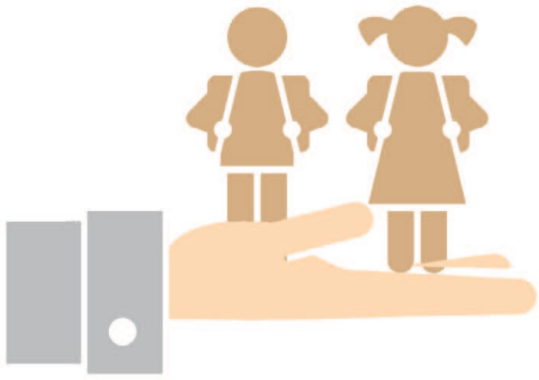
LIRA'S IMMIGRATION CORNER



Refusal of Children Applications

The "Evil Twins"?

SEPARATION CAN be very difficult and for some this is made even harder where a refusal decision was made in an application for their child / children to join them in the UK. The reasons provided by the Home Office in 90 percent of our appeal cases is that of "sole responsibility". This is increasingly coupled with the contention that the child is "leading an independent life", where the child is in his/her teens. I often refer to these two distinct provisions as the "evil twins" as they are utilised with alarming regularity especially where the applicant child is aged 16 and above.

The usual scenario involves a sponsor parent who has been living in the UK for several years working to support his / her child. The other parent is no longer involved in the child's life following separation from the sponsor parent. The sponsor parent remits money regularly to another member of the child's family for his / her support and this arrangement goes on for several years until the sponsor parent is finally in a position to apply for the child to join him / her in the UK.

Our practice, Douglass Simon Solicitors, has seen an increased willingness on part of the Home Office to refuse applications of children in the above scenario and the reasons are all too often the "evil twins"; failure to demonstrate "sole responsibility" on behalf of the sponsor parent **and** an allegation that the child has been "leading an independent life". It is further worrying that the refusal decision regularly lacks cogent reasoning, often only citing the years of separation and nothing more.

The starting point for challenging refusals based on the above should begin with consideration of the relevant rules namely para E-EEC.1.5 (the applicant must not be leading an independent life) and E-EEC.1.6(b) (the applicant's parent has had and continues to have sole responsibility for the child's upbringing) of Appendix FM to the Immigration Rules. As usual, rules are expounded upon by caselaw. Hence the premise of any challenge should begin with the question, did the decision properly consider the rules and relevant caselaw? If not, you should appeal the decision.

The case of *NM (Zimbabwe) v SSHD [2007] UKAUT 00051* provided that:

"Where a child ... is seeking limited leave to remain as the child of a parent with limited leave, in order to establish that he is not "leading an independent life" he must not have formed through choice a separate (and therefore independent) social unit from his parents' family unit whether alone or with others. A child who, for example, chooses to live away from home may be "leading an independent life" despite some continuing financial and/or emotional dependence upon his parents

Hence, the fact that the child has not lived with the sponsor parent since the parent moved to the UK does not, on its own, justify a finding that a child had formed his own independent social unit.

The Home Office's common failure to properly consider para E-EEC.1.6(b) of Appendix FM is also a ground for challenge especially where there is no direction upon the case of *TD Yemen [2006] UKAIT 00049 (Paragraph 297(i)(e): "sole responsibility")* as approved in *Buydov v Entry Clearance Officer, Moscow [2012] EWCA Civ 1739 at [18]* where it was held:

"... The Tribunal drew attention to the factual difference between one-parent and two-parent cases. It observed that in a one-parent case the starting point will generally be that it is the sole active parent who will be likely to have sole responsibility, and the issue will be whether s/he has exercised it despite the separation. On the other hand, in a two- parent case the usual starting point will be that both parents have responsibility for the upbringing of the child."

The Home Office all too often omits reference to whether the application is a one-parent or two-parent case. This is a crucial starting point in any fact-finding investigation into whether the sponsor parent has had sole responsibility.

Decisions often cite the law but fail to go beyond this. The Home Office is bound by rules of transparency as noted in the case of *MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)*. Hence to simply state the law does not, as it were, "cut it" the refusal decision must provide reason(s). Mere incantation of the rules is insufficient, but this is not to say that it is incumbent on the Home Office to seek out evidence. Here, applicants **beware** as it is for you to prove your case so failure to explain or provide evidence will make a refusal justifiable and difficult to appeal.

Where evidence has been submitted in compliance with "sole responsibility" and further evidence is given rebutting "independent family life" the Home Office is duty bound to state why they have concluded that there is discrepant evidence. ■

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