LIRA'S IMMIGRATION CORNER

Challenging Children Refusals

A COMMON reason for refusal of children applications to join their parents in the UK is the principle of "sole responsibility"; this is especially true when the applicant child is nearing majority (18 years old).

SAMPLE SCENARIO:

The **Appellant** whose application for entry clearance to join her mother was refused.

The **Sponsor** mother who has indefinite leave to remain (ILR) in the UK.

The **Respondent** to the appeal is the Home Office.

The Appellant's **Grandmother** who has been looking after The Appellant since her mother left the Philippines.

The Appellant's **Father** has not had contact with A since the age of 7 years.

At the time of her entry clearance application to join her Sponsor mother, the Appellant was a 17-year-old child; although she has subsequently turned 18 years old in the intervening period, her application should still be determined on the basis that she remains a minor, pursuant to paragraph 27 of the Immigration Rules:

"An applicant will not be refused an entry clearance where entry is sought in one of the categories contained in paragraphs 296-316 … of Appendix FM solely on account of his attaining the age of 18 years between receipt of the application and the date of the decision on it'

The Sponsor was granted ILR and lives in the UK in a flat also suitable for the Appellant. The Sponsor works and has a gross income of £25,000. It was accepted by the Home Office that the Sponsor will be able to adequately accommodate and maintain the Appellant, without recourse to public funds.

THE RESPONDENT'S DECISION:

The Respondent's decision refusing the Appellant's application states that **paragraph 297** (the route for children making application to join a parent who is present and settled or being admitted for settlement in the United Kingdom) has not been satisfied because based on the information and documents provided the Sponsor did not have sole responsibility for the Appellant's upbringing.

The Respondent's letter of refusal also goes on to say that she has taken into account the Appellant's best interests.

THE LAW:

The legal issues in this case are:

(i) Has the Sponsor had 'sole responsibility' for the Appellant's upbringing, for the purposes of paragraph 297(i)(e) of the Immigration Rules.

(ii) What do Appellant's best interests require pursuant to section 55 BCIA 2009;

Issue 1: Has the Sponsor had 'sole responsibility' for the Appellant's upbringing?

The Appellant's father disappeared from her life from the age of 7 year and so relinquished his responsibility for her. The starting point is that the Sponsor as the remaining active parent, has 'sole responsibility' for her. **HOW DO YOU PROVE THIS?**

(i) Witness statements – should set out the Sponsor's role in the Appellant's life. Statements can be provided from the Sponsor, the Appellant, and the Grandmother. There is no need for "permission" from the Father for the Appellant to leave the Philippines. If you provide a statement from the Father "giving permission" this will imply that the Father is involved in the child's care and has joint parental responsibility; this will likely lead to a refusal of the application or appeal as it directly goes against the Appellant's case that the Sponsor has sole responsibility.

(ii) Financial support – remittances are not conclusive evidence but are still good evidence that the Sponsor has assumed sole responsibility for the Appellant's upbringing. Provide as many as you can and list them (excel is a useful tool). Total the sums for each year and say what it is for. For example, state if the remittances are paid towards school fees, food, board, and lodging. If the Sponsor sends money via family or friends, obtain statements from those third parties to confirm their part in getting the funds to the Appellant.

(iii) Adverse evidence – deal with these as it is never a good idea to ignore them. If the Appellant was interviewed and Respondent claims that the Appellant gave evidence against sole responsibility, ask for a copy of the interview transcript. If the Respondent fails to provide this, the Appellant should say (in her statement or later at the Tribunal) that she asked for the document, but it was not disclosed. In any event, the Appellant in her statement should give her own account of the interview.

(iv) Language usage - beware that referring to the Grandmother as a "Guardian" can be construed as sharing parental responsibility with the Sponsor; this may lead to refusal of the application or dismissal of the Appellant's appeal.

Issue 2: What does the Appellant's best interests mean pursuant to section 55 BCIA 2009?

"S 55 Duty regarding the welfare of children

(1) The Secretary of State must make arrangements for ensuring that—

(a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and

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(b)any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need."

The case of **Mundeba** (s.55 and para 297(i)(f)) [2013] UKUT 00088(IAC) helpfully provides guidance as to the applicability of S55 to children outside the UK. I have quoted salient points from the case.

"Although the statutory duty under s.55 UK Borders Act 2009 **only applies to children within the UK**, the broader duty doubtless explains why the Secretary of State's IDI invites Entry Clearance Officers to consider the statutory guidance issued under s.55."

The above means that although the Appellant lives in the Philippines, the decision made by the Respondent in refusing her application for ENTRY CLEARANCE to the UK still required the Respondent to have regard to the general factors imposed by S55 which "require an evaluation of the child's welfare including emotional needs.". The case also states: "As a starting point the best interests of a child are usually best served by being with both or at least one of their parents".

The Appellant was 17 years old at the time of her application. She was living with her Grandmother and was supported by her Sponsor mother. She is studying and generally has a good life in the Philippines. The Appellant claims that the Respondent's decision was not in the Appellant's best interest. **HOW DO YOU PROVE THIS?**

(i) Witness statements – the Grandmother should set out in her statement the reason why she is no longer able to assist in caring for the Appellant. For example, state if there are medical reasons or it could be as simple as the Grandmother's retirement or her advanced age. The generational gap can sometimes also be an issue and the Grandmother may no longer wish to care for the Appellant who is now a teenager. The bottom line is that the Grandmother is no longer willing or able to care for the Appellant. The Appellant should also provide a statement confirming the points made by her Grandmother.

(ii) Mental health – if the Appellant has been affected by the separation from her Sponsor mother, a report from a school counsellor or doctor may be helpful to confirm the issue that the Appellant has faced. The report may also conclude that it is therefore in the Appellant's best interest to be reunited with her mother.

USDEFUL TIPS:

1. If adducing documents that are not fully in English such as texts, make sure you have these translated.

2. If witnesses need documents to be translated to them from English to Tagalog. The statement should say this. For example, "translated from English to Tagalog by…"

3. You can provide expert reports from the UK as long as they can take instructions from the Appellant, for example a psychologist or therapist can prepare a report if they can take instructions remotely.

4. Those who prepare statements should be ready to give evidence. If they are abroad evidence can be provided remotely but beware that you should inform the tribunal that evidence will be given remotely and possibly with the help of an interpreter.

5. Tribunal or court interpreters are free of charge, but you need to request them well before the hearing. It is good practice to double check that they will be available for the hearing say a week before the date. ■

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