



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/05553/2019
(P)**

THE IMMIGRATION ACTS

**Decided at Cardiff Civil Justice Centre Decision & Reasons Promulgated
Under Rule 34 On 31 March 2021
On 19 March 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**M N O
(ANONYMITY DIRECTION MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, PRETORIA

Respondent

DECISION AND REASONS

Unless and until a Tribunal or Court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of their 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.

1. The appellant is a citizen of Kenya who was born on 2 December 2003.
2. On 19 December 2018, she made an application for entry clearance to settle in the UK as the daughter of the sponsor, her father under para 297 of the Immigration Rules (HC 395 as amended).

3. On 22 February 2019, the ECO refused the appellant's application under para 297 and also under Art 8 of the ECHR.
4. The appellant appealed to the First-tier Tribunal. Following a hearing, on 2 December 2019 Judge M A Khan dismissed the appellant's appeal. In relation to para 297 of the Immigration Rules, he was not satisfied that the sponsor had "sole responsibility" for the appellant as required under para 297(i)(e). Further, he was not satisfied that there were "serious and compelling family or other considerations" which made the appellant's exclusion undesirable under para 297(i)(f). Finally, he concluded that the appellant's exclusion did not breach Art 8 of the ECHR.
5. The appellant sought permission to appeal to the Upper Tribunal. In particular, the grounds contended that the judge failed to give adequate reasons for his finding under para 297 that it was not established that the sponsor had "sole responsibility" for the appellant and that the judge's conclusion was irrational.
6. Permission to appeal was initially refused by the First-tier Tribunal but, on 4 August 2020, UTJ Blum granted the appellant permission to appeal on all grounds, but in doing so the judge specifically identified that it was arguable that the judge had materially erred in law and/or failed to give adequate reasons in reaching his adverse decision on "sole responsibility".
7. UTJ Blum issued directions concerning the future conduct of the appeal, including expressing the provisional view that the error of law issue could be determined without a hearing. The appellant filed further submissions on 26 August 2020 and the Secretary of State submitted a rule 24 response on 27 September 2020. Neither party, in their submissions, objected to the error of law issue being determined without a hearing. Further, in her rule 24 response the Secretary of State conceded that a material error of law was made out on the basis of the appellant's grounds and she invited the UT to set aside the First-tier Tribunal's determination and to remit the appeal to the First-tier Tribunal for a *de novo* hearing. Further directions were made by UTJ Finch on 10 September 2020.
8. On 19 March 2021, the appeal was listed before me in order to determine how to proceed with the appeal. In the light of the issues raised and that the respondent has conceded that the First-tier Tribunal's decision should be set aside as the judge materially erred in law, I am satisfied that it is in the interests of justice to determine the error of law issue without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).
9. In the light of the respondent's concessions set out in her rule 24 response, with which I agree, I am satisfied that the judge materially erred in law in reaching his adverse findings under para 297 of the Immigration Rules and, therefore, in reaching his decision to dismiss the appeal under Art 8 of the ECHR. In those circumstances, the decision cannot stand and is set aside.

10. Both parties' submissions recognised that there should be a further hearing in order to remake the decision. It is not suggested that any of the judge's findings should be preserved. Indeed, the respondent in her rule 24 response invited the UT to remit the appeal to the First-tier Tribunal for a *de novo* rehearing.
11. In these circumstances, the appropriate disposal of the appeal, given the nature and extent of fact-finding required, is to remit the appeal to the First-tier Tribunal for a *de novo* rehearing.

Decision

12. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.
13. I remit the appeal to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge M A Khan. None of the judge's findings are preserved.

Signed

Andrew Grubb

Judge of the Upper Tribunal
23 March 2021