

UK Visas: Children to be interviewed: evidence required for entry clearance

Many people have settled in the UK and struggle to have their children and families join them so that they live together as families. People have been granted different status and as such the way they have to seek family re-union differs. Those who are refugees would apply for family reunion, and others may simply apply in terms of the immigration rules to ensure that their families come to the UK to live with them. In most cases entry clearance officers raise various issues seeking to deny families to live together. Children particularly those who would be near the age of majority have really suffered as many reasons are raised against them. In such cases it is absolutely significant that relevant evidence and materials be furnished to the entry clearance officer and also the child involved may be interviewed even by telephone.

In the case of ***T (s.55 BCIA 2009 – entry clearance) Jamaica***, the sponsor C was born in Jamaica in May 1977. Her father was a British citizen. It seems that C first went to the United Kingdom in 2000. She has made visits back to Jamaica since then. T was born to C and her unmarried partner CL in 1995. C decided to migrate to the UK in 2006. She married a Jamaican national in 2007; he was granted entry clearance as a spouse and is settled in the UK where they both work and live.

Issues arose when the child was seeking entry clearance to come to the UK to live with the mother as a family.

The decision was reviewed by the Entry Clearance manager who concluded that no case had been made of compelling circumstances making exclusion undesirable and that the decision did not interfere with family life and if it did it was justified and proportionate having regard to the factual foundation of the rejection of the claim under the Immigration Rules. The Upper Tribunal decided that:

- Section 55 of the Borders, Citizenship and Immigration Act 2009 does not apply to children who are outside the United Kingdom.*
- (ii) Where there are reasons to believe that a child's welfare may be jeopardised by exclusion from the United Kingdom, the considerations of Article 8 ECHR, the "exclusion undesirable" provisions of the Immigration Rules and the extra statutory guidance to Entry Clearance Officers to apply the spirit of the statutory guidance in certain circumstances should all be taken into account by the ECO at first instance and the judge on appeal.*
 - (iii) When the interests of the child are under consideration in an entry clearance case, it may be necessary to make investigations, and where appropriate having regard to age, the child herself may need to be interviewed.*

The court acknowledging that the best interests of the child must be a primary consideration in these cases immediately raises the question of how these are to be discovered. An important part of this is discovering the child's own views. Article 12 of UNCRC provides:

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child

being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

The court observed that the immigration authorities must be prepared at least to consider hearing directly from a child who wishes to express a view and is old enough to do so. While their interests may be the same as their parents' this should not be taken for granted in every case. There are a number of primary questions of fact that should be resolved when applications of that nature are made such as:

- a. What were the living arrangements prior to invitation?
- b. When did C decide to settle in the UK and what arrangements did she make for T between 2000 and 2006?
- c. When did C's relation with CL cease; how many children did they have together and what arrangements were made for any other children and by whom?
- d. Where was T living during the period in question?
- e. Who provides food, clothes and materially supports her? Who makes the decisions on important questions in T's life and gives her moral guidance and support?
- f. Has T been neglected while in her father's care, if so how and why?

These are the type of questions which may have to be posed and addressed when the initial application is made to avoid issues arising.

The court observed that apart from the policy requirement to consider the spirit of s.55 if there is reason to suspect that the welfare of the child may be compromised by refusing her application, the ECO will be conscious that the best interests' principle includes some requirement to sufficiently explore disputed material to reach a conclusion. Lady Hale in **ZH (Tanzania)** indicated that this includes taking into account the views of the child herself.

The court decided that the child (who is about 16 years) is of an age when she can be interviewed. At the very least the court decided that T should have the benefit of a telephone interview where she can comment on what her father has said and explain her position. It will be for the ECO to consider whether a face-to-face interview is practicable and desirable.

Parents seeking to invite children and or other family members should ensure that comprehensive applications and full supporting documents are also submitted at the very first instance to achieve success. It is not good enough to simply submit bank statements, tenant agreements and bills without more.

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