



IAC-AH--V1

**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/01959/2020**

**THE IMMIGRATION ACTS**

**Heard at Field House (via MS      Decision & Reasons Promulgated  
Teams)      On the 28<sup>th</sup> October 2021  
On the 7<sup>th</sup> October 2021**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**IM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Bellara, counsel instructed by NN Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge SJ Clarke, promulgated on 24 February 2021. Permission to appeal was granted by Upper Tribunal Judge Canavan on 10 June 2021.

Anonymity

2. An anonymity direction was made previously and is reiterated below because the appellant is a minor child.

### Background

3. The appellant is now aged eight and is a national of Bangladesh. On 25 November 2019, he applied to settle in the United Kingdom with his father under paragraph 297 of the Immigration Rules. That application was refused on 2 January 2020 and this decision is the subject of this appeal.
4. The Entry Clearance Officer refused the application because it was not accepted that appellant and sponsor were related as claimed or that the sponsor was solely responsible for the appellant's upbringing (297(i)(e)). The ECO further considered that the appellant's mother was still involved in his life. It was not accepted that there would be adequate maintenance for the appellant without further recourse to public funds. There were also said to be no serious and compelling family or other considerations which made the appellant's exclusion undesirable. Article 8 ECHR was considered however, the ECO was satisfied that the decision was justified and proportionate.
5. The appellant lodged an appeal, following which an Entry Clearance Manager reviewed the decision in question but maintained it, notwithstanding the additional evidence and arguments which had been provided.

### The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the respondent's representative confirmed that the only issue to be determined was that of sole responsibility. The hearing of the appeal was initially conducted over video link but had to continue via telephone owing to persistent technical issues. The judge had concerns with aspects of the evidence before her and ultimately found that the sponsor was not solely responsible for the appellant and dismissed the appeal on human rights grounds.

### The grounds of appeal

7. The grounds of appeal were poorly drafted but took issue, in some detail, with the findings made by the judge.
8. Permission to appeal was granted on the basis that it was arguable that the judge failed to take into account any explanation which might have been provided by the sponsor regarding the concerns as to the reliability of the documents.
9. The error of law hearing came before Upper Tribunal Judge Macleman on 20 August 2021 by way of a remote hearing over MS Teams. The hearing was adjourned because counsel for the appellant, who had not drafted the grounds, was unaware of the terms of the grant of permission until the

hearing itself and wished to submit amended grounds. There was no objection on behalf of the respondent.

10. Directions were made to enable an application to amend the grounds to be filed along with supporting evidence. The respondent was directed to file a copy of the Presenting Officer's minute of the hearing and any other record kept.
11. Amended grounds were provided on 8 September 2021 which argued that the judge did not consider the sponsor's oral evidence which she had recorded over the majority of the 16 pages of her handwritten record of proceedings. It was contended that the judge's concerns were addressed by the sponsor in oral evidence as were the issues raised in the decision letter. There was also an indication of a missing section of the judge's notes which related to the appellant's birth certificate.

### The hearing

12. At the outset, I permitted the applicant to amend the grounds and granted permission on those grounds. Ms Everett indicated the respondent's view, stating that having seen the amended grounds of appeal, she was reluctant to challenge a procedural allegation without evidence to the contrary.
13. For the appellant, Mr Bellara argued that the judge had written sixteen pages of notes, most of which concerned the evidence of the sponsor, the sole witness. Yet none of the sponsor's evidence was summarised or referred to in the decision which suggested that the points he made had been overlooked. As for the presenting officer's concessions, there had been no cross-examination on maintenance nor the birth certificate issues. The only matters covered in cross-examination were the *ex parte* court order and the address given for the appellant's mother on his passport.
14. In reply, Ms Everett was content to leave matters in my hand, having accepted that the hearing of the First-tier Tribunal was very fractured.
15. At the end of the hearing, I informed the parties that I was satisfied that there were material errors of law in the decision of the First-tier Tribunal owing to the lack of engagement with the oral evidence, the technical difficulties as well as the findings made being based on an absence of evidence where those concerns do not appear to have been raised with the parties at the hearing.
16. Mr Bellara requested that the matter be remitted to the First-tier Tribunal as the appellant had not had a fair hearing. He was concerned regarding the timescale, following which I agreed that the matter be expedited.

### Decision on error of law

17. That the hearing of this appeal before the First-tier Tribunal was beset with technical difficulties was not in issue. At [5], the judge comments

that “*during the course of examination in chief neither representative was able to retain a continuous link and after many attempts we continued the hearing using the telephone facility for them.*” In the amended grounds, the same point is made, stating that the CVP hearing had “*five or six breaks where a connection was lost.*”

18. Before me, Mr Bellara reiterated the point made in the amended grounds that the flow of the sponsor’s evidence was lost and/or missed entirely. It is possible to see from the judge’s record of proceedings that the sponsor was examined by Mr Bellara fairly extensively, with references to pages 0-4 inclusive. Pages 4-12 of the record of proceedings concern cross-examination. Regrettably neither the respondent nor appellant have provided any notes of what was said by the sponsor and the judge’s handwritten record of the sponsor’s evidence is difficult to decipher. Furthermore, there is little engagement with the sponsor’s evidence in the decision itself, in that it is not said what questions were put to the sponsor nor, in the main, what evidence was given by him. This may well have been a partial consequence of the loss of the video link. Either way, the result is that the appellant was denied a fair hearing.
19. The reasons given by the judge for dismissing the appeal did not engage with the sponsor’s evidence and were focused on the absence of evidence the judge would have liked to have seen. It does not appear that this series of concerns were put to the sponsor and if they were, any explanation has not been referred to in the decision. Examples of these types of findings are found at [8] regarding there being no evidence from the agent the sponsor used to renew the appellant’s passport; [11] there being no evidence from the barrister as to what steps were taken by the court to act in the absence of appellant’s mother and [12] as to why the court documents did not recite that the mother looked after the appellant until 2014. Also, at [12] the judge comments that she had not got the “*best evidence*” before her and that she needed need “*cogent evidence from an independent source to resolve the issue.*” At [14], the judge criticises the letter from the Little Star school for what it did not say rather than assessing what it did say. The judge had evidence from the local councillor in Bangladesh, the appellant’s school, a court as well as the oral and written evidence of the sponsor. It is unclear why this evidence was rejected and weight was instead placed on areas where the evidence was thought to be lacking.
20. Considering the foregoing issues, I am satisfied that the amended grounds of appeal are made out and that the decision of the First-tier Tribunal contained material errors of law.
21. In deciding to remit this matter to the First-tier Tribunal, I am mindful of statement 7 of the Senior President’s Practice Statements of 10 February 2010, the nature and extent of the findings to be made as well as that the appellant has yet to have an adequate consideration of his human rights appeal, it would be unfair to deprive him of such consideration.

## **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of one day by any judge except First-tier Tribunal Judge SJ Clarke.**

**The appeal is expedited owing to the appellant's age and the fact that he is being cared for outside of his immediate family.**

## **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:  
Upper Tribunal Judge Kamara

Date 8 October 2021