



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2022-002208  
UI-2022-002209  
First-tier Tribunal Nos: HU/03552/2021  
HU/03559/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 19 December 2023**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**NB  
JB  
(ANONYMITY ORDER MADE)**

Appellants

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellants: Mr K Wood, Legal Representative from Immigration Advisory Services Limited  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer  
Interpreter: Mr W Moore, interpreted the English and Spanish languages as necessary

**Heard at Field House on 11 May 2023**

**Order Regarding Anonymity**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court. I make this order because the Appellants were minors when they applied for leave and the evidence touches on their health and close family relationships.

**DECISION AND REASONS**

1. This is the remaking of an appeal by two young people who are citizens of Colombia. The first appellant was born in July 2009 and the second appellant in April 2005. They appeal the decision of the Secretary of State refusing them entry clearance to the United Kingdom to join their father in the United Kingdom.
2. The appeal has previously been determined unsatisfactorily and I set aside the decision of the First-tier Tribunal for reason of error of law.
3. The appellants' father lives in the United Kingdom with his wife and their infant son. It was established at the previous hearing that the appellants can satisfy the financial requirements of the rules but not that their father in the United Kingdom has sole responsibility for their upbringing of that there are serious and compelling family or other reasons that make their exclusion undesirable. The appeals are brought on human rights grounds but complying with the rules is usually good reason to allow the appeals because the rules show where the public interest lies in an article 8 balancing exercise. If I find that the appellants do not satisfy the rules I must ask if they have nevertheless established that the decision to refuse them entry clearance is contrary to the "private and family life" rights of those involved. The appellants must prove on the balance of probabilities the facts on which they seek to rely and I must consider if the Respondent has shown that any interference consequent on refusal is proportionate.
4. In outline it is their case that it is in their best interests to be with their father and that they do in fact meet the requirements of the Immigration Rules and so the appeal should be allowed on human rights grounds.
5. There are two appellants here and I have reminded myself that each has case has to be considered individually but I can see no sensible reason to reach different decisions. Their case are not materially different.
6. Mr Wood had to apply to adduce further evidence, which, regrettably, had not been drawn to Mr Clarke's attention before the hearing. Mr Clarke, appropriately, took time to read it before deciding not to object to its late admission and the evidence was admitted.
7. The appellants (obviously) did not attend but had made statements.
8. The statement of NB is dated 28 December 2021.
9. There he said that his father and stepmother and youngest "baby brother" had been living in London since 29 November 2019.
10. He said that his father had always taken care of him and his brother. They were in touch every day by WhatsApp or Messenger and this was appreciated but was not as good as day-to-day contact.
11. He said his grandmother was no longer able to look after him properly and was finding it hard to breathe and was gasping for breath at times. This was distressing.
12. He said at paragraph 5 of that statement:

"My mother personal health has deteriorated to the point where she has been advised to cease caring for us, please see her medical evidence provided in support of my statement at pages (15 to 40).. My mother is no longer in contact with us because of her behaviour, we feel lonely and desperate...".
13. He and his brother felt lonely and desperate and this was impacting adversely on their lives. They wanted to be with their father and his new family.

14. The appellant JB had made a similar statement, also dated 28 December 2021. He too said that their father “has always taken care of me and my brother”. However paragraph 5 of his statement did not repeat exactly paragraph 5 of NB’s statement. He said:

“My mother personal health has deteriorate to the point where she has been advised to cease caring for us, please see medical evidence provided at pages 15 to 40 and pages 92 to 105. My mother cannot control her behaviour anymore; it was advised by he doctor to stay away from us.”
15. The appellant’s father, JCN, made statements dated 28 December 2021 and 4 May 2023. He attended and gave evidence.
16. In his first statement he described himself as the “sole responsible parent” of the appellants but he did little or nothing to explain what this meant. He said they were living at an address in Colombia with their grandmother, then age 52 years.
17. He said that the children have been under his care since they were born and that his “former partner is no longer fit” to look them. He explained that “she is currently diagnosed with Diabetes Type II, anxiety, depressing disorder, and sleep apnea, and she is “with an impediment (personality traits) that stop her from having any contact with them.”
18. He then explained that his “elderly mother” was trying to look after the children but was finding it difficult. Her own health was fading and they were too demanding for her to control their behaviour.\_He believed that they were unsettled by his absence and this had been noted by family members and their teachers.
19. He described it as “inhuman and degrading” that he was not able to support them with their homework or associate with them in their daily activities.
20. He made a second statement dated 4 May 2023.
21. There he explained that although he continued to live in the United Kingdom with his wife and infant son he was the “sole responsible parent” for the appellants. They had been under his care since they were born and:

