ASYLUM AND IMMIGRATION TRIBUNAL

TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049

THE IMMIGRATION ACTS

Heard at: Columbus House, Newport Date of Hearing: 12 April 2006

Promulgated on 24 May 2006

Before:

Mr C M G Ockelton, Deputy President of the Asylum and Immigration Tribunal
Senior Immigration Judge Grubb
Immigration Judge A D Baker

Between

Appellant

and

ENTRY CLEARANCE OFFICER, SANA'A

Respondent

Representation:

For the Appellant: Mr N Gobir, Counsel instructed by Kalee Lau & Co, Solicitors
For the Respondent: Mr G Russell, Home Office Presenting Officer

"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".

DETERMINATION AND REASONS

1. The appellant (aged 17) and his two brothers (aged 15 and 14) are citizens of Yemen. They have lived since birth with their mother in Yemen. In August 2004, they applied for entry clearance to settle in the United Kingdom with their father who has lived here since 1976. They

relied upon paragraph 297 of Statement of Changes in Immigration Rules, HC 395, in particular that they fell within paragraph 297(i)(e) on the basis that their father had "sole responsibility" for them. Their applications were rejected by an Entry Clearance Officer on 27 December 2004 on a number of grounds. They appealed to the Asylum and Immigration Tribunal and it was accepted that the only issue under paragraph 297 was that of "sole responsibility". On 8 November 2005, Immigration Judge Halliwell dismissed their appeals concluding that responsibility for the appellants was shared between their father in the UK and their mother in Yemen. Thus, the "sole responsibility" requirement in paragraph 297(i)(e) was not met for each of them. An order for reconsideration was made on the basis that the Immigration Judge had arguably erred in law in reaching his conclusion on "sole responsibility".

2. Before turning to that issue, we must first deal with a procedural matter which was raised by the Tribunal at the outset of the reconsideration hearing. It is plain from the "Application for Reconsideration" on file that the application was made solely in the name of the first appellant to the appeal as originally lodged with the AIT. Mr Gobir, who appeared for the appellants, informed the Tribunal that all three appellants intended to seek reconsideration of their appeals. That may well be so. Unfortunately, that was not what was done by those representing the appellants. For whatever reason, the application for reconsideration did not include the names of the second and third appellants in the appeal as originally filed. The effect is that their appeals are not now before the Tribunal for reconsideration. There has been no order for reconsideration in their appeals. We accept that this was unintended but the rules are there to be complied with and the oversight was no mere formality. It goes to the Tribunal's jurisdiction as to whose appeals are now before it for reconsideration. It may be, however, that our resolution of this reconsideration will, for all practical purposes, also resolve the substantive issues for the other two original appellants.

The Immigration Judge's decision

3. The Immigration Judge accepted the evidence before him, in particular, the oral evidence of the sponsor, the appellant's father. He accepted that the appellant (and his brothers) had lived separately from their father all their lives. They lived with their mother in Yemen. For the last 4 years they have lived rent free in a flat owned by their paternal grandfather. Their father spoke to their mother daily by telephone. Their father had "left all day to day care and control with the mother". The Immigration Judge seems to have accepted the father's evidence that he was involved in "big decisions". However, he noted that there had been "no very major decisions in the Appellant's [sic] lives to date". He acknowledged, however, that the father had been consulted and involved in their schooling and would probably make a decision as to which University they should attend, not least because he would be

paying the fees. Their father had spent very little time with the appellant and his brothers although there was a clear emotional bond between them. Their father only occasionally visited them in Yemen, perhaps every 4 to 5 years. Contact by telephone with them was extensive – he spoke to them weekly. Their father had, however, provided all financial support for the appellant and his brothers throughout their lives.

4. On the basis of this evidence, the Immigration Judge concluded at paragraph [28] that responsibility was shared between the appellant's mother and his father. Mr Gobir submitted that the Immigration Judge's finding on "sole responsibility" was not one he could properly make on the evidence before him. In effect, he submitted that the finding was perverse.

"Sole responsibility"

5. The applicable Immigration Rule is paragraph 297 of HC 395. The only issue before us is that of "sole responsibility". It was not suggested that the appellant failed to meet the other requirements of paragraph 297 such as maintenance and accommodation and that he was a child under 18, unmarried and not leading an independent life. Paragraph 297(i)(e) provides 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:
> …
> (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; …"

6. The meaning of the phrase "sole responsibility" in, what is now, paragraph 297(i)(e) of HC 395 has given rise to a body of case law before the IAT dating back over 30 years and, more recently, a number of decisions of the Court of Appeal have provided guidance. Mr Gobir referred us explicitly to some of these cases and others are cited in the relevant passages in *Macdonald's Immigration Law & Practice*, I Macdonald QC and F Webber (eds), (6th edn), 2005 at paras 11.89-11.92 to which he also referred us.

