



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/01673/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at the Rolls Building

On 20 February 2018

**Decision & Reasons
Promulgated**

On 22 February 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

ENTRY CLEARANCE OFFICER

Appellant

and

J G D

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondent: Ms JF, sponsor

DECISION AND REASONS

1. This is an appeal by an Entry Clearance Officer ("ECO") against the decision of First-tier Tribunal Majid promulgated on 20 March 2017 in which he allowed Ms JGD's appeal against the decision to refuse entry clearance to join her grandmother, Ms JF ("the sponsor"). That decision was taken under paragraph 297 of the Immigration Rules.
2. The ECO refused the application as he was not satisfied that the respondent met the requirements of paragraph 297 (i)(f) which states:-

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:

...

(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

3. The ECO reached that conclusion for the reasons set out in full in the decision of 27 May 2015, but in summary, he was not satisfied that:

- (a) The respondent was related to the sponsor as claimed;
- (b) That the respondent and sponsor had ever met;
- (c) The sponsor supported the respondent financially, noting no evidence of regular contact;

The ECO also found that the respondent still lives with her mother who has legal custody of her

- 4. For these reasons the ECO concluded that the respondent had not shown that there are any serious, compelling family or other considerations which make her exclusion undesirable or that suitable arrangements had been made for her care. He also concluded that refusing to grant the respondent entry clearance would not be a breach of her right to respect for her family and private life under article 8 of the Human Rights Convention.
- 5. It follows from this that there were a number of issues in dispute. It was for the judge to make findings of fact and then apply the law as set out in paragraph 297 (i)(f).
- 6. The ECO submits that the judge did not do this, and that his decision is so incoherent that it cannot be discerned what findings the judge made, or why he allowed the appeal.
- 7. While I have no reason to doubt that Ms JF did explain to the judge what her relationship is with JGD, the difficulties she faces and why she should come to the United Kingdom where she could look after her, there is no real indication that the judge made any findings based on that evidence. It is particularly worrying that at paragraphs [12] and [13] that the judge appeared to consider that JGD was in fact present in the United Kingdom.
- 8. The judge did not set out the relevant law, and failed to make findings on the issues in dispute. He did not explain why he had allowed the appeal

except at paragraph [32] by reference to paragraph [12] which refers to “special arrangements” where by a person of Jamaican background can switch categories despite having come as a visitor. That is clearly not relevant here as JGD is not in the United Kingdom.

9. There is no attempt to explain why JGD has met the requirements of the Immigration Rules or why, if not, the refusal to grant her leave would be in breach of the Human Rights Act.
10. For all of these reasons, I am satisfied that the decision of Judge Majid involved the making of an error of law, and I set it aside. As the judge failed to make any proper findings, the only course of action properly open to me is to remit the appeal to the First-tier Tribunal for a

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The appeal is remitted to the First-tier Tribunal for a fresh decision on all issues.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 20 February 2018



Upper Tribunal Judge Rintoul