“Since 2011, the children have lived with myself and their paternal grandmother all under one roof. The children have always lived in this house since they were born.”
22. When he came to the United Kingdom to live with his wife in November 2019 he did not intend to leave the children in Colombia but intended that they should join them and the youngest child in the United Kingdom.
23. Initially his mother coped but her health has collapsed.
24. JCN said that the appellants’ mother was “happy for me to have sole responsibility” and she did suffer from health problems.
25. He said that he had submitted medical records showing that JB has a history of substance abuse.
26. JCN and is wife were in daily contact with the children using an electronic messenger service and sent presents at Christmas and birthdays.
27. He insisted that he was responsible for making “all of the important decisions in their lives” and their mother was not involved of such provision.
28. He arranged medical and dental appointments from the United Kingdom.

29. They had been to the United Kingdom as visitors and they were very happy.
30. He confirmed that immediately before coming to the United Kingdom he lived with his mother and children and stepfather.
31. He was cross-examined by Mr Clarke.
32. He was asked, briefly, about his son in the United Kingdom.
33. He was then asked about bank statements. Mr Clarke had only been able to find bank statements from the witness's wife but there are statements from JCN's account with Barclays Bank in the Respondent's bundle. Mr Clarke asked him about his payments for the appellants. The witness explained that he made payments through "Azimo" or "Remitly". I have been able to trace some payments by "Azimo" but only for sums less than £100.
34. He was asked if he had any evidence to support his claim that he sent money through one of the "apps". The witness's attention was directed to a copy of his bank statement dated January 2021. This did show a "bill payment" paid in a currency other than sterling but with a sterling value of £18 on 21 December and also a card payment via Azimo for £16.32 on 23 December. The £18 bill was recognised as a dental bill but the money was sent to the appellants' grand mother, he said. It was put to the witness that he did not send large amounts every month. He replied it depended on the month, but he did send £500 a month, but not in one go.
35. He confirmed that money was sent to his mother and that his mother had not produced a statement explaining that she received money from him.
36. There was a letter saying that she agreed to the children coming to the United Kingdom and she had health problems but he could not explain why the grandmother's letter had not confirmed that it was the witness who made the decisions in the children's lives.
37. He was asked about the appellants' mother.
38. He said that the appellants' mother was ill and had tried on two occasions to take her own life. He had a meeting with a psychologist who said that the appellants should not see their mother but he did not have a report that he could produce. He said that getting such evidence was as a very slow process.
39. He said that the natural mother visited the children about every two months for an hour or two. His mother ran a small restaurant and the appellants' mother met them there.
40. He then drew attention to statements from the children. However, he agreed that it was N's case that he did *not* see his mother. The evidence became a little bit confused but I made it plain that I understood the witness to have said that the appellants' mother's health had not improved and she should not see the appellants, that she had seen the children but had not got better.
41. JCN confirmed that the psychologist had advised that the mother should not see the children but had not said that in writing. He said that when the appellants' mother visited they got into arguments, which is why supervision was important. He repeated his claim that the appellants' mother had twice tried to kill herself and did not have a good relationship with the children.
42. Mr Clarke referred to a document in the bundle dated May 2017. This document appears at page 152 in the JACB bundle. It is a translation of a Conciliation Record which is clearly part of the Colombian judicial process. It identifies the witness as the parent, asking that the mother of the children contribute to child support and

that the mother accepts the proposal voluntarily and “agrees to comply with each and every one of the agreements provided for in this act”. This related to custody, food, clothing, medical and educational expenses and visits and under the heading “VISITS” it said there would be arrangements at weekends every two weeks. The document is dated 9 May 2017.

