First-tier Tribunal
(Immigration and Asylum Chamber) [redacted]

THE IMMIGRATION ACTS

Heard at the IAC (via remote CVP), Taylor House, London on 09 May 2022	**Decision and Reasons Promulgated 12 May 2022**

Before

JUDGE OF THE FIRST TIER TRIBUNAL S MEAH

Between

[redacted]

(ANONYMITY ORDER NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr S Bellara, Counsel instructed by Legend Solicitors
For the Respondent: None

DECISION AND REASONS

BACKGROUND

1. The appellant is a national of Bangladesh who was born on 03 February 2013. He appeals against the Entry Clearance Officer's (ECO's) decision to refuse him entry clearance as the dependent child of M[redacted] the UK sponsor in this matter. [redacted]s a full British citizen and is also settled here.

2. The application was made on 25 November 2019, and refused on 02 January 2020, on the grounds that the ECO was not satisfied that there were any compelling family

or other considerations to make the appellant's exclusion from the UK undesirable, or that the sponsor had had sole responsibility for the appellant's upbringing. The relationship between the appellant and sponsor was also disputed owing the appellant's birth certificate not being issued contemporaneously at the time of his birth, and the respondent was also not satisfied the appellant would be adequately maintained in the UK without recourse to public funds.

3. Full details of the refusal are set out extensively in the ECO's Notice of Immigration Decision issued separately to the appellant. This is a matter of record hence I shall not repeat it here. These were the only grounds of refusal and there has been no formal application to either amend or add to these from the time of the original refusal until the date of the substantive hearing.

4. The matter was also considered outside the Immigration Rules under ECHR Article 8, although the ECO decided there were no such circumstances which merited a grant of entry on this basis.

5. This appeal was previously decided in the FtTIAC in a decision promulgated on 24 February 2021. The appellant successfully appealed this decision which was then set aside in its entirety by a decision in the Upper Tribunal on 08 October 2021, and the matter was remitted to be heard again in the FtTIAC. The matter now comes before me to decide afresh with none of the previous Judge's findings being preserved.

DOCUMENTS

6. I was supplied with appellant's indexed bundle consisting of further documentary evidence to support the appeal totalling 68 pages. This included a witness statement from the sponsor. All of this was in compliance with IAC Directions and provided in electronic format.

7. A respondent's bundle was also provided. This included a copy of the Reasons for Refusal Letter (RFRL) together with copies of some other relevant documents pertinent to the appellant's appeal. It also included the Entry Clearance Manager's (ECM)/Respondent's reviews (x2) of the original decision.

THE LAW

8. The appeal is made under section 82 of the Nationality, Immigration & Asylum Act 2002 (NIAA - as amended).

9. The application was considered under paragraphs 297 of HC 395 Immigration Rules (as amended). The relevant sections of this state as follows:-

> 297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

(i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:
(a) both parents are present and settled in the United Kingdom; or
(b) both parents are being admitted on the same occasion for settlement; or
(c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or
(d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or
(e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; or
(f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and
(ii) is under the age of 18; and
(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
(iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and
(v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and
(vi) holds a valid United Kingdom entry clearance for entry in this capacity; and
(vii) does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974.

10. The refusal of the appellant's application constitutes a refusal of a Human Rights claim. The appeal is brought under the amended section 82(1)(a) of the NIAA 2002. Pursuant to section 84(1)(c) of the NIAA 2002. The sole ground of appeal is that the refusal is contrary to section 6 of the Human Rights Act 1998, and that exclusion of the appellant from the UK is a disproportionate interference with the private and family lives of the appellant and his sponsor under Article 8 of the ECHR.

11. The appeal will therefore be decided on wider human rights grounds including under the provisions of section 117B of the NIAA 2002, rather than on the question of whether the requirements of the Immigration Rules in question here were met at the time of the decision. Whether the appellant satisfied the Immigration Rules on the date of decision is not determinative in human rights appeals, however it is a weighty factor to be considered in the overall assessment and consideration to be afforded to an appeal brought on human rights grounds.

