



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

Appeal Number: HU/05788/2019  
UI-2021-001078

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 August 2022**

**Decision & Reasons Promulgated  
On 29 September 2022**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**JACKILYN MAE RAMIREZ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr L Magsino, solicitor, Queens Park Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Monson, promulgated on 28 September 2021. Permission to appeal was granted by on First-tier Tribunal Judge Karbani on 18 November 2021.

Anonymity

2. No direction has been made previously, and there is no application nor apparent reason for one now.

### Background

3. The appellant is a national of the Philippines, born in January 2001. On 30 November 2018, she sought entry clearance to enter the United Kingdom as the adopted child of David and Manuela Mills. Manuela Mills is the appellant's paternal aunt and David Mills is the husband of Mrs Mills.
4. On 15 February 2019, the Entry Clearance Officer (ECO) refused the said application. The reasons provided were that a copy of a finalised Adoption Order had not been provided with the application and that Mr Mills had said that as of 5 December 2018, the adoption was not finalised. The ECO was not satisfied that the appellant was being adopted due to the inability of her mother to care for her or that there had been a genuine transfer of parental responsibility to the sponsors. The ECO was also not satisfied that the appellant had lost or broken ties with her family of origin. Enquiries made by the ECO showed that the sponsors had not been issued with a Certificate of Eligibility in relation to intercountry adoption, as required by the Adoption and Children Act 2002 and Adoptions with Foreign Element Regulations 2005. Reference was made to the delay in commencing the adoption process as Mrs Mills had been living in the UK since 2007 and the appellant had made her application shortly before her eighteenth birthday. The application was refused under paragraphs (vi), (ix), (x) and (xi) of paragraph 310 of the Immigration Rules as well as paragraphs (ii) and (iii) of paragraph 316D, owing to the Philippines being a member of the Hague Adoption Convention. The ECO also assessed the application under paragraph 297 of the Rules but concluded there were no serious and compelling family or other considerations which made the appellant's exclusion undesirable as required by paragraph 297(i)(f) of the Rules.
5. The appellant appealed. In the grounds of appeal dated 22 March 2019, it was argued that the requirements of paragraphs 297, 310 and 316D of the Rules were met. It was also said that the presiding judge dealing with the appellant's adoption had fallen ill and had been 'unable to issue a certificate of finality before the appellant turned 18.' In addition, the grounds stated that the appellant's biological mother was unable to raise her, that the appellant was now being cared for by the sponsor's family in separate accommodation to avoid a predatory male in the previous household and that the appellant was, nonetheless, being maltreated.
6. Following the appellant's appeal, an Entry Clearance Manager reviewed the matter and maintained the decision of the ECO. It was noted that while the appellant had provided further detail, there was a failure to provide any supporting evidence. Consideration was given, on this occasion, to Article 8 as well as section 55 of the Borders, Citizenship and Immigration Act 2009.

### The decision of the First-tier Tribunal

7. At the hearing before the First-tier Tribunal, an order dated 2 March 2021 as well as a decree of adoption dated 18 March 2021 was submitted. The judge accepted these documents as valid evidence pursuant to the Adoption (Recognition of Overseas Adoptions) Order 2013 but noted that this was not the position at the time of the decision under appeal. Consequently, he found that the appellant was unable to meet the requirements of paragraph 310(vi) of the Rules. The judge considered whether the appellant was the subject of a de facto adoption but declined to find that she was because the appellant's biological mother was not unable to care for her and had only surrendered her in view of her financial problems and therefore 310(ix) was also not met. The judge did not accept that the appellant met the requirements of paragraph 297(1)(f) of the Rules and found, considering Article 8 that the consequences for the appellant of the decision to refuse entry clearance were not unjustifiably harsh.

### The grounds of appeal

8. There were five grounds of appeal. Firstly, the judge had taken into consideration irrelevant considerations and/or failed to take account of relevant considerations when considering the adoption order. Secondly, that the Tribunal erred in considering the appeal in circumstances where the respondent had failed to comply with the Tribunal's directions to reconsider the decision under appeal. Thirdly, the judge failed to consider evidence which arose after the date of the decision, that being the adoption order. Fourthly, the judge erred in his finding that there had been no genuine transfer of parental rights. Lastly, the judge failed to consider the best interests of the appellant as a British child.
9. Permission to appeal was granted solely on the basis that the fifth ground disclosed an arguable error of law, *'in that the judge failed to consider whether weight should be attached to the Adoption Order which meant that the appellant had a parent-child relationship with her adoptive parents and therefore may have qualified under paragraph 297 of the Rules.'* Permission to appeal was not restricted in respect of the other grounds.
10. The respondent's Rule 24 response was received on 7 March 2022, in which the appeal was opposed. In addition, the respondent contended that the grounds showed a misunderstanding of the basis upon which the appeal was dismissed, that being that the adoption order, while found to be genuine, was not in existence at the time of the visa application. The judge had made alternative findings which showed that even if the adoption order was in existence at the time of the application, the appellant could not meet the requirements of paragraph 310 of the Rules.
11. The respondent further submitted that the judge was wrong to find that the adoption order was valid, that he wrongly applied the judgment in *FX*

& *NJX v CAFCASS Legal* [2020] EWHC 1227 (Fam) and that his finding ignored the lack of evidence to show that the mandatory aspects of the Adoption with a Foreign Element Regulations 2005 had been met at the date of the hearing.