7. The cases struggle with the obvious difficulty that where there is a UK based parent – the sponsor – whom the child is seeking to join for settlement there will inevitably be others in the country of origin who *de facto* 'look after' the child. Usually these are relatives such as grandparents or aunts and uncles but they could, as in this case, be the other parent of the child concerned. As a matter of common sense,

some responsibility for the child's life must rest with the carer in the country of origin.

Leading Tribunal decisions

8. We turn first to consider the leading Tribunal decisions of Emmanuel v SSHD [1972] Imm AR 69; Martin v SSHD [1972] Imm AR 71; Sloley v ECO, Kingston [1973] Imm AR 54; and Rudolph v ECO, Colombo [1984] Imm AR 84.

9. Our starting point is the decision in Emmanuel v SSHD [1972] Imm AR 69 which illustrates the correct approach to the issue of "sole responsibility". The appellant, who was 11, lived in St Lucia and sought entry clearance to join her mother who was settled in the UK. Her mother had left St Lucia to live in the UK when the appellant was 4. Initially, the appellant lived with her grandmother and when the latter died shortly before the application was made, she went to live with her aunt. The appellant's father lived in St Lucia about 10 miles from where the appellant lived. He had seen his daughter at least once recently but took no part in her life and made no financial contribution to her upkeep despite a request by the appellant's mother to do so. Her mother financially supported the appellant by sending money from the UK. It was accepted that the daily burden and responsibility of looking after the appellant fell upon her grandmother and latterly her aunt. The Adjudicator held that the appellant's mother had abdicated responsibility for her rather than delegated it to her grandmother and aunt. The IAT disagreed. In an important passage, the IAT set out what it saw as the indicators in the evidence that the mother retained "sole responsibility" for the upbringing of the appellant (at p 71):

> "We have heard argument about the meaning of 'sole responsibility' and clearly the first sentence of [the relevant immigration rule] cannot reasonably be construed in its most strictly literal terms. It appears plain to us that there must be in nearly all cases some form of responsibility of the relative or grandmother with whom the child lives: the responsibility for seeing that the child attends school, the responsibility for seeing that the child is fed and clothed in as reasonable a manner as can be afforded, the responsibility for ensuring that the child has medical attention when needed, and so on. We do not therefore think that literal or absolute sole responsibility of the parent in the United Kingdom could ever be established. In this case whilst we agree with the view of the adjudicator that the issue of sole responsibility is not one to be decided only between parent and parent we do not think that it is more apt to say that there has been an abdication of responsibility in this case. The mother has sent money regularly for the child's upkeep and, as the adjudicator says, she retains a close interest in, and affection for, her daughter. Considering all the circumstances ... we concluded that this was a case in which it was shown that the parent in the United Kingdom had had sole responsibility for the child's upbringing."

10. As the IAT stated: "sole responsibility" cannot sensibly be read in an absolute or literal way. The IAT rejected the argument that "sole

responsibility" was only an issue between parents. It could also arise where the child lived with a relative. Significantly, the IAT accepted that a parent who has settled in the UK may retain "sole responsibility" for a child where the day-to-day care or responsibility for that child is necessarily undertaken by a relative abroad. That day-to-day responsibility may include seeing that the child attends school, is fed and clothed and receives medical attention when needed. The IAT identified the mother's financial support and the retention of a close interest in and affection for the child as important to its decision. One final point: the fact that the appellant's father lived nearby did not affect the IAT's decision, presumably because, in its words, "he takes no interest in his daughter and has never played any part in her life" (at p 70).

11. The outcome in Emmanuel may be contrasted with that in Martin v SSHD [1972] Imm AR 71. The appellant, aged 13, sought entry to the UK to settle with her mother. Prior to the appellant's mother leaving Jamaica, she had left the appellant with the appellant's grandmother in order to work elsewhere in Jamaica and during that time she had lived separately from the appellant for 2 years with a man with whom she had another daughter. She left Jamaica and came to the UK when the appellant was almost aged 7 to live with her partner (who by then had moved to the UK) and their daughter. Thereafter, the appellant lived with her maternal grandmother. The appellant saw her father, who lived in Jamaica, every week and he gave her money on a weekly basis. The appellant's aunt and uncle also contributed financially to support her. In addition, the appellant's mother also sent money each week from the UK to the appellant's grandmother.