12. Section 85(4) of the NIAA 2002 provides the Tribunal with the power to consider any matter which it thinks relevant to the substance of the decision including a matter arising after the date of decision **HH ('conditional' appeal decisions) Somalia [2017] UKUT 490 (IAC)**.

13. I have also considered the following Reported decisions:

- **TD (Paragraph 297(i)(e): "Sole Responsibility") Yemen [2006] UKAIT 00049**

- **Mundeba (s.55 and para 297(i) (f)) Democratic Republic of Congo [2013] UKUT 88 (IAC) (26 February 2013)**

BURDEN AND STANDARD OF PROOF

14. In immigration appeals the burden of proof is on the appellant and the standard of proof required is a balance of probabilities.

THE HEARING

15. This was a remote hearing to which the parties consented. The format of remote hearing was via video platform using CVP. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties and the party in attendance did not express any concern with the process.

16. There was no appearance by any representative on behalf of the respondent and no explanation has been received for the absence. No written submissions specifically for the hearing have been received on her behalf either. I am nonetheless satisfied that all notices have been properly served on all the parties concerned, including the CVP joining notices, and that it was fair and just to proceed in the absence of a representative on the respondent's behalf.

17. The sponsor appeared before me. He adopted his witness statement as his evidence-in-chief. I also heard submissions from Mr Bellara. I have taken all of this into account in my consideration of this appeal, alongside that which was contained in the bundles from both sides. I shall not repeat all of this here except that some of it may be referred to in my findings as might be appropriate.

18. The CVP recording of the hearing comprises the formal Record of Proceedings in this matter in line with the Presidential Guidance of 02 December 2021. I decided to allow the appeal at the end of the hearing and I duly announced my decision to the parties in attendance. I shall now proceed to provide full reasons for my decision.

FINDINGS

19. I have considered very carefully the grounds of appeal and all the other evidence submitted in support of the appellant's appeal against the reasons given by the ECO for refusing the application.

20. I have also considered the case of **Budhathoki (reasons for decision) [2014] UKUT 00341** which stated, inter alia, as follows:

> *"…We are not for a moment suggesting that judgments have to set out the entire interstices of the evidence presented or analyse every nuance between the parties. Far from it. Indeed, we should make it clear that it is generally unnecessary, unhelpful and unhealthy for First-tier Tribunal judgments to seek to rehearse every detail or issue raised in the case. This leads to*

judgments becoming overly long and confused. Further, it is not a proportionate approach to deciding cases. It is, however, necessary for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost…"

21. I have further considered in this regard that which is stated in the case of **UT (Sri Lanka) [2019] EWCA Civ 1095** at paragraphs 37-39 in particular, alongside that which is stated at paragraph 35 in **TZ & PG [2018] EWCA Civ 1109** as follows:

"….there is no obligation in law for a tribunal to structure its decision-making in any particular way and it is not an error of law to fail to do so……"

22. I have drawn the following conclusions:-

Disputed Relationship

23. Issue was taken in the original refusal with the appellant's birth certificate being issued some four years after his birth. This was the basis of the disputed relationship. The sponsor explained that a birth certificate was not obtained at birth for the appellant as this was/is not a mandatory requirement in Bangladesh.

24. He further explained that he personally visited the hospital in Dhaka where the appellant was born to obtain the birth certificate for the purposes of the appellant's entry clearance application. The hospital is a reputable one which maintains good computerised birth records and he was therefore able to obtain the birth certificate from the hospital with relative ease after satisfying the hospital authorities of his own identity which he did by using his passport and UK driving licence, upon which the hospital proceeded to provide him with the appellant's birth registration details.

25. There is nothing before me to show that the birth certificate relied upon by the appellant and sponsor to prove their biological relationship is not genuine. The respondent has not provided any verification of any kind to show or suggest that this cannot be relied upon, other than the assertion that it is not contemporaneous. This of itself is insufficient to dislodge the authenticity of the birth certificate which I find is enough to prove that the relation is as claimed.

26. Furthermore, asked why the sponsor had omitted to provide DNA evidence to conclusively prove the relationship, he stated that he had not been advised of this by those acting for him otherwise he would have availed himself of such an option. He was also very clear that he would be more than content to go through DNA testing to prove the appellant is his biological child if this was still required.

27. I found the sponsor to be credible witness and I believed his evidence and I also accept that the birth certificate provided for the appellant which shows him as the father is genuine and that this can therefore be relied upon to alleviate the dispute raised regarding the relationship.

Appellant's biological mother's involvement in his life

28. The sponsor claimed the appellant's mother effectively abandoned him at age 3 years when they separated. The appellant was left in the care of the sponsor's mother. She filed for divorce within a year of separating from the sponsor although she made no attempts to contact the appellant during this time or at any point after she separated from the sponsor. The sponsor was clear that she has not in fact had any contact with the appellant since she left when he was around 3 years of age.

29. The respondent stated in this regard in her latest review in this case that the court document from Bangladesh that had been presented to support the appeal showing the sponsor has legal custody of the appellant which had also been provided with the original application, did not confirm that the mother is not involved in the appellant's welfare. It was asserted that sole responsibility is not the same as having legal custody.

30. The sponsor has now provided a 'Lawyer's Certificate' from Bangladesh dated 25 April 2022, from an advocate there who assisted the sponsor with the custody case in the Bangladeshi courts, where he states that the appellant's mother who was noted as the 'defendant' in that matter failed to appear or the contest the sponsor's custody claim. This is self-explanatory and stated as follows:

> "TO WHOM IT MAY CONCERN
>
> Subject: Lawyer's Certificate
>
> I, Shajib Mahmood Alam, an advocate enrolled in the Supreme Court of Bangladesh, date of birth: 15th May 1991, do hereby certify that I am lawyer who conducted the case of [redacted] being Family Suit number 427 of 2018 in the matter of seeking permanent custody of the minor and further seeking permission to take the minor abroad. The law suit was filed on 06.05.2018 before the Learned Senior Assistant Judge 3rd Court, Dhaka and was subsequently transferred to 2nd Additional Assistant Judge & Family Court, Dhaka where it was renumbered as Family Suit No. 427 of 2018.
>
> That this is to further certify that the Learned Court issued summons on 08.05.2018 to
> notify the Defendant and ordering her to appear before the said Court with necessary
> instructions. That the summons was properly served on the Defendant which is reflected in the Learned Court's order dated 30.05.2018. However, the Defendant did not make any appearance in the suit or contest the suit in any other manner which has also been reflected in the subsequent orders of the Learned Court. After repeatedly pleading with the court, after more than one year of filing the suit, the Learned Court took deposition of the Plaintiff ex-parte and decreed the suit on 28.10.2019 allowing the
> Plaintiff to have permanent custody of the minor and further allowed him to take the minor abroad among other activities.
>
> It is further stated that the Courts will not issue any such Order without being satisfied that all parties have been given valid notice. The Court ensured this

> procedural requirement was properly satisfied. Further, as far we are aware, there has been no application or inquiry from the Defendant mother to apply for a discharge, set aside or any variation to the Order.
>
> BARRISTER SHAJIB MAHMOOD ALAM, ACIArb
> (Barrister not having license to practice in the UK)
> Advocate, Supreme Court of Bangladesh
> Associate, Chartered Institute of Arbitrators, UK
> Member, Commonwealth Lawyers Association…"

31. I find that this, together with the sponsor's detailed and credible explanation around the circumstances of his separation with the appellant's mother and her subsequent abandonment of the appellant and the lack of her appearance and interest in the custody proceedings in Bangladesh, is sufficient to persuade me that the sponsor is telling the truth when he says that the biological mother is not in any way involved in the appellant's life and that this has been the case since she separated from the sponsor.

32. In relation to the mother's name being on the appellant's passport, the sponsor again explained in detail that this was rudimentary in that a next of kin must always be named and her name was there as a default as his name could not be inserted on the grounds that he was/is living abroad in the UK. Again, having heard the sponsor's explanation on this, and taking account of the other evidence in this regard including the 'Lawyer's Certificate' cited above, I find that this is sufficient to outweigh any inference that might be drawn from the mother's name being on the passport, and I accept that this does not indicate that she is in some way involved in the appellant's life.

Sole Responsibility & Exclusion Undesirable

33. The sponsor explained that when the appellant's mother first left him at the point of their separation he was left in the care of the sponsor's mother in Bangladesh. The sponsor later married in Bangladesh and his second wife (who is now settled in the UK) also assumed care and responsibility for the appellant which they both provided under the sponsor's instructions. The sponsor's mother passed away in September 2018, after which his second wife provided day to day care to the appellant whilst she was still in Bangladesh. The appellant's care was then taken over by the parents of the second wife when she came to join the sponsor in the UK as his spouse.

34. The sponsor stated that he continues to provide monthly funds for the appellant's maintenance and upkeep amounting to around £180.00 each month. He also pays TK3000.00 per term for the appellant's private schooling at a local school in Dhaka, and he has also arranged two additional private tutors for him to assist the appellant in the subject of maths as the appellant struggles with this. The sponsor has also arranged for the appellant to study the Quran in Arabic where he has also arranged a Quran/Arabic teacher to teach the appellant how to read the Quran and he pays around TK500.00 for this each month.

35. The sponsor was very clear in his evidence that since the appellant's mother abandoned him it is he who has been solely responsible for the appellant's upbringing whereby he has paid for the appellant's maintenance, upkeep, education and all his other needs and that this continues until the present day. He also confirmed that it was his decision that the appellant follow the Islamic religion and part of this was to ensure that the appellant learn to read the Quran in Arabic, and it is he who decided upon which school the appellant would attend in Bangladesh and he in essence makes all the major decisions in the appellant's life.

36. He also explained that the temporary arrangement currently in place where his mother-in-law and father-in-law are providing day to day care for the appellant is unsustainable in the long-term as they are both in their seventies hence elderly and they are struggling to take care of the appellant, especially as he is growing older where his care needs are therefore increasing by the day.

37. Paragraphs 49 and 50 of **TD Yemen** state as follows:

> *"….Where one parent has disappeared from the child's life and so relinquished or abdicated his (or her) responsibility for the child, the starting point must be that it is the remaining active parent who has "sole responsibility" for the child. The fact that the remaining active parent is in the UK makes no difference to this. Of course, the geographical separation of the parent from the child means that the day-to-day care of the child will necessarily be undertaken by others - relatives or friends abroad - who look after the child. Here, the issue under the immigration rules is whether the UK-based parent has, in practice, allowed the parental responsibility for the child to be shared with the carer abroad. This is, of course, the question we see most frequently in the case law.*
>
> *The cases, particularly Nmaju and Cenir in the Court of Appeal, make clear that the touchstone of "sole responsibility" is the continuing control and direction by the parent in the UK in respect of the "important decisions" about the child's upbringing. The fact that day-to-day decision-making for a child - such as "getting the child to school safely and on time, or putting the child to bed, or seeing what it has for breakfast, or that it cleans its teeth, or has enough clothing, and so forth" (Ramos, per Dillon LJ at p 151) - rests with the carers abroad is not conclusive of the issue of "sole responsibility". However, if the UK-based parent has allowed the carer abroad to make some "important decisions" in the child's upbringing, then it may readily be said that the responsibility for the child has become "shared"…."*

38. Having found the sponsor to be a consistent and credible witness I accept that he has had sole responsibility for the appellant and that all the other care arrangements that have been in place since the appellant's mother abandoned him at the time of separating from the sponsor has in fact only been day to day care for the appellant, all of which has been under the instructions of the appellant, whereas the sponsor has been entirely responsible for all of the appellant's affairs including meeting all of his financial needs which covers upkeep, maintenance, school fees, food, clothing and other incidental expenditure. Contact has been maintained with the appellant by the sponsor over the telephone via social media, and predominantly through the What's App, Viber and Skype internet applications.

39. I received in the appellant's bundle from pages 62 - 64 evidence of some money transfers along with letters from the appellant's school at pages 67 – 68.

40. Having had the benefit of hearing the sponsor's cogent testimony I am satisfied and therefore find that the sponsor is the one who has had sole responsibility for the appellant's upbringing and that this was not shared with the grandmother before she passed away in 2018, or indeed with his current wife (appellant's stepmother) before she came to live in the UK with the sponsor.

