Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19951/2016
HU/19952/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 December 2017	On 24 January 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[C G]
[S G]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer
For the Respondent: Miss A O'Callaghan, Counsel instructed by N C Brothers & Co Solicitors

DECISION AND REASONS

1. The appellant (hereafter the Entry Clearance Officer or ECO) brings a challenge to the decision of First-tier Tribunal Judge Graham sent on 26 September 2017 allowing the appeal against the ECO's decision refusing to grant entry clearance as a child under para EC-C.1.1(d) of the Immigration Rules. The respondent (hereafter the claimant) had applied

to join his mother who had been issued with a spouse entry clearance in July 2015 as the spouse of the claimant's father who has now become a British citizen. The claimant is currently aged 12. The ECO was not satisfied that the claimant was related to the sponsors in the UK as claimed and did not consider there were any exceptional circumstances warranting a grant of entry clearance.

2. By the time of the hearing before Judge Graham the claimant had obtained DNA evidence establishing that the claimant was the child of the sponsor father and mother. At the hearing the judge also heard evidence from the parents. During submissions the Home Office Presenting Officer stated that whilst the ECO accepted that the sponsors were the biological parents of the claimant he wished to pursue the issue under para E-ECC.1.6(b) of sole responsibility. The judge refused to allow the ECO to introduce the issue of sole responsibility at the hearing. The judge concluded at para 14:-

> "In order to determine whether the Entry Clearance Officer's decision amounts to a disproportionate interference with family life I have conducted a balancing act weighing on the one side the factors in support of entry clearance and the public interest grounds as set out in section 117B of the Immigration Act 2014 on the other side. As the Appellants relationship with the sponsors is established and the Appellants meet the Immigration Rules for the reasons set out, I am satisfied that the public interest grounds in refusing entry clearance are minimal and the decision to refuse entry clearance represents a disproportionate interference with Article 8 ECHR."

3. The ECO's grounds restate the same submissions of the HOPO stating that whilst it was now accepted the claimant and sponsors were related as claimed, the judge erred in failing to consider the issue of sole responsibility. The grounds cited **RM (Kwok On Tong: HC 395 para 320) India [2006] UKAIT 00039** and submitted that in light of this failing there had not been adequate reasons given for allowing the appeal.

4. I am unpersuaded by the ECO's grounds. The relevant requirements of the Immigration Rules are set out by the judge at para 2 as follows:-

> "The requirements to be met for entry clearance as a child are set out in –
>
> *EC.C: Entry clearance as a child and state;*
>
> a) the applicant must be outside the UK;
>
> b) the applicant must have made a valid application for entry clearance as a child;
>
> c) the applicant must not fall for refusal under any of the grounds in section S-EC: suitability for entry clearance; and

d) the applicant must meet all of the requirements in section E-ECC: Eligibility for entry clearance as a child.

Relationship requirements

E.ECC.1.2 The applicant must be under the age of 18 at the date of application.

E.ECC.1.3 The applicant must not be married or in a civil partnership.

E.ECC.1.4 The applicant must not have formed an independent family unit.

E.ECC.1.5 The applicant must not be leading an independent life.

E.ECC.1.6 One of the applicant's parents must be in the UK with limited leave to enter or remain, will be applying, or have applied, entry clearance, as a partner or a parent under this Appendix (referred to in this section as the "applicant's parent"), and

(a) the applicant's parents partner under Appendix FM is also a parent of the applicant; or

b) the applicant's parent has had and continues to have sole responsibility for the child's upbringing; or

(c) 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."

5. On my plain reading E.ECC.1.6(a), (b) and (c) sets out three alternative conditions. The claimant did not need to satisfy (b) because his parents have joint responsibility for him. The ECO's grounds fail to identify, any other provision of the Rules that the claimant did not meet.

6. In such circumstances the ECO's grounds cannot succeed. The decision of the First-tier Tribunal Judge allowing the appeal on human rights grounds is upheld.

Signed: H H Storey Date: 21 January 2018

Dr H H Storey
Judge of the Upper Tribunal