12. Reiterating that the issue of "sole responsibility" must depend upon the facts of each case, the IAT distinguished the facts from Emmanuel and held that they fell short of establishing that the appellant's mother had sole responsibility for her. The IAT pointed to a sharing of responsibility between the appellant's mother and grandmother prior to the former's departure to the UK and also the fact that other members of the appellant's family were contributing to her maintenance. Although the reasoning of the IAT is sparse, it seems to us that the involvement of the appellant's father in her life was a matter of some significance to the outcome of the appeal as was the fact that the mother had ceased to have factual sole responsibility at a time when she was not forced by circumstances to do so.

13. A central part of the notion of "sole responsibility" for a child's upbringing is the UK-based parent's continuing interest and involvement in the child's life, including making or being consulted about and approving important decisions about the child's upbringing. In Sloley v ECO, Kingston [1973] Imm AR 54 the appellant, aged 13, lived in Jamaica and sought entry clearance to settle with his mother in the UK. His mother came to the UK when he was 5 years old and since

that time he had lived with his maternal grandmother. The mother alone provided financial support for the appellant. Although the appellant's father lived in Jamaica, the appellant had only seen him on three occasions and he had given money to the appellant on only one occasion. When the appellant was 10, his mother and her husband brought their son (the appellant's half-brother) to Jamaica to live with the appellant and his grandmother so that they could grow up together prior to them both coming to the UK. There was evidence of correspondence between the appellant's grandmother and his mother in which she was consulting and seeking approval in respect of the appellant's upbringing. The evidence was that his mother made decisions about his schooling and that she gave the grandmother instructions and approved holidays. Referring with approval to Emmanuel, the IAT approached the issue of "sole responsibility" as follows (at p 56):

> "The decision in every case will depend on its own particular facts, and this will involve consideration, inter alia, of the source and degree of financial support of the child and whether there is cogent evidence of genuine interest in and affection for the child by the sponsoring parent in the United Kingdom."

14. On the evidence, the IAT concluded that the appellant's mother had established "sole responsibility" for the appellant's upbringing. She had never abdicated responsibility for him. She had sole financial responsibility and "[a]ll the evidence ... demonstrated a continuing and positive concern on the part of the sponsor in the welfare and bringing up of the appellant." (at p 57) In Sloley again the appellant's father lived nearby but was virtually absent from her life.

15. Further, in Sloley we see the emergence of what may be the core issue in "sole responsibility", namely the idea that it is important to identify the person, if any, who alone makes significant decisions about the child's upbringing and whose obligation it is to make those decisions. Sloley perhaps also illustrates that in a case where only one parent has an involvement with a child's life, it is likely to be that parent who alone is "responsible" for the child, providing that responsibility has not been relinquished or abdicated.

16. Financial support, particularly sole financial support, of a child is relevant since it may be an indicator of obligation stemming from an exercise of "responsibility" by a parent but it cannot be conclusive. There may be other reasons why an individual financially supports a child and so it can only be a factor to be taken into account along with all the other facts. Rudolph v ECO, Colombo [1984] Imm AR 84 illustrates this.

17. Shortly after the appellant was born, the marriage of her parents broke down. She and her mother went to live with her paternal grandparents. A year later the appellant's mother came to the UK as a student and remained here. The appellant stayed with her grandparents but

subsequently her grandmother and grandfather died. Thereafter she moved into a convent where she remained until four years later, aged 15 she applied to join her mother in the UK. It was accepted that the appellant's mother had provided financial support for her daughter. There had been regular contact between them by letter. The appellant's father had little or no involvement in her life. He rarely visited her at the convent and had been in a mental institution and most recently in prison. The evidence was that a number of people including her paternal grandparents until their deaths, her maternal grandparents and the nuns at the convent all had played a part in her life. The decision to admit the appellant to the convent was one in which a number of people were involved and not the mother alone. The IAT observed that there was "no evidence of anything other than a natural concern of a caring mother which falls short of the exercise of the 'responsibility' required by the rule." (at p 90)

18. In approaching the issue of "sole responsibility" the IAT stated that it must not only be established that the appellant's mother provided "essential financial support" but also that "she was regularly consulted about and expressed 'a continuing and positive concern' for the appellant." (at p 89) The fact that "sole responsibility" was not established for a limited time during the appellant's childhood might not be crucial "looking at the childhood as a whole". In concluding that "sole responsibility" had not been established by the mother, the IAT stated (at p 90):

> "On the evidence we are unable to say that the roles of all except [the appellant's mother] were in substance to act simply on directions from [the appellant's mother]. The period of separation between mother and daughter was some 13 years at the date of decision. To find that [the appellant's mother] exercised sole responsibility for [the appellant's] upbringing for that period even in a broad sense we would require positive and precise evidence of regular contact, consultation and decision taking Such evidence is not before us."