43. Mr Clarke asked why, if the court order was by agreement, CJN had said that the mother had not had those rights on the advice of a psychologist. He replied that the problems came later, she did not visit the children and did not make contributions to them. There was a new order in August 2022.
44. The witness said that he could only go by what he was told and he was told arrangements were not working and they were bad for the children.
45. He accepted, as was indicated by the document at page 86, that at that time he was living with the children and had custody of them. The same document referred to violence between the mother and children. The witness denied that he had been responsible for any violence. He was asked why he was allowed to remain in the house but he said he had always lived there. He applied for custody in 2017 to “free my mother”. He was asked to explain why he had waited. He said if he had gone through the judicial process the children would not have been allowed within 200 metres of their mother. It was pointed out that part of the conciliation order prescribed that he should not leave the country without taking steps to fulfil his obligations. There was suggestion that a different order had been made but he did not have it or remember where it was.
46. Mr Clarke referred to the new bundle at pages 141 and 142, where there was an order dated August 2022. There is an order dated 29 August 2022 in the bundle. There the mother was identified as the defendant and it is recorded that she did not oppose the claims filed by the father and was made to grant custody and personal care of the children to their father. The order referred to a written statement from the mother but that was not available.
47. Mr Clarke asked why there was not something up-to-date that made sense of the court order. The witness said that the mother had never complied with the orders, did not visit the children and did not want to meet them. He agreed there was nothing in the order of August 2022 to indicate the court had been told he had plans to take the children out of the jurisdiction.
48. He was asked to explain that he agreed to court regulation continuing. He said he only wanted to bring the children to the United Kingdom because they had always been with him and he became emotional.
49. Mr Clarke moved on to another topic. There is a letter from the school referring to bad behaviour of one of the children.
50. He was then asked questions about interviews with the psychologist. JCN said that it was almost impossible to get an assessment in less than three years. He said his mother had a small restaurant.
51. I asked questions.
52. JCN said when the order was made in August 2022 he was in the United Kingdom. He had gone to Colombia to take part in the proceedings and had instructed a lawyer. He had initiated the proceedings. He hoped he would achieve better evidence with a view to bringing his children to the United Kingdom.
53. The order was made after the hearing and he had attended the hearing but could not remember the date. The children’s mother was there and was

represented. The children were not represented and the judge did not have any independent evidence about the children but they were present. His mother was there too.

54. Mrs S gave evidence. She adopted statements dated 14 December 2021 and 5 May 2023.
55. There she confirmed that she is married to the appellants' father and that she is a British citizen. They have their own child who was born in 2020. She had known her husband for several years before they married. They lived quite close to each other. She knew that he had always "had custody" of the appellants. She said that being separated from their father was bad for the children and that had impacted adversely on their school and personal life and that the grandmother who was caring for them was not well. She said that they were dependent children. She was not cross-examined.
56. Before looking at submissions I want to consider the other evidence. There is a sworn statement from the children's mother dated 2 June 2021 where she confirms that she is the mother of the appellants and says that she has been diagnosed with diabetes type II and suffers from anxiety, depressive disorder and sleep apnea "for that reason the custody of our children mentioned above is under the charge of their father". She said that their father had now gone to live in London and they had remained with their grandmother. She then said that "their father responds economically for them and provides what is necessary for the maintenance and welfare of our minor children and I am with an impediment that stops me from visiting them". She also said she was unemployed and did not have the resources.
57. There is a translation of medical records relating to the children's mother. The report that I have seen was dated 4 June 2021. She presented with symptoms which I associate with diabetes. There is confirmation that she has a severe depressive disorder. This seems a repeated theme in the medical records. There is reference in a report again dated 4 June 2021 to a "history of depressive and anxiety disorder who is being managed by psychiatry" and did not seem to be getting the treatment she needed for that.
58. The appellants' grandmother's clinical records were also included. This shows she was born in 1971 and was then 50 years old. She was said to be without disabilities. The first record on that sheet referred to her having thrombophlebitis. There is consultation notes from 2 October 2021 when the appellants' grandmother was said to have "sporadic morning headache". The summary is in the following terms, "

"FEMALE PATIENT OF 50 YEARS OLD WHO REFERS TO CONSULT FOR PRESENTING CLINICAL CONDITION OF APPROXIMATELY 3 MONTHS OF PRESENT EVOLUTION CHARACTERISED BY PRESENTING SPORADIC MORNING HEADACHE IN THE FRONTAL AND BIPARIETAL REGION HANDLED WITH ACETAMINOPHEN DENIES EXPERIENCING ANY TRAUMATISMS OR OTHER SYMPTOMS, SHE ALSO EXPERIENCES A CLINICAL CONDITION APPROXIMATELY 6 MONTHS OF EVOLUTION, ALSO WITH A DECREASE IN PROGRESSIVE VISUAL ACUTE, FEMALE PATIENT WITH DESCRIBED CLINICAL CONDITION IS THEN CONSIDERED TO GIVE SYMPTOMATIC MEDICAL MANAGEMENT, ASSESSMENT BY NEUROLOGY CONTROL IS INDICATED DUE TO INDICATED CHARACTERIZATION OF ALARM SIGNS".
59. She was given pain killers. Examination of samples tended to suggest high cholesterol levels.

