Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04590/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 February 2019	**On 4 March 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

JANOI [J]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M Rhind, legal representative, IR Immigration Law LLP
For the Respondent: Ms S Jones, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Jamaica aged 18. He applied when still a minor for entry clearance to join his father in the UK. On 17 February 2017 the Entry Clearance Officer refused his application, considering that it had not been shown he was related as claimed and that in any event he had not shown that his father had sole responsibility for him. The appellant appealed this refusal. In time for the hearing he produced a certificate of the registry of births dated 20 April 2000 and a birth registration form dated 10 June 2009. On 5 October 2018 Judge Lucas of the First-tier

Tribunal (FtT) dismissed his appeal. The judge set out her reasons for dismissing the appeal at paragraphs 27-35:

> "27. The burden of proof is upon the Appellant and the standard of proof is of the balance of probabilities.
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> 28. The Tribunal does not accept that the Appellant and sponsor are related as claimed. The issue and question of the relationship was raised quite clearly in the Refusal decision. The burden of proof in this respect does not fall upon the Respondent. There was nothing at all to prevent the Appellant from obtaining a DNA Report in order to prove that relationship. This is almost as commonplace when a biological relationship is said not to be proved before this Tribunal.
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> 29. It is accepted that there is evidence of money transfers and visits to Jamaica by the sponsor. There is also evidence in the form of letters from witnesses who did not attend this Hearing, to state that the sponsor is the father. However, this is not convincing evidence and the issue could have been disposed of simply by obtaining a DNA Report in respect of paternity.
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> 30. The Tribunal does not accept that the details contained on a birth certificate issued long after the birth of the Appellant is a reliable document.
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> 31. The Tribunal does find it significant that there is not a single photograph of the sponsor and Appellant together despite the – what is said – frequent trips by the sponsor to Jamaica.
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> 32. The Tribunal does not accept that the sponsor has or had sole responsibility for this Appellant in Jamaica. The sponsor left the Appellant in Jamaica to come to the UK in 2007 when the Appellant was aged seven years. He has not attempted to apply to bring him to the UK until the present application in 2016. His stated reasons for not so doing are not convincing and the Tribunal finds that the present application was made simply because the Appellant was approaching the age of 18, which he now is.
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> 33. Despite the evidence from school, friends and relatives, the Tribunal does not accept that the sponsor has had sole responsibility for the Appellant and Jamaica. It is quite obvious that the Appellant's emotional and material needs were and continue to be looked after by other family members in Jamaica. The Appellant currently lives in a property owned by the sponsor and his other family in Jamaica. His mother also lives there. It is not therefore accepted that sole responsibility for this Appellant falls at the feet of the sponsor in this case.
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> 34. The asserted relationship is not accepted in this case and it is not accepted that there is or has been sole responsibility by the sponsor.
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> 35. For these reasons, the appeal is dismissed."

2. The appellant's grounds of appeal assail both limbs of the judge's decision. They firstly submit that the judge wrongly approached the evidence of paternity. Whilst there was no DNA evidence, there was birth certificate documentation, together with surrounding evidence from relatives, a bank account manager and a football coach attesting to the fact that the appellant was the son of the sponsor.

3. I am persuaded that this ground identifies legal error. The reason the ECO gave for not accepting paternity was because the appellant had produced a birth certificate stating that his birth was registered on 3 April 2014, nearly fourteen years after he was born. However, by the time of the hearing, the appellant had produced a certificate of registry of birth naming the sponsor as his father and signed by the registrar on 20 April 2000. Thus the judge's understanding as expressed at paragraph 30 was clearly incorrect. The document in the appellant's bundle is only a copy, but Ms Jones did not dispute Ms Rhind's statement that originals had been produced. Further, the judge seems to have considered that the evidence from relatives, friends and the school was irrelevant or very peripheral to the issue of paternity and only went to the issue of sole responsibility. However, although indirect evidence, it was evidence that had a bearing on the issue, especially because to the judge's (mistaken) understanding there was no birth certificate created soon after the birth. To merely state without explaining why that this evidence was "not convincing" (paragraph 29), was inadequate.

4. However, the judge's erroneous treatment of the issue of paternity is not enough for the appellant to succeed in this appeal, since the judge went on to find that in any event the appellant had not shown that his sponsor had sole responsibility under paragraph 297 of the Immigration Rules. All hinges, therefore, on which the appellant's second ground of appeal is made out.

5. The appellant's grounds submit that the judge's finding that the appellant had not established sole responsibility on the part of the sponsor was against the weight of the evidence in the form of not only the letters from relatives, friends and school officials, but also the oral evidence of the sponsor. It was pointed out that the ECO did not conduct interviews with any or all of the witnesses before making a decision on the application. The appellant's grounds also submit that the judge's finding that the appellant's emotional and material needs were being met by other relatives was simply a presumption, as the evidence submitted by the appellant was plainly to the contrary. In any event, if the judge had properly applied case law principles as set out in **TD** [2006] UKAIT 00049 she would have realised that sole responsibility for a child does not preclude the possibility that the child will be looked after day-to-day by someone other than the sponsor parent and the proper test was whether the sponsor parent had control and direction over the child's upbringing.

6. I would accept that the judge does not refer to the case of **TD** or to the principles it establishes. Nor does she specifically identify that the key question was whether the sponsor had shown control and direction over the child's upbringing. However, I am not persuaded that her assessment misunderstood the requirements of the Rules or applied the wrong test. It is clear first of all that the judge gave careful consideration to all the sources of evidence relevant to the issue of sole responsibility: see paragraphs 10-21. It is also clear that the judge heard submissions from both representatives (the appellant's representative before the judge was also Ms Rhind and Ms Rhind did not suggest that her own submissions failed to identify **TD** principles: see paragraphs 22-26). Third, the judge's reasons identify a number of factors pointing strongly against the sponsor having control and direction over the

appellant's upbringing, noting at paragraph 31 that despite what were said to be frequent trips paid by the sponsor to Jamaica, there were no photos of the sponsor and appellant together (paragraph 31); that the sponsor had not attempted to call the appellant to the UK until 2016, some nine years after he (the sponsor) had come to the UK (paragraph 32); that the appellant's emotional and material needs were being met and could continue to be met by family members in Jamaica (paragraph 33); and that he had a mother in Jamaica (paragraph 33). Ms Rhind submits that the written evidence from school, friends and relatives did not show that the appellant's emotional and material needs were being met, as the judge presumed, by other family members in Jamaica. However, having looked through the body of evidence before the judge, I consider the judge's assessment of its effect was within the range of reasonable responses. This evidence shows that the appellant has been cared for by his paternal grandmother for most of his life until quite recently when his uncle took over care of him. The appellant himself made no mention in his letter to the sponsor having control and direction over his upbringing; he simply stated that the two "have a very good relationship". The sponsor's letter catalogued the financial support he provided to the appellant and states that he was known by the school to be the only parent involved in the appellant's life, but he did not assert that he had exercised control and direction over the appellant's upbringing. The letter from the appellant's mother did assert that the sponsor had "had all the responsibilities" for the appellant, but she did not explain why she played no part except to say it was "inconvenient"; the appellant's paternal grandmother, who had borne the main responsibility for bringing up the appellant until recently, made no mention of the sponsor having control or direction over the appellant's upbringing, although she did mention his financial support and his visits back to Jamaica so that he could be involved in his son's life. The letter from a teacher, Ms Lettman, did mention that the sponsor has been "the sole provider and parent mainly involved in his son's supervision", but gave no examples.

7. The letter from the football coach only confirmed that the sponsor has been very supportive of the appellant "[w]henever he is back on the island"; it did not refer to any control and direction exercised from the UK. The letter from the bank employee also confirmed the sponsor's active role in the appellant's life to periods when he has visited Jamaica. This body of evidence, much of which is unparticularised and lacking in any concrete examples fell well short of establishing sole responsibility except for the periods when the sponsor paid visits.

8. In short, I am unable to accept that the judge erred in concluding that the appellant had not shown that his sponsor had exercised sole responsibility. The evidence considered by the judge (including the oral evidence) was properly seen to be insufficient to discharge the burden of proof resting on the appellant.

9. For the above reasons I conclude that although the judge erred in her treatment of the issue of paternity, her decision was free of material error since the findings made on the issue of sole responsibility were within the range of reasonable responses.

10. Accordingly I conclude that the decision of the FtT Judge to dismiss the appellant's appeal must stand.

No anonymity direction is made.

Signed: Date: 28 February 2019

Dr H H Storey
Judge of the Upper Tribunal