19. (See also ECO, Kingston v Martin [1978] Imm AR 100 where the appellant's father also provided money which was interpreted by the IAT as amounting to contributions to the maintenance of the appellant. Distinguishing Sloley, the IAT concluded, on the evidence, that the sponsor did not have "sole responsibility".)

Court of Appeal cases

20. We now turn to the relevant cases in the Court of Appeal. Three cases provide important guidance on the issue of "sole responsibility": Ramos v IAT [1989] Imm AR 148, Nmaju v SSHD [2001] INLR 26 and Cenir v Entry Clearance Officer [2003] EWCA Civ 572.

21. In Ramos, the appellant was from the Philippines. Shortly before her birth, her parents separated and she lived with her mother. Her father never had any contact with the appellant or played any part in her life.

When the appellant was aged 5 years old, her mother left the Philippines to work in the UK. Thereafter, the appellant lived with her maternal grandmother in a family home with an aunt and uncle. Her mother provided financial support for her and her grandmother. Her mother had formed a relationship with a man settled in the UK and had a daughter by him. He, together with the appellant's half-sister, visited the Philippines but the mother did not. The following year, when the appellant was aged 14, she applied to join her mother in the UK. Her application and subsequent appeals were dismissed. Simon Brown J dismissed her application for judicial review of the IAT's decision. The Court of Appeal dismissed her appeal against that decision.

22. Dillon LJ (with whom Taylor LJ and Sir John Megaw agreed) identified two points about "sole responsibility" which were clear and accepted (at p 151):

> "One is that the issue of sole responsibility for the child's upbringing is not to be decided only between the child's parents. There may be cases where the conclusion is that there has been a sharing of responsibility between the parent who is settled here and some other relative, or other person possibly, in the country where the child has been left when the parent came here.
>
> The second point which is also established is that the words 'sole responsibility' have to carry some form of qualification in that the rule envisages that a parent who is settled in the United Kingdom will or may have had the sole responsibility for the child's upbringing in another country. Obviously there are matters of day-to-day decision in the upbringing of a child which are bound to be decided on the spot by whoever is looking after the child in the absence of the parent settled here, 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. ... The question must be a broad question."

23. Commenting on the correct approach, Dillon LJ continued (at p 152):

> "Each case must depend on its own facts considered broadly."

24. Dillon LJ agreed with the IAT's view that "sole responsibility" entailed "more than simple financial responsibility". He noted that in reaching a view (at p 153):

> "Direction and control of the upbringing are also factors which are part of the total fact pattern ... . Another matter was of course the extent of contact that the mother had had with the child since the mother went to the United Kingdom and the reasons why the contact had not been more ... .".

25. As Dillon LJ indicated, the issue in the case was not whether the father had any responsibility for the child – clearly he had not. Nor was the issue whether the appellant's mother has abandoned all responsibility – again clearly she had not. Rather, the issue was whether responsibility was shared between the appellant's mother and her grandmother and, possibly, also the aunt and uncle. He concluded that there was no error

in the approach of the IAT in deciding on the facts that the appellant's mother had not established "sole responsibility" for the appellant.

26. Taylor LJ in a short concurring judgment emphasised two specific findings which, in his judgment, entirely justified the IAT's conclusion (at p 153):

> "First, [the adjudicator] found that there was no evidence whatsoever of the grandmother consulting the sponsor – that is to say, the mother – regarding the appellant. Secondly, he found that the appellant herself, when interviewed, evidently believed that all the decisions regarding her education and upbringing were made by her grandmother who had full responsibility and who consulted nobody."

27. What is apparent from both the judgments is the need to establish "responsibility" for the child's upbringing in the sense of decision-making, control and obligation towards the child which must lie exclusively with the parent. Financial support, even exclusive financial support, will not necessarily mean that the person providing it has "sole responsibility" for the child. It is a factor but no more than that.

28. In Nmaju v SSHD, the Court of Appeal was faced with the particular issue that if "sole responsibility" was established for a short period of time (in that case 2½ months) at the date of decision whether that was insufficient to satisfy the rule. Not surprisingly, the Court of Appeal refused to place a gloss on the wording of paragraph 297(i)(e) so as to require the "sole responsibility" to last for any particular duration (see also Qui Zou [2002] UKIAT 07463). We would add only that the appellant's burden of showing sole responsibility may be more difficult to discharge when there is only a short period to point to.

