



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: OA/06395/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 August 2015**

**Decision & Reasons Promulgated  
On 15 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

v

**Miss Jody Ann Georgina GORDON**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer

For the Respondent: Mr Adophy, Rana & Co solicitors

**DECISION & REASONS**

1. The Respondent is a national of Jamaica born on 10 April 1996. She made an application for entry clearance as a dependent child in order to join her parents in the United Kingdom. This application was refused on 24 April 2014 on the basis that neither parent was settled in the United Kingdom and the sole responsibility requirement was not satisfied. The Respondent appealed and her appeal came before First Tier Tribunal Judge McWilliam for hearing on 27 February 2015. In a decision promulgated on 26 March 2015, the Judge allowed the appeal under the Immigration Rules and under Article 8 of ECHR.

2. The Secretary of State for the Home Department sought permission to

appeal on 1 April 2015. The grounds of appeal asserted *inter alia* that the Judge erred materially in fact at [31] in taking into consideration that both the sponsor and her husband have been in the United Kingdom for a considerable period of time and “*throughout that period have been here lawfully.*” Home Office records show that the sponsor entered the United Kingdom as a visitor for 6 months in 1999 and was then given leave to remain as a student until October 2002 but she then overstayed and was next encountered over 5 years later on 17 December 2007. The Judge’s finding at [24] that the sponsor was an impressive witness does not take into account that the sponsor and her husband have a history of deceit and the Judge’s finding at [28] in respect of the Appellant’s mental health is unsustainable as it was made without any medical evidence.

3. Permission to appeal was granted on 20 May 2015 by First Tier Tribunal Judge Lambert on the basis that it was clearly both arguable and material to the ground that the Judge erred materially in fact that documentary evidence establishing lengthy periods of unlawful residence of both parties. The Judge commented that there is “... *an absence of much reasoning sustaining the positive credibility findings made*” and that “... *the alternative findings under Article 8 depend on those credibility findings and therefore cannot be used to sustain the decision reached.*”

4. At the hearing before me, Mr Whitwell sought to rely on the grounds of appeal. He acknowledged that the Judge may have made a drafting error in light of her findings at [2] [13] and [18] of the determination which show that she was aware of the gap in lawful status. He asserted that the Judge’s findings at [31] did impinge on her findings under the Rules at [26] and [28] and the decision with regard to the Rules and Article 8 of ECHR stand or fall together. He further clarified that the reference to a “*history of deceit*” in the grounds of appeal referred only to the sponsor’s immigration history. In response, Mr Adophy submitted that the Judge was entitled to find as she did. The sponsor had not misrepresented her situation and had been lawfully present from 1990 to 2002 and had been on temporary admission from 2007 to 2011 when she was granted leave to remain. He accepted that there was no medical evidence before the Judge but drew attention to the fact that a letter from the sponsor dated 7 February 2014 which made reference to the Appellant’s suicide attempts pre-dated the decision letter and the Judge was entitled to take this into account. Both parties agreed that paragraph 301 of the Rules was the applicable rule in this case, given that the sponsor was not settled in the United Kingdom.

5. Having carefully considered the submissions of both parties and the documentary evidence I find that the First Tier Tribunal Judge did not err materially in law. Whilst it is the case that at [31] the Judge erred in fact in finding that the sponsor and her husband had resided lawfully in the United Kingdom throughout, I consider that this finding is confined to the Article 8 consideration as is clearly indicated by the heading before [30]. I do not consider that this finding infects the Judge’s clear findings that the Appellant satisfied the requirements of paragraph 301 of the Immigration Rules. As Mr Whitwell acknowledged, at [18] the Judge noted the sponsor’s evidence that:

*“She was unable to make an application until she herself had been granted limited leave in 2011. She was waiting to receive a second period of leave before making an application.”* Clearly the Judge was aware that the sponsor was not lawfully resident until 2011. At [24] the Judge found the sponsor to be an impressive witness having had the benefit of hearing her give oral evidence. Whilst the sponsor may have an adverse immigration history this does not mean that nothing she says is true and, unlike the Entry Clearance Officer, the Judge had the opportunity to assess the sponsor’s oral evidence, including cross-examination and was entitled to find that she was a credible witness. The Judge was also well aware of the absence of medical evidence as this was expressly drawn to her attention by the Home Office Presenting Officer at [26] but she accepted the sponsor’s evidence, which was supported by a letter from the Appellant as to her mental health problems. The Judge was entitled to find on the evidence before her that, at the date of decision, there were serious and compelling family or other considerations that make her exclusion undesirable and that the requirements of paragraph 301 of the Rules were met [29]. Her finding in respect of Article 8 was in the alternative.

6. For the reasons set out above, I do not find that Judge McWilliam erred materially in law in allowing the appeal under paragraph 301 of the Immigration Rules and her decision in this respect is upheld, with the effect that entry clearance should be granted to the Appellant.

Deputy Upper Tribunal Judge Chapman

10 September 2015