. As Mr Tan pointed out, both the uncle and the mother are listed as contacts at the appellant's school.
8. Considering the limited evidence available to the judge and reading the decision as a whole, in the round, I am satisfied that the judge has made a holistic assessment of the child's best interests. At [24] the judge specifically stated that consideration was given to what was best for the child. I am satisfied that the judge properly applied the requirements of the Rules and carefully considered whether the appellant has demonstrated that his mother has had sole responsibility. In that consideration, at [23] the judge pointed out a discrepancy between the uncle's letter and the sponsor's claim that the uncle no longer wishes to look after the appellant because his wife is not willing to continue to care for the appellant. Whilst the uncle states he wishes to move to a different village, no reason is given why the appellant cannot relocate with him. There have been no material changes in circumstances between this and previous application.
9. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 26 July 2021