29. Schiemann LJ (with whom Aldous and Thorpe LJJ agreed) offered some guidance on the nature of the "sole responsibility" requirement. Having approved the approach of Dillon LJ in Ramos which we have set out above, he continued under the heading "The Quality of Control" (at para [9]):

> "9. While legal responsibility under the appropriate legal system will be a relevant consideration, it will not be a conclusive one. One must also look at what has actually been done in relation to the child's upbringing by whom and whether it has been done *under the direction of the parent settled here*." (our emphasis)

30. The Court of Appeal saw "sole responsibility" as a practical (rather than exclusively legal) exercise of "control" by the UK-based parent over the child's upbringing and whether what is done by the carer is done "under the direction" of that parent.

31. The final Court of Appeal decision is Cenir v Entry Clearance Officer. The appellant was aged almost 18. His mother had left the Philippines to work abroad, eventually ending up in the UK, when he was aged 4. She

left him in the care of her parents. For most of the time that she lived in the UK, she was an overstayer but she was granted indefinite leave to remain a year before the appellant's application. She had only made two visits to the Philippines since she left, one for six months when the appellant was aged 7 and one for a month about a year after she had been granted indefinite leave. She provided the family financial support. The appellant's father was described as a "wastrel and drunkard" and had no involvement with the appellant. The appellant's mother telephoned home about every two weeks on average. The Court of Appeal approved the approach in Ramos and Nmaju and again emphasised that in determining the issue of "sole responsibility" each case will depend upon its own particular facts. As for the 'touchstone' for "sole responsibility", Buxton LJ (at para [6]) stated:

> "The general guidance is to look at whether what has been done in relation to the upbringing has been done under the direction of the sponsoring settled parent."

32. He emphasised (at para [8]):

> "the importance of the parent with responsibility, albeit at a distance, having what can be identified as direction over or control of important decisions in the child's life."

33. The Court rejected a submission – somewhat reminiscent of one made by Mr Gobir in this case – that the Adjudicator had placed too much weight upon the absence of day-to-day control and care for the appellant. Despite his findings that the sponsor was a devoted and caring mother, provided financial support and was very concerned about the overall welfare of her family (including the appellant), the Adjudicator was entitled to reach the conclusion that the appellant's mother had not established "sole responsibility" for the appellant.

34. These cases are largely concerned with the issue of "sole responsibility" arising between a UK-parent and relatives who are looking after the child in the country of origin. In many of the cases, the other parent has disappeared from the child's life totally or plays so little part as to have, in effect, abdicated any responsibility for its upbringing. What emerges is a concept of "authority" or "control" over a child's upbringing which derives from the natural social and legal role of an individual as a parent. Whilst others may, by force of circumstances, look after a child, it may be that they are doing so only on behalf of the child's parent. The struggle in the case law is to identify when the parent's responsibility has been relinquished in part or whole to another such that it should be said that there is shared rather than sole responsibility. By contrast, where both parents are active in the child's life, the involvement of the parent in the country of origin is significant – perhaps crucial - in assessing whether the parent in the UK has "sole responsibility" for the child.

Two-parents cases

35. Two decisions of the IAT demonstrate the significance of involvement by the other parent in the child's life. In SSHD v Pusey [1972] Imm AR 240, the appellant lived with her mother in her maternal grandmother's home until she was 4 years old. Her mother then moved out to live some 60 miles away. She continued to live with her grandmother but was in regular contact with her mother and stayed with her during school holidays for three or four weeks on each visit. The appellant's father (the sponsor) came to the UK when the appellant was aged 5. He corresponded regularly with the appellant's grandmother about her upbringing and sent money for her support. When 17 years of age, the appellant sought entry clearance to live with her father in the UK. The IAT accepted that as between the father and grandmother, the father had "shouldered the main responsibility" for the appellant (at pp 244-5). However, overturning an adjudicator's decision that the appellant's father had "sole responsibility" for her, the IAT held that the mother's position had to be taken into account and given the "close and regular contact" with the appellant, the parents shared responsibility for the child. (at p 245)

36. The same outcome for similar reasons was reached in Eugene v ECO, Bridgetown [1975] Imm AR 111 on facts, perhaps, not as strong as Pusey. The appellant was 16 years of age. He sought entry clearance to join his father who came to the UK when the appellant was 6 months old. He did not see the appellant until he visited 12 years later. His father sent money for the appellant's upkeep. From the time his father came to the UK, the appellant lived first with his paternal grandmother and then, when she died, with his aunt. His mother lived separately and the appellant visited her from time to time and also spent some weekends and school holidays with her. His mother maintained an interest in his welfare but she provided no financial support because of her own circumstances other than to give him pocket money. The IAT recognised that the mother had not had "such close and regular contact" as in Pusey. Nevertheless, the Tribunal held that it was "difficult not to conclude that there has ... been some sharing of responsibility for the appellant's upbringing between his mother and father." (at p 114)

