



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

Appeal Number: HU/15710/2016  
HU/15711/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4<sup>th</sup> January 2016**

**Decision & Reasons  
Promulgated  
On 23<sup>rd</sup> January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KELLY**

**Between**

**(1) PHB  
(2) IOB  
(ANONYMITY DIRECTED)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellants: Mr John Waithe, Counsel instructed by Greenland Lawyers  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants appeal against the decision of First-tier Tribunal Judge Jerromes, promulgated on the 31<sup>st</sup> July 2017, to dismiss their appeals against refusal of their applications for entry clearance in order to join their mother, who is now a British citizen, in the United Kingdom.

2. The appellants are citizens of Jamaica who were both minors at the date of the respondent's decision and were being cared for in that country by their maternal uncle and his wife.
3. On behalf of the Secretary of State, Mr Clarke did not dispute that the judge was in error in supposing that his consideration of the appeals was restricted to the circumstances appertaining at the date of the respondent's refusal of the applications in question. That has not been the position since the amendments to section 85 of the Nationality, Immigration and Asylum Act 2014, which came into force on the 5<sup>th</sup> April 2015. The current position is that the Tribunal is entitled to have regard to any circumstances that are material to the decision, including those arising after the date of the refusal of the applications. The judge was led into this error by his reliance upon Gurung v The Entry Clearance Officer, New Dehli [2016] EWCA Civ 358 (7<sup>th</sup> April 2016) without apparently having noted that this concerned an appeal that had been decided in the First-tier Tribunal before the amendments to section 85 came into force.
4. The remaining grounds argue that the judge undertook a flawed assessment of the question of whether the appellants had met the requirements of paragraph 297 of the Immigration Rules.
5. Firstly, it is said that the judge was wrong to focus upon whether the sponsor had "sole responsibility" for the appellants' upbringing given that their father is also resident in the United Kingdom and has been for some 15 years. Whilst there is some force in this criticism insofar as it relates to the technicalities of the Immigration Rules, the reality is that the level of the sponsor's responsibility for her children's upbringing was highly relevant to the Tribunal's assessment of their case under Article 8. The error was thus one of form rather than of substance. I therefore conclude that it was immaterial to the outcome of the appeal.
6. Secondly, it is said that in assessing the question of whether there were (for the purposes of the Immigration Rules) "serious and compelling circumstances" rendering the appellants' exclusion from the UK "undesirable", the judge failed to have regard to the sponsor's claim that their current carers were planning to emigrate from Jamaica to the USA on a date in September 2017; that is to say, about two months after the date of the hearing. There is also force in this argument. However, given that meeting the requirements of the Immigration Rules is not generally determinative of an appeal brought on grounds under Article 8, I propose to consider this within the context of whether the judge's error in restricting the scope of the circumstances to which he was entitled to have regard warrants the setting aside of his decision.
7. I therefore return to the undoubted error of law concerning the relevant date for determining the facts of the appeal. In considering the materiality of that error, I note that Mr Waithe was unable to identify any particular facts or circumstances arising after the date upon which the applications had been refused that weighed in favour of admitting the appellants to the

United Kingdom. That may be because there does not appear to have been any. Indeed, the changes in the appellants' circumstances since the decision seem to me to weigh even more heavily against admitting them to the UK than those that were appertaining at the date of the respondent's decision. The appellants were aged 17 years and 15 years on the date their applications were refused, whereas at the date of the hearing they had attained the ages of 19 years and 17 years respectively. They had moreover spent a further two years residing in the country where they were born and had spent the entirety of their lives. By the date of the hearing, it was thus at least questionable whether they would continue to require full-time carers following the departure of their parental uncle and his wife for the USA some two months' later. The changes in the appellants' circumstances thus fortified, rather than undermined, the reasons given by the judge at paragraph 36.4(ii) of his decision for concluding that it was in the best interests of the appellants to remain in Jamaica. Moreover, if and to the extent that the appellants continued to require parental care at the date of the hearing, there was no evidential basis upon which the judge could have concluded that there would be very significant obstacles to the sponsor providing such care by joining her children in Jamaica.

8. I therefore conclude that whilst the First-tier Tribunal undoubtedly made an error of law, it was not such as to warrant the exercise of discretion in favour of setting aside its decision.

### **Notice of Decision**

9. The appeal is dismissed.

**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 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.**

Judge Kelly

Date: 17<sup>th</sup> January 2018.

Deputy Judge of the Upper Tribunal