



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

Appeal Number: HU/06829/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 4 December 2017**

**Decision & Reasons
Promulgated
On 8 January 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MASTER GC
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Makol, Legal Representative

For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. At the centre of concern in this appeal is the situation of the appellant who is a citizen of Ghana aged 7. In a decision sent on 5 July 2016 First-tier Tribunal (FtT) Judge Sullivan had dismissed his appeal against the decision of the respondent dated 1 February 2016 refusing to grant him entry clearance as a dependent child of the sponsor, his mother. However, in a decision dated 13 October 2017 Deputy Upper Tribunal Judge (DUTJ) Chapman set aside Judge Sullivan's decision for legal error. DUTJ

Chapman found that the judge has wrongly approached assessment of the accommodation requirement of the Rules (by looking at the date of application and decision and not asking if such accommodation would be available on arrival) and had wrongly approached the issue of sole responsibility.

2. The case comes before me in order for the decision on appeal to be re-made. I received further evidence from the appellant in the form of printouts of a number of Whats App messages between the sponsor and the appellant's school teacher being dated between 20 May 2016 and February 2017.
3. I heard concise submissions from the representatives. Mr Makol said that the evidence showed that the sponsor had direct contact with one of the appellant's teachers and that this fact explained the respondent's concern about different phone numbers. The evidence clearly established that the sponsor had sole responsibility. As regards accommodation, the sponsor had recently (in December 2016) moved accommodation again to a 3-bedroomed house. Mr Pal pointed out that the majority of the sponsor's evidence relating to her exercise of parental functions in relation to the appellant was post-decision.

My Decision

4. Whilst the decision of the FtT Judge has been set aside for material error, there is no challenge to a number of findings of fact made therein. These include: that the sponsor has sufficient funds to support the appellant; that the sponsor has taken an active interest in the appellant's education; that she had visited her son in Ghana on a yearly basis and also maintains contact with him by telephone; that there is family life between the sponsor and the appellant (see paragraph 12 of DUTJ Chapman's decision). At paragraph 14 DUTJ Chapman held that "... there were no issues about the sponsor's income and her ability to support the appellant including the payment of rent for suitable accommodation for both of them".
5. In light of these preserved positive findings, DUTJ Chapman directed that the further hearing be confined to two issues: accommodation and sole responsibility.

Accommodation

6. At the date of application the accommodation in contemplation for the appellant was an address in Raleigh Road. However the sponsor did not provide evidence to show that was available or suitable accommodation. By the time of the hearing before the FtT Judge the sponsor had moved. It was the sponsor's evidence that although there was a tenancy agreement dated 2 October 2015 for the Raleigh Road address she had never moved in. the sponsor sought to rely on accommodation in another part of Wembley. She produced a tenancy agreement dated 31 December 2016.

However she did not produce a letter from her landlord permitting the sponsor to live in this different accommodation with the appellant and there was no report as to the occupancy or adequacy of accommodation there. The FtT noted that there was no evidence of current payment of rent into any recent bank account. The FtT Judge's apparent reliance on correct payment of rent was properly found by DUTJ Chapman to wrongly focus on the situation at the date of hearing rather the date of arrival of the appellant. However, it remains that to satisfy this requirement an appellant must show not just that such accommodation is available but that it is suitable. The appellant has failed to provide evidence showing that. It is possible that in so failing the sponsor has been poorly served by those representing her who may have been able to obtain satisfactory evidence; but she has not done so and the burden of establishing suitable accommodation rests on her. The appellant's appeal fails to meet the requirements of paragraph 297 of the Rules.

Sole Responsibility

7. I am not persuaded that the appellant has shown he meets the requirements of paragraph 297(i)(e). The sponsor stated in the EC application that a previous application had been refused because the ECO was not satisfied the father was no longer involved in the appellant's life. It was stated that although the father had been involved in the appellant's life before the sponsor came to the UK (in 2011), "the father is with his wife in Obvasi", an area some 200 miles away from where the appellant had gone to live with his aunt. In the refusal decision, among the reasons for rejecting sole responsibility were that "you have not provided any evidence of the whereabouts of your father or that he consents to your travel and settlement in the UK". Even if not strictly correct to say the appellant had provide no evidence of the father's whereabouts, it was correct that no address had been given and no documentary evidence had been received from the father giving his consent to his son leaving Ghana to go live with his mother. This absence of evidence was not remedied before the FtT Judge nor before DUTJ Chapman. In my assessment the appellant is unable to establish that his mother has sole responsibility in the absence of such evidence in satisfactory form. For this reason alone the appellant cannot meet paragraph 297 of the Rules.
8. For the above reasons the decision I re-make is to dismiss the appellant's appeal.
9. I would go on to observe, however, that I would not exclude that the appellant might be able to succeed if his sponsor makes a fresh application providing he produces (1) satisfactory evidence to show that the appellant's father no longer plays any role in his life and that he gives his consent to the appellant going abroad to live with his mother; and (2) satisfactory evidence that the appellant's new carer (Ms Ofei) who apparently also lives in the same area as the appellant's father is not sharing responsibility for bringing up[the appellant. The evidence

indicates that the appellant began living with Ms Ofei, a friend of the sponsor, in March 2016. Ms Ofei is also identified in a number of the WhatsApp message printouts. For the FtT Judge the fact that if there is a problem at school, the school staff contact Ms Ofei was “indicative of Ms Ofei sharing responsibility for the appellant”. That, as DUTJ Chapman recognised, betrayed an erroneous approach to the issue of sole responsibility, one failing to consider the range of relevant factors identified in **TD** [2006] UKAIT 00049; nevertheless the FtT Judge properly noted a dearth of evidence about the new arrangement – “no witness statement from Ms Ofei, nothing to show the circumstances in which the appellant is currently living and no evidence to confirm that the appellant ... cannot continue to live with her safely or that he cannot continue with his current education. All the sponsor said was that Ms Ofei is a pensioner and that she promised to return the appellant after one year”. Despite the observed lacuna in the evidence, the sponsor has not produced further evidence for the purposes of the hearing before me. Had it been material to my decision I would have gone on to find that this lack of evidence about the circumstances of the new caring arrangement was a further reason to find that sole responsibility on the part of the sponsor had not been established. But if the sponsor chooses to make a fresh application to the ECO she will have an opportunity to provide further and better evidence about the precise terms of the arrangement with Ms Ofei and what it discloses as regards whether she (the sponsor) exercises control and direction over major decision regarding the appellant’s life.

10. To conclude:

The decision of the FtT Judge has already been set aside for material error of law.

The decision I re-make is to dismiss the appellant’s appeal.

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
2018

Date: 5 January

Dr H H Storey
Judge of the Upper Tribunal