37. The consistency of approach by the IAT in two-parents cases is illustrated by the more recent case of ECO, Accra v Otuo-Acheampong [2002] UKIAT 06687. The appellant, who was 17 years of age, sought entry clearance to join her mother in the UK. Her mother left Ghana to come to the UK when the appellant was aged 3 and was granted indefinite leave to remain when the appellant was twelve. The appellant lived with her maternal grandmother. The sponsor provided money for school fees and other expenses. In addition, it seems to have been the case that her father also provided some financial support. When returning from boarding school for holidays, the

appellant stayed overnight with her father before returning to her grandmother's house. The IAT upheld the adjudicator's finding that the sponsor did not have sole responsibility for the appellant (at para [15]):

> "The appellant's father accompanied the appellant to the interview. That in itself demonstrates that he had not abdicated responsibility for her. On top of that, the appellant used to stay with him on her way to her grandmother from her school. Furthermore, the appellant's father stated that he was happy for the appellant to live with him although she felt comfortable with the sponsor. The appellant's father stated that he paid for the school fees and that her grandmother paid for household things. In addition, he gave her money whilst she was at school."

38. (See also R (Philippines) [2003] UKIAT 00109, where the father lived in the same house as appellant and other family members (albeit on a different floor). In finding that the mother in UK did not have "sole responsibility", the IAT took account of the fact that the father had played "some part in the household, in common with other members of the claimant's family" (para [17]) and that the appellant was "close to his father" (para [7]).)

39. A decision of the Outer House of the Court of Session does, however, contemplate a different outcome in exceptional circumstances. In Alagon v ECO, Manilla [1993] Imm AR 336 the appellant sought entry clearance to join his mother in the UK shortly before his eighteenth birthday. His mother had come to this country when he was aged 8 and had only made one visit to see him when he was 13 years old. The appellant lived in a house with his father who was divorced from her mother. The house was owned by her mother. The mother provided most of the financial support for the appellant. Relatives who lived relatively close saw and provided some financial and other support to the appellant. The father did not contribute financially to the appellant's support and himself benefited from living in the house and the financial contributions from the mother. The mother alone was consulted about all major decisions such as education and the appellant's future maintenance. The father was not consulted and he took no major decisions about the appellant. It was accepted that the father played "at most a passive role" in the appellant's life. The Lord Ordinary (Lord Prosser) acknowledged (at p 344) that it was significant that the appellant was living with her father

> "since any responsibility exercised by her father need not be derived from her mother, and might put in doubt the mother's 'sole responsibility'."

40. Nevertheless, the judge concluded that the appellant's mother had indeed established "sole responsibility" for her on the basis that (at p 345):

> "the adjudicator effectively found that the father is doing nothing for the child beyond the bare fact of living with her on reasonably good terms.... Moreover ... that is in a house belonging to the mother, so that even his bare presence and any help that that might be to the child, is derivative from the

> mother and essentially part of her arrangements for the child rather than his own."

41. The judge concluded that that the mother (rather than the father or other relatives) was "exercising all the forms of responsibility typical of sole responsibility properly understood". (at p 345)

42. In our view, this case is consistent with the principled approach applicable to cases of this sort. It is merely a factually unusual – indeed exceptional case – in its outcome. It turns upon the very particular findings of the judge concerning the non-involvement of the father in the child's upbringing despite the fact that the appellant was living with him.

Discussion

43. We have set out in some detail the leading cases before the IAT and in the Court of Appeal relating to the issue of "sole responsibility" for a child's upbringing. We emphasise that each case must turn upon a consideration of all the facts and each case will be unique in that respect. It is difficult to imagine any two cases being exactly alike. The cases do, however, cumulatively provide important legal guidance for determining the "sole responsibility" which we now attempt to draw together.

44. In most of the cases, the parent based in the child's own country – usually the father – has abdicated any responsibility for his child by disappearing or taking no part in the child's upbringing. There is only one parent involved in the child's life. If one started from principle, it might be thought that the issue of "responsibility" for a child and whether or not that amounts to "sole responsibility" is exclusively an issue between parents. The issue of sole responsibility should not, therefore, arise. However, that is not the position taken in the cases, including those in the Court of Appeal. We accept that the question of "sole responsibility" is not so restricted and it remains an issue even where there is only one parent but, for practical reasons, the child is looked after by others (see, Ramos, above, *per* Dillon LJ at p 151). The issue is then whether, as between the relative/carers and the UK-based parent, the latter has "sole responsibility" for the child.