### The hearing

12. In advance of the hearing, both representatives forwarded brief skeleton arguments to the Upper Tribunal. Mr Magsino also relied upon the grounds of appeal which he had drafted and to which he added very little. Mr Magsino said nothing to support his contentions that the Rules were met or that the exclusion of the appellant from the United Kingdom would have unjustifiably harsh consequences. In respect of the third ground, he accepted that this case did not involve a new matter being raised.
13. Mr Melvin defended the judge's decision except for the finding that the adoption order was valid. He asked me to take account of the respondent's submissions before the First-tier Tribunal regarding the adoption order as well as the inconsistencies regarding the facts relied upon in the adoption order.
14. In reply, Mr Magsino conceded that there was no reliance on paragraph 297 of the Immigration Rules. In response to my query, Mr Magsino denied that there had been any further orders or an annotation of the appellant's birth certificate after the adoption order was made.
15. At the end of the hearing, I announced that there was no material error of law in the decision of the First-tier Tribunal. I reserved my decision with respect of the reliability of the adoption order.
16. Following the hearing, Mr Magsino sent an email to which was attached a birth certificate in the appellant's name. The birth certificate contained no details of the date of registration and had clearly been subject to some manual alteration. The accompanying email included no application for the document to be admitted and it was stated that this document was not before the First-tier Tribunal. Given that Mr Melvin would not have had the opportunity to view this document and that this matter is not a rehearing, I have given it no further consideration.

### Decision on error of law

17. The first ground concerns the considerations which the judge had either wrongly taken into account or which it was said he failed to consider when assessing the appeal. It was argued on the appellant's behalf that the judge gave inadequate reasons for dismissing the appeal under paragraph 310 of the Rules in referring to the fact that neither of the sponsors was domiciled in the Philippines [23-24]. It was further contended that the adoption order was not challenged at the hearing, and it was inferred that the judge had gone behind a concession in finding at [29] that the

appellant *'needed to have been adopted by the date of the application or at the latest date of the decision.'* On the first point, the judge's reasons for dismissing the appeal under paragraph 310 were replete with detail. Contrary to what is contended in the grounds, the judge did not refer to the sponsors' domicile, but the fact that the adoption order was not in existence either at the date of the entry clearance application nor the date of the ECO's decision, with reference to 310(vi)(a). The aforementioned provision is expressed in the past tense, evidenced by the use of the term "was adopted ..."

18. In addition, there was no concession by the respondent before the First-tier Tribunal. On the contrary, the respondent's representative raised serious concerns with the adoption order both prior to and during the hearing as can be seen at [11] and [19] of the decision and reasons. There is no merit in the first ground.
19. In the second ground it is contended that the Tribunal erred in considering the appeal in circumstances where the respondent had failed to comply with the Tribunal's directions to reconsider the decision under appeal. Specifically, on 8 April 2021, another judge had directed the respondent to reconsider the decision to refuse entry and on 3 June 2021, a direction had been given for the respondent *'to review her decision following the final adoption order made by the family court in the Philippines. If decision to refuse is maintained then a supplementary letter be sent giving reasons.'* It is argued that the judge failed to address the respondent's non-compliance with the said directions and imposed no sanctions. The judge cannot be faulted for deciding to proceed with an appeal involving a young person in the prolonged absence of the ECO's review. In any event, the respondent was represented at the hearing and made submissions regarding the adoption order. Within this ground, it was contended that the respondent did not 'challenge' paragraph 310(vi)a of the Rules. This is plainly wrong. The decision under challenge made a clear reference to there being a failure to meet the requirements in paragraph 310(vi) and there is no evidence that the respondent's representative made any concession regarding this matter.
20. As for the third ground it is argued that the judge failed to consider the adoption order because it materialised after the date of the respondent's decision. It was argued that the judge did not engage with section 85(4) of the Nationality, Immigration and Asylum Act 2002. Furthermore, the adoption order was not a new matter, its' promulgation had merely been delayed by the death of the previous counsel and pandemic-related delays. This ground is misconceived. The judge considered the adoption order and found that it was valid. Furthermore, there was no argument before the First-tier Tribunal regarding a new matter being raised, as Mr Magsino conceded before me.
21. Regarding the fourth ground, it was contended that there had been a genuine transfer of parental rights as a result of the adoption order and that the judge was wrong to find otherwise. Reference was made to the

decision in *Boadi v ECO Ghana* [2003] INLR 54, where it was found that 310(x) of the Rules applied to ties of responsibility rather than affection in an intra-family adoption. Criticism was made of the judge's finding at [30] that the appellant was not surrendered for adoption owing to her biological mother's inability to care for her. Mr Magsino did not develop this ground either in writing or during the hearing. The judge provided more than adequate reasons for finding that the appellant had not demonstrated that her mother was unable to care for her. Indeed, the judge took into consideration claims made in the documents provided on the appellant's behalf which showed that her mother had financial problems and agreed to the proposed adoption of the appellant on that basis. Indeed, the sponsor's witness statement confirms that the reason for her involvement was the impoverished situation of the appellant's mother.

22. Paragraph 310(ix) of the Rules requires that for a valid de facto adoption, this must be due to the 'inability of the original parent' to care for the child and that there has been a 'genuine transfer of parental responsibility' to the adoptive parents. It is not in contention that the appellant has remained living with other relatives in the Philippines since the adoption proceedings were commenced and the sponsors have lived throughout in the United Kingdom. I was referred to no evidence which indicated that the judge's decision on this matter was wrongly arrived at.
23. Lastly, it is asserted that the judge failed to consider the best interests of the appellant, specifically as a British child. The difficulty with this argument, is that the appellant was aged twenty at the time of the hearing. If there was any error in the judge not mentioning the term best interests, it is not a material error given the detailed assessment which the judge undertook, which included a consideration of the appellant's circumstances as well as her own views on the adoption proceedings [38].
24. I will now address the respondent's cross-appeal. Mr Magsino made no objection to the issue of the validity of the adoption order being raised in the Rule 24 response and at the hearing. I find that the judge erred in failing to consider the respondent's submissions at the hearing and in accepting the validity of the adoption order, for the following reasons.
25. Firstly, the adoption order is dated 18 March 2021, at a time when the appellant was aged twenty. Republic Act No. 8552, or 'Domestic Adoption Act of 1998,' described therein as an Act establishing the rules and policies on the domestic adoption of Filipino children was produced on behalf of the respondent at the hearing before the First-tier Tribunal. The said Act states that in the Philippines a child is a person below eighteen years of age, and in terms of who may be adopted Section 8 of the Act states that this applies only to a person aged under the age of eighteen. Furthermore, no evidence has been produced to show that an adult can be adopted in the Philippines.
26. Secondly, The Domestic Adoption Act of 1998, at section 15, outlines a process for keeping proceedings and records in adoption cases confidential



and for meriting the release of information. It has not been explained whether permission was given for the details of the appellant's claimed adoption to be disclosed to the First-tier Tribunal. The documents submitted on behalf of the appellant include an order dated 2 March 2021 which submitted the petition for a decision as well as the order itself of 18 March 2021. The adoption order contains no permission for the order to be circulated to others.

27. Thirdly, the adoption order refers to a process, under 'section 16' of the 1998 Act, which must be completed shortly after the order is made to finalise the adoption. That process includes the issuance of a certificate of finality after fifteen days have expired which is to be submitted to the registrar for the original birth certificate to be annotated as well as for the issue of a new birth certificate showing the details of the adoptive parents. The order also stipulates that proof of compliance with the foregoing procedure must be submitted within thirty days of the date of the order. There is no evidence of any compliance with the order of the court.
28. I also note that while the copy of the 1998 Act provided by the respondent does refer to a post-adoption order process in similar terms, it can be found under section 14 and not section 16. These issues cast further doubt on the reliability of the adoption order.
29. Fourthly, there are serious inconsistencies between the version of the facts on which the adoption order was made and that relied upon by the sponsors. The adoption order stated that the sponsors were present in court in the Philippines on 2 March 2021 and 'placed on the witness stand' whereas in their statements which date from September 2021, the first sponsor mentions only visiting the Philippines in 2014 and the second sponsor makes no reference to ever visiting.
30. Furthermore, the order states that the legal requirement of trial custody was dispensed with because the sponsors took the appellant to their home and spent quality time 'up to the present' and that the sponsors and the appellant have 'been living as one family.' That claim has never been made on the appellant's behalf. On the contrary, the appellant visited the sponsors in the United Kingdom once in 2015 and their witness statements do not refer to having seen her in person since, owing to various factors including her aunt's ill-health and the pandemic. The appellant is also wrongly referred to as a minor throughout the order.
31. The First-tier Tribunal noted at [28] the lack of correspondence between the facts set out in the adoption order and the 'underlying reality' but did not seek to resolve the inconsistencies prior to accepting that the order should be recognised as valid. In this he erred. However, as the judge was entitled to dismiss the appeal for the reasons he gave, his error was not material.

## **Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is upheld.**

**No anonymity direction is made.**

Signed: T Kamara

Date 17 August 2022

Upper Tribunal Judge Kamara

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### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email