



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

Appeal no: **OA 16649-12**

**THE IMMIGRATION ACTS**

At **Field House**  
on **28.11.2013**

Decision signed:  
**28.11.2013**  
sent out:  
**05.12.2013**

Before:

Upper Tribunal Judge  
**John FREEMAN**

Between:

**CHEN LING**

appellant

and

**Secretary of State for the Home Department**

respondent

Representation:

For the appellant: *Alexis Slatter* (counsel instructed by Maxwell Alves)  
For the respondent: Miss Emilie Martin

**DETERMINATION AND REASONS**

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Bernard Andonian), sitting at Taylor House on 16 July, to dismiss a dependent son appeal by a citizen of China, born 13 August 1998, and refused a visa on 30 July 2012. The judge was not satisfied that the sponsor, the appellant's mother, had had sole responsibility for him (see Immigration Rules paragraph 297 (1) (e)); nor apparently (though he did not say so explicitly) that there were nevertheless 'serious and compelling family or other considerations which make exclusion of the child undesirable' (see paragraph 297 (1) (f)).

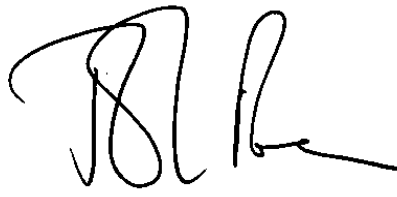
2. The judge reached conclusions on the responsibility the sponsor herself had (or had not) taken for the appellant, which were clearly open to him on the evidence before him: the same appears to be true with the view he took (at paragraph 5) on whether or not it was desirable for the appellant

to be excluded from this country, and particularly from living with his mother here.

3. However, the question of 'sole responsibility' required the judge to consider who did have responsibility for the appellant, if not the sponsor, and he answered this question at paragraph 8. The judge took the view that the appellant was being looked after by three people: a Miss Woo (paid to do it by the sponsor, through a third party), and his father and paternal grandmother.
4. The appellant's case on the parts played by these people in his present care is set out by the judge at paragraph 4: in each case the sole source is the evidence of the sponsor herself. Miss Woo reported that the appellant had become very unruly, and refused to take notice of a woman who was not his mother; his grandmother was "no longer able to care due to various health issues"; and his father has "psychological and mental problems", described by Mr Slatter as alcoholism and schizophrenia. The arrangements were for Miss Woo to have the appellant in term-time, while for holidays he went to his grandmother's, where his father also lived.
5. The judge noted that the grandmother's incapacity was unsupported by medical evidence; but he did not say anything more of his own on this side of the case. While it might have been hard for the appellant to succeed before any experienced judge (as this judge certainly is) without some confirmatory evidence, either about his grandmother or his father's problems, in my view these were important enough issues in the circumstances for the judge to need to make an express reasoned finding on them, and the same applies to what had been said about Miss Woo.
6. While there is nothing wrong with the judge's findings on the sponsor in themselves, it is clear that he needed to consider the whole picture (or perhaps, given the often-repeated injunction to do so 'in the round', it should be sculpture) together, both about her, and about the others who might or might not have been involved in the appellant's care. For this reason I have come to the view that there must be a fresh hearing, both on paragraph 297 (1) (e) and (f), which can most conveniently take place before another first-tier judge.
7. If it becomes necessary for the judge to consider article 8, that will be open too; but at present I find it hard to see what room the wide discretionary terms of paragraph 297 (1) (f) leave for success under that provision, if not under the Rules. On 297 (1) (f), the Home Office must file and serve at least certificates of the convictions on which they rely, with any other material they can get to explain the circumstances. If any request for an expedited re-hearing becomes necessary (which I hope it will not, given the appellant's age and the unsatisfactory circumstances in which he is said to be living), then that should be made to the resident judge at Taylor House.

### **Appeal allowed**

### **Fresh hearing at Taylor House, not before Judge Andonian**

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(a judge of the Upper  
Tribunal)