45. To understand the proper approach to the issue of "sole responsibility", we begin with the situation where a child has both parents involved in its life. The starting point must be that both parents share responsibility for their child's upbringing. This would be the position if the parents and child lived in the same country and we can see no reason in principle why it should be different if one parent has moved to the United Kingdom.

46. In order to conclude that the UK-based parent had "sole responsibility" for the child, it would be necessary to show that the parent abroad had

abdicated any responsibility for the child and was merely acting at the direction of the UK-based parent and was otherwise totally uninvolved in the child's upbringing. The possibility clearly cannot be ruled out: Alagon provides an example of this exceptional situation and turns upon an acceptance by the judge of the wholly unusual situation that the father was "doing nothing for the child beyond the bare fact of living with her on reasonably good terms". (at p 345)

47. Our conclusion on the likely decision that responsibility is shared where a child has both parents involved in its life is, in our view, consistent with the policy relating to the admission of children for settlement underlying paragraph 297. In full, paragraph 297(i) provides 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..."

48. The purpose of paragraph 297 is clear: it is designed to maintain or effect family unity. Under sub-paragraphs (a) to (d) of paragraph 297(i), the child is accompanying his parents or a parent to live in the UK or he is seeking to join them when they are already settled in the UK. The end product is that parents and child live together in the UK; only if one parent is dead will the other be able to be in the UK alone with the child. By contrast, paragraph 297(i)(e) is concerned with settlement where one parent is in the UK and the other is abroad and will remain so. Paragraph 297(i)(e) has the potential to split up a family and separate a child from one of its parent abroad who is involved in its life. It is only the requirement of "sole responsibility" which acts as a control mechanism. It would, in our view, usually run counter to the policy of family unity to admit a child for settlement where the parent abroad is caring for the child and involved in its upbringing, unless the requirements of paragraph 297(i)(f) are met. This must be borne in mind when interpreting, and applying, the test of "sole responsibility". The requirements of that latter sub-paragraph are onerous requiring "serious and compelling family or other considerations which make

exclusion of the child undesirable". Hence, the family will be split up only because the parent abroad has no involvement for the child's upbringing (para 297(i)(e) applies) or, where there is involvement, because all the circumstances (including the child's interests) require such a result (para 297(i)(f) applies).

49. 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.

50. 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".

51. In reaching a decision on what is a fact-rich issue, it is important to take account of evidence of any contact between the parent and the carer in respect of important decisions to be taken about the child and its upbringing. The availability of modern communications technology may reduce the impact of distance alone on a UK parent's ability to be consulted (and therefore decide) about the child's upbringing in another country. The length, and cause, of the separation of parent and child and the reasons for its continuation may shed some light on the role played by the carer abroad. Likewise, it may be helpful to look at the financial support provided by the parent and, in particular, its absence may be very telling.

Summary

52. Questions of "sole responsibility" under the immigration rules should be approached as follows:

i. Who has “responsibility” for a child’s upbringing and whether that responsibility is “sole” is a factual matter to be decided upon all the evidence.
ii. The term “responsibility” in the immigration rules should not to be understood as a theoretical or legal obligation but rather as a practical one which, in each case, looks to who in fact is exercising responsibility for the child. That responsibility may have been for a short duration in that the present arrangements may have begun quite recently.
iii. “Responsibility” for a child’s upbringing may be undertaken by individuals other than a child’s parents and may be shared between different individuals: which may particularly arise where the child remains in its own country whilst the only parent involved in its life travels to and lives in the UK.
iv. Wherever the parents are, if both parents are involved in the upbringing of the child, it will be exceptional that one of them will have sole responsibility.
v. If it is said that both are not involved in the child’s upbringing, one of the indicators for that will be that the other has abandoned or abdicated his responsibility. In such cases, it may well be justified to find that that parent no longer has responsibility for the child.
vi. However, the issue of sole responsibility is not just a matter between the parents. So even if there is only one parent involved in the child’s upbringing, that parent may not have sole responsibility.
vii. In the circumstances likely to arise, day-to-day responsibility (or decision-making) for the child’s welfare may necessarily be shared with others (such as relatives or friends) because of the geographical separation between the parent and child.
viii. That, however, does not prevent the parent having sole responsibility within the meaning of the Rules.
ix. The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child’s upbringing including making all the important decisions in the child’s life. If not, responsibility is shared and so not “sole”.

