



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002384
On appeal from: HU/54274/2022
IA/06422/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 19th February 2024

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

MOHAMMED HAMDAN
(NO ANONYMITY ORDER)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Michael Biggs of Counsel, instructed by Zyba Law solicitors

For the Respondent: Mr David Clarke, a Senior Home Office Presenting Officer

Heard at Field House on 12 February 2024

DECISION AND REASONS

Introduction

- 1.** The appellant challenges the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 20 December 2021 to refuse him entry clearance to join his father, who is a British citizen. The appellant is a citizen of Bangladesh and is 19 years old: at the date of application, he had just turned 17 years old.
- 2. Mode of hearing.** The hearing today took place face to face.

3. For the reasons set out in this decision, and having regard to the concession made by Mr Clarke on behalf of the respondent, I have come to the conclusion that the decision of the First-tier Tribunal should be set aside and the appellant's appeal allowed.

Background

4. The main basis of the appellant's case is that his father has sole responsibility for him and that the First-tier Judge did not apply the paragraph 297 test correctly: see *TD (paragraph 297(i)(e): "sole responsibility") Yemen* [2006] UKAIT 000049. The test in *TD* is set out in the judicial headnote:

"Sole responsibility" is a factual matter to be decided upon all the evidence. Where one parent is not involved in the child's upbringing because he (or she) had abandoned or abdicated responsibility, the issue may arise between the remaining parent and others who have day-to-day care of the child abroad. The test is whether the parent has continuing control and direction over the child's upbringing, including making all the important decisions in the child's life. However, where both parents are involved in a child's upbringing, it will be exceptional that one of them will have "sole responsibility".

5. The First-tier Judge held that he was satisfied that the sponsor was entirely responsible for meeting the appellant's financial needs, took a close interest in his education and general welfare, and had a close emotional bond with him. The appellant's mother in her statement said that she was no longer in a position to look after him, for health reasons.
6. The First-tier Judge nevertheless found that the appellant's mother had not abdicated responsibility for her.
7. At the hearing today, Mr Clarke conceded that on the evidence before the First-tier Judge, the Judge had erred in law in finding that the sponsor did not have sole responsibility for the appellant. He invited me to remake the decision in this appeal by allowing it. Mr Biggs for the appellant did not oppose that approach.
8. The appeal will be allowed on that basis.

Notice of Decision

9. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeal.

Judith Gleeson
Judge of the Upper Tribunal

Appeal Number: UI-2023-002384

Immigration and Asylum Chamber

Dated: 12 February 2024