

# Sole responsibility requirement Under para 297 of the Immigration Rules

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## Paragraph 297 of the Rules

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; [...]

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

- ▶ §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).”

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

§52(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””
- ▶ Shared **day-to-day** responsibility does not prevent the UK parent from having sole responsibility
  - ▶ Day-to-day responsibility 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

## General principles of 'sole responsibility'

### Starting Point?

- ▶ 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 is that the remaining active parent has "sole responsibility" for the child.
- ▶ Confirmed in ***Buydov v Entry Clearance Officer, Moscow*** [2012] EWCA Civ 1739
  - ▶ But not a legal presumption – better to view it as setting the parameter for the factual enquiry.
- ▶ The issue is whether the UK-based parent has, in practice, allowed the parental responsibility for the child to be shared with the carer abroad.
  - ▶ Not about a theoretical or a legal obligation but a factual exercise of that responsibility.
  - ▶ Divorce papers giving UK parent sole custody, for example, is not enough.

## General principles of 'sole responsibility'

### Duration of sole responsibility?

- ▶ Sole responsibility need not be for the entire duration
  - ▶ may have been for a short duration in that the present arrangements may have begun quite recently.
  - ▶ No minimum period
  - ▶ ***Nmaju v SSHD*** [2000] EWCA Civ 505: Tribunal had held that mother could not show 'sole responsibility' because she only had exercised it for some 2.5 months. The Court of Appeal found that the Tribunal had erred in law by disqualifying the mother from the 'sole responsibility' requirement purely because of the length of time she was exercising that responsibility
- ▶ BUT §28 of ***TD (Yemen)***
  - ▶ "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."

## General principles of 'sole responsibility'

### Financial support?

#### §16 of *TD (Yemen)*

"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. "

- ▶ Evidence of sole financial support is not enough!
- ▶ In fact, the Tribunal often places limited weight on sole financial support, and will usually use it to either confirm the assessment of sole responsibility or, if there is no sole financial support, to confirm the absence of sole responsibility.

## General principles of 'sole responsibility'

### Visits/Communications?

- ▶ Evidence of frequent visits
  - ▶ The less the frequency of visits the more likely a Judge will find (right or wrongly) that UK parent does not have sole responsibility
  - ▶ Portion of annual leave
- ▶ Evidence of frequent communication
  - ▶ Instant Messaging (Whatsapp, Facebook, Viber etc)
  - ▶ Calls and text messages

**\*\*If you can show evidence of exercising sole responsibility over text then extremely helpful\*\***



## Main examples of 'sole responsibility'

- ▶ Education/Schooling
- ▶ Medical/Health
- ▶ Religious/Spiritual

## Educational decisions

Letter from the school is of paramount importance

- ▶ Probably the most powerful and persuasive evidence
- ▶ Confirming attendance at school and that the UK parent is paying fees is not enough
- ▶ Should confirm that they only deal with UK parent - expressly exclude the other parent (eg: "We have not had any involvement with the father/mother and to the best of our knowledge he/she is not involved in the child's life")
- ▶ Should confirm that to the school's best knowledge the UK parent is the one who would make all important decision in relation to the child
- ▶ Bonus: confirm any instances of requiring UK parent's consent (eg: school trip, vaccination, etc)

## Educational decisions

Detailed witness statement is equally crucial

- ▶ Who chose the school?
- ▶ Why?
- ▶ What research, if any, was done to choose that particular school?
- ▶ How often do you speak with the school?
- ▶ Who pays for school fees?
- ▶ Any situation where you had to provide consent for something that the school wanted to do?

\*Prepare to be cross-examined on it in an appeal\*

## Medical/health decisions

### Letter from a doctor/GP/Hospital

- ▶ If child has ever been to the doctor obtain a letter from the doctor
- ▶ Communication with UK parent?
- ▶ Involvement with other parent?
- ▶ Consent obtained from UK parent for any treatment/surgery?
- ▶ Payment?

## Medical/health decisions

### Detailed witness statement again vital

- ▶ Example of when child required medical attention and the steps you took to ensure your child was received proper medical care
- ▶ Instruct carer to go to a particular hospital?
- ▶ Any decisions in relation to child's diet?
- ▶ Demand particular treatment/surgery?
- ▶ Braces, contraception, vaccinations etc?

## Religious/spiritual decisions

- ▶ Usually a witness statement can be sufficiently persuasive
- ▶ If child attends church/mosque/synagogue etc give reason for why that particular place of worship
  - ▶ How often?
  - ▶ Where?
  - ▶ How do you make sure child attends?
  - ▶ If not religious/spiritual then should give reason for this as well
- ▶ Letter from church/mosque/synagogue etc confirming attendance is also helpful

## Other decisions

- ▶ The kind of friends the child is permitted to hangout with;
- ▶ Sleepovers;
- ▶ Holidays;
- ▶ Purchase and use of mobile phone;
- ▶ Afterschool classes;
- ▶ Make up;
- ▶ Any disagreement with those providing day-to-day care etc

## Two parent cases

- ▶ §45 of **TD (Yemen)**: “The starting point must be that both parents share responsibility for their child’s upbringing.”
  - ▶ §48: “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).”
- ▶ Onerous requirement
- ▶ **Mundeba (s.55 and para 297(i)(f)) Democratic Republic of Congo** [2013] UKUT 88
  - ▶ The focus needs to be on the circumstances of the child in the light of his or her age, social backgrounds and developmental history
    - ▶ Child is living in an unacceptable social and economic environment. T and will involve inquiry as to whether:
    - ▶ There is evidence of neglect or abuse;
    - ▶ There are unmet needs that should be catered for;
  - ▶ There are stable arrangements for the child’s physical care etc



## CONCLUDING THOUGHTS

- ▶ Detailed witness statement (both in an application and in an appeal) is key.
  - ▶ Explain how decision making power is being exercised. Give examples!
  - ▶ If child is old enough, a detailed statement from the child abroad is also helpful.
- ▶ Letter from the school is a necessity
  - ▶ Try to get the school to exclude others from the realm of 'decision making'
- ▶ Make the entry clearance application as soon as possible
  - ▶ If there is a delay make sure to explain
    - ▶ Immigration status
    - ▶ Financial constraints
    - ▶ Change in circumstances etc





# THANK YOU

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