53. With these matters in mind, we turn to consider the appellant’s case.

The appellant’s case

54. Mr Gobir submitted that the Immigration Judge had attached too much weight to the absence of physical contact between the Appellant and his father and to the absence of day-to-day responsibility. He referred us to the decisions in Emmanuel; Martin (1972) and Sloley. These cases, he submitted, showed that the phrase “sole responsibility” should not be interpreted literally – absolute responsibility could never be established where a child was cared for in another country. What

was important was whether the appellant's father had, as he put it, "chief" responsibility. He accepted that the appellant's mother had day-to-day responsibility for the appellant but her responsibility was different in quality and type from that of the father. Her role in bringing up the appellant was completely subordinate to the father's. Mr Gobir pointed out that the father made all the "big decisions" in the appellant's life; he kept daily contact with his wife; he was emotionally committed to the appellant; the whole family was financially dependent upon him. On the basis of his findings, the Immigration Judge's decision was, he submitted, perverse.

55. Mr Gobir has failed to make good his contention that the Immigration Judge's decision was perverse on what is quintessentially a factual assessment.

56. The Immigration Judge set out the evidence – which he accepted in full - in paragraphs [15]-[25] of his determination. In paragraphs [26]-[28] he set out his findings and concluded as follows in paragraph [28]:

> "I find that the parents of the Appellants have a shared but differing responsibility for the Appellants. Neither parent in this case has sole responsibility, and I accept that with the constraints of living in the UK the Sponsor has done all that he can hope to do to maintain support, and keep in touch with the Appellants. However real that telephone contact is, it is not a day to day responsibility which has been left fully with the Appellants' mother. The Sponsor has played almost no physical part in the upbringing of the Appellants – even the oldest Appellant can only have met his father on about 3 or 4 occasions. The Sponsor elected to work in this country but otherwise delegated all day to day care to the mother. I conclude this is a case where responsibility is shared, and it cannot be said the Sponsor has sole responsibility."

57. Mr Gobir's objections, perhaps, focus attention on this paragraph of the judge's determination and his reference to the absence of day-to-day contact between the appellant and his father and that the father had played no physical part in his upbringing. We do not consider that the judge gave inappropriate weight to these matters when his determination is read as a whole – as it must be. The judge clearly and fairly sets out and accepts the sponsor's evidence in his determination. He plainly takes account of all the relevant factors. In paragraph [27] he refers to the fact that the sponsor has not lived in Yemen since the appellant, who is now 17, was born. He has visited only every 3 or 4 years. He refers to the weekly contact by telephone with the appellant and the daily contact with the appellant's mother. He refers to the fact that the sponsor is the sole financial supporter of the appellant apart from the free accommodation provided the family by his grandfather. The judge accepts the sponsor's statement that he makes the "big decisions", hypothesising that he would make the decision about the appellant's University education not least because he would be paying. However, the judge notes in paragraph [27] that, on the evidence, no "very major decisions" have so far arisen in the appellant's life. All

these matters are relevant and were considered by the judge. We do not see anything in the determination to suggest that the judge either failed to take account of a matter he should have taken into account or gave improper weight to any matter that he did take into account. The simple truth is that he correctly engaged in the fact-dependent question of whether the appellant's father had "sole responsibility" for the appellant – presumably since his birth as it is not suggested that the relationship has significantly changed during the appellant's life.

58. The judge was, of course, dealing with a case where the child's 'carer' abroad was his own mother who had looked after him for seventeen years. As far as we are aware, there was no evidence before the judge from the appellant's mother as to her position. We note that no reliance was placed upon paragraph 297(i)(f) in this case. We have already set out above our view in relation to cases involving both parents such as this. Despite the accepted involvement and role of the appellant's father, the judge was not perverse to conclude that the appellant's mother was not merely acting at the direction of his father and had not ceased to act as the appellant's mother caring for her child. This is not a case where the facts approach the situation of "passive" non-involvement in the child's life found to be the position of the father in the Alagon case we discussed earlier. We do not consider that the judge perversely concluded in those circumstances that the mother had not relinquished or abdicated all responsibility for the upbringing of the appellant to his father so that he had "sole responsibility" for the appellant. Indeed, we do not think that the judge could properly have come to any other conclusion.

59. There is one final matter with which we should deal. Mr Gobir also submitted that in paragraph [29] of his determination the judge had wrongly taken into account that he believed the appellant's reason for coming to the UK was to further his education. We agree with Mr Gobir that this is irrelevant to the issue of "sole responsibility". However, there is nothing in this point as it is clear that the judge did not take this into account in reaching his conclusion on the issue of "sole responsibility" – a conclusion he reaches in paragraph [28] of his determination. Paragraph [29] is no more than a footnote to his determination and in no way infects his finding – which is unassailable – on "sole responsibility".

Decision

60. For these reasons, the Immigration Judge's determination does not disclose a material error of law and his decision to dismiss the appellant's appeal stands.

A GRUBB
SENIOR IMMIGRATION JUDGE
Date: