



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

Appeal Numbers: HU/07606/2019
HU/07611/2019

THE IMMIGRATION ACTS

**Heard at Field House
Decision given orally
On 3 July 2020**

**Decision & Reasons Promulgated
On 30 July 2020**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

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(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Atuegbe, R & A Solicitors

For the Respondent: Ms Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, who are minors born on the same day in 2006, appeal with permission the decision of First-tier Tribunal Judge Lloyd-Smith, who for reasons given in her decision dated 29 January 2020 dismissed the appellants' appeals against the decision of the Entry Clearance Officer. That decision, which was made on 22 March 2019, was to refuse the appellants' applications to settle in the United Kingdom as the adopted children of a British national and her husband who has settled status in the

United Kingdom. The Entry Clearance Officer explained that he was not satisfied that the sponsors had had sole responsibility for the children's upbringing and explained why this was so under paragraph 310(x) of the Immigration Rules.

2. The First-tier Tribunal heard evidence from the sponsoring adoptive mother and found (in paragraph 39) that the sponsor and her husband had not had sole responsibility for the appellants and so dismissed the appeal on human rights grounds. In summarising the case before her the First-tier Tribunal judge referred to the Entry Clearance Officer's decision. She observed in paragraph 11 of her decision that the Entry Clearance Manager had raised the issue of the sponsor not having demonstrated sole responsibility either financially or emotionally. She also noted in this paragraph that at the start of the hearing Mr Billinge had stated that it was accepted the sponsor and her husband are the adoptive parents of the appellants and have financial responsibility for them. Therefore, the issue to be decided was one of whether the sponsor has had sole responsibility for them.
3. The challenge by the appellants focused on the correctness of the First-tier Tribunal's evidential findings. In granting permission to appeal First-tier Tribunal Judge Grant noted the background factors and concluded that the judge had erred by focusing on delay and had misdirected herself as to the test to be applied under paragraph 297. This was the first mention of paragraph 297 in the proceedings so far.
4. At the hearing before me today it was accepted by Ms Isherwood for the Entry Clearance Officer and by the appellant's representatives that the First-tier Tribunal had erred in approaching this case through the prism of 'sole responsibility'. The correct course would have been for the judge to consider the case under paragraph 310(ix) of the Immigration Rules, being the single provision of paragraph 310 which the Entry Clearance Officer had considered the appellants had fallen foul of. That provision is in these terms, "*was adopted due to the inability of the original parents or current carers to care for him and there has been a genuine transfer of parental responsibility to the adoptive parents*".
5. Ms Isherwood had good reason to accept that the First-tier Tribunal had erred in its approach. She also raised, when I turned to the remaking of the decision, her concerns about the immigration history of the sponsors. This is the first time that such points had been raised, however, she accepted that these concerns did not touch on the requirement in paragraph 310(ix), that is to say whether there had been a genuine transfer of parental responsibility or the adoption had not been due to the inability of the original parents to care for the appellants. Indeed, as I have cited from the First-tier Tribunal's decision, it was accepted by the Presenting Officer before the First-tier Tribunal that the sponsor and her husband are the adoptive parents of the appellants. In these circumstances Ms Isherwood understandably accepted that the appeals could no longer be opposed. The ground available to the appellants is

under the Human Rights Act. Having regard to the fact of the appellants' ability to demonstrate they met the only requirement of the Immigration Rules identified by the Entry Clearance Officer in his decision, in my judgment it would be a disproportionate interference with family life to refuse an application where the requirements of the Rules had been met. Accordingly, the decision of the First-tier Tribunal is set aside. These appeals are allowed on human rights grounds.

6. By way of footnote, it will be for the Entry Clearance Officer to consider the concerns raised by Ms Isherwood when implementing this decision in particular whether there is any basis for calling into question the citizenship and settled status of the appellants' adoptive parents.

NOTICE OF DECISION

The decision of the First-tier Tribunal is set aside

Upon remaking, the appeals are allowed on human rights grounds.

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

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

Signed

Dated: 3 July 2020

UTJ Dawson

Upper Tribunal Judge Dawson