41. The sponsor was emotional when he explained the dynamics of his marriage break-up with the appellant's mother and how it has been difficult not being able to care for the appellant himself and the less than desirable circumstances he was compelled to leave the appellant in under the care of his aged mother-in-law and father-in-law when the appellant's entry clearance application was refused. He further stated that in his mind this latter arrangement was always supposed to be short-term after his second wife came to join him here with the aim of urgently bringing the appellant to the UK to settle with the family here.

42. I found this to be telling and I did not find that this was either being feigned or made up by him, but rather that it was a true reflection of what he described about both him and the appellant being 'heartbroken' when he had to leave the appellant behind in Bangladesh after a trip there in late 2019 which he made with a view specifically to bring the appellant to UK following what he had hoped would be a successful entry clearance application. He stated he and the appellant were devastated by the refusal that prevented the appellant from coming to the UK with the sponsor.

Maintenance

43. The respondent conceded in her most recent review of the decision that the maintenance requirements were met based on evidence provided in the appellant's appeal bundle. In fact the sponsor was questioned about his ability to maintain the appellant without recourse to public funds in the UK whereby he aptly elaborated upon his and his wife's employment details and financial circumstances including on their joint income and essential outgoings comprising rent, council tax and utilities. In short and suffice it to say that I was more than satisfied, notwithstanding the respondent's concession on this, that the appellant would be more than adequately maintained and indeed accommodated in the UK without becoming a charge on any public funds.

Section 117B - Public Interest

44. In assessing the public interest under Article 8(2) I have also kept in mind the provisions of section 117B of the NIAA 2002 as amended by section 19 of the Immigration Act 2014. I have in this regard taken note of the reported cases of **Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC), Deelah and others**

(section 117B – ambit) [2015] UKUT 00515 (IAC), Dube (ss.117A-117D) [2015] UKUT 90 (IAC) (24 February 2015), AM (s 117B) Malawi [2015] UKUT 0260 (IAC) and **Rhuppiah v SSHD [2018] UKSC 58**, insofar as they are applicable in this appeal.

45. The appellant will be adequately maintained and accommodated in the UK by the sponsor and no issues were raised in relation to the appellant's ability to speak English – this is not a requirement of the Rules under which the appellant sought to enter in any event. Otherwise, there are no precariousness of stay/leave issues here given that the matter is to do with an entry clearance application by a child from overseas.

46. I therefore find that there is no public interest to be served in preventing the appellant from entering the UK to join his father here. The appellant has shown that all of the relevant requirements of the Immigration Rules under which he sought to enter are satisfied. This is therefore of course dispositive of the appeal as per **TG & PZ**.

SUMMARY CONCLUSIONS

47. The application was dealt with on the basis of the documentation submitted to support the original application without any interviews being conducted with the appellant/sponsor. I, however, have had the opportunity of carefully reviewing all of the substantial documents that have been placed before me which include not only the papers submitted to the ECO to support the original application, but also the additional bundle submitted by the appellant's sponsor in the UK.

48. I have also had the opportunity of hearing direct evidence from the sponsor and I found him to be credible witness in all respects as to the evidence he gave before the Tribunal, and such evidence forms in part, the factual basis of my decision, none of which I find has been undermined at any point.

49. Therefore, in totality, and having considered all the evidence presented to me in the round, I find the ECO's concerns have been adequately addressed. I find that the appellant has therefore successfully proved his case to the requisite standard under the relevant provisions of the Immigration Rules under which he sought entry to the UK.

NOTICE OF DECISION

50. The appeal is allowed.

ANONYMITY

Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 & Presidential Guidance Note No. 2 of 2022: Anonymity Orders and Directions regarding the use of documents and information in the First-tier Tribunal (IAC) (21 March 2022)

51. No Anonymity Order is made in this appeal

FEES

52. I make no fee award despite my decision to allow the appeal as it was necessary for me to hear direct evidence from the sponsor and to consider the documentary evidence provided for the appeal for me to reach my decision in this matter. A fee award would therefore be inappropriate in these circumstances.

Signed Date: 10 May 2022

S Meah

Judge S Meah
Judge of the First-tier Tribunal