60. There is then a document confirming Ms S's salary in 2021 at £53,000 gross per annum and evidence of the appellants' father's income. There is then evidence about the housing which I assume is intended as the family home in the United Kingdom.
61. There is then the conciliation record to which Mr Clarke made reference in cross-examination. This is shown to be approved by the court.
62. I look again at the court order dated 2 September 2022 relating to a hearing of 29<sup>th</sup> August 2022. The plaintiff is the appellants' father, the defendant their mother and the children are named on the face of the document. It is about custody and personal care and the hearing was entitled "anticipated sentence". I do not understand what that means. It shows that the mother had accepted the claims made in the suit "to grant the custody and personal care of the minors to their father".
63. At page 108, there is a document entitled "Request for non-surgical procedure's response to inter consultation" and it relates to the appellant JACB born in April 2005. There was apparently a history of psychoactive substance abuse leading to a psychology consultation by a social worker and occupational therapy session.
64. Then the passports which I do not find particularly significant. I then go to the appellants' bundle prepared for the First-tier Tribunal. This has the witness statements that I have considered and then the "general information and clinical record for YPR".
65. I now turn to the respondent's bundle. The Entry Clearance Officer saw a court document dated 9 May 2017 indicating that the document September 2022 from the Family Court referring to a hearing of 29 August 2022, considered above be looked at again. It says that the defendant did not oppose the claim and granted custody and personal care.
66. Mr Clarke's submissions were predictable and none the worse for that. He relied on the decision letter in May 2021 and reminded me the Rules address sole responsibility or compelling family or other circumstances. He said the rehearing provided an opportunity for the appellants, or more realistically the sponsors, to get their ducks in a row and they had failed.
67. The court documents tended to suggest that the sponsor did not live under the same roof as the children in 2011. There had been a change of circumstance but the mother had visiting rights and was involved. Income was considered and she was supposed to be making payments. Evidence that she did not visit the children seems to have been contrary to what they told the court in 2017. The 2022 order gave no indication the children were going to leave the jurisdiction and no independent evidence of the suicidal ideation.
68. The grandmother's letter was rather general. She was running a restaurant. There is nothing to support the suggestion that she had to fade out of the picture because she just could not cope.
69. He said that the evidence did not work and I should dismiss the appeal. Outside the Rules there was nothing to add.
70. Mr Wood submitted that the father gave evidence in a credible way and there are no false documents.
71. He said that contact with either parent not establish parental responsibility but their mother had agreed that the sponsor has legal custody. There is no evidence of grandma making important decisions or no evidence of shared responsibility. There is some suggestion of mental illness, but nothing to flesh it out.

72. He submitted that it would be better for the brothers to be with their father and their half sibling in the United Kingdom where the financial requirements can be met.
73. I have found it surprisingly difficult to decide this appeal. Mr Clarke was particularly apt when he said that it was an opportunity for the appellants to get their ducks in a row and they did not take it. The language is informal but the point is good.
74. Exactly what was going on in the former family home is hard to ascertain. The appellants, understandably, are not really able to help and the appellants' father's case appeared to be that neither he nor the appellants' mother had been totally frank with the courts in Colombia. The first order was not give proper effect because, on any version, ordered contact collapses and when another court order was sought the court was not told of JCB's plans for the children. This is a poor start but I accept that relationships in collapsing families can be fluid and I certainly have not concluded that JCB has been overtly dishonest rather than approximate and optimistic in his evidence.
75. Certain things speak loudly to me and these include the appellants' father leaving the children and going to live in the United Kingdom. It is very big thing to do and he would not have done that if he was not satisfied that proper arrangements had been made. The children were with the grandmother and may or may not have been seeing their mother from time to time.
76. I do not accept their grandmother is incompetent. She is not an old lady. She is running a small business and properly managing the boys. There are difficulties for the boys, one particularly has had problems at school, but we do not know what the reason is for that. The parents' relationship breaking down and tensions between them may very well have played a part but I do not know.
77. What I do not have is clear evidence of the sponsor in the United Kingdom having control over the lives of the boys. The assertion that JCB was the solely responsible parent is repeated but it is not fleshed out. There was no illustrations of how JCB exercise sole responsibility from the United Kingdom. There was some evidence of some dealing with the school but that is not enough.
78. The financial support that he offered is not determinative but it does not help the appellants. Clearly JCB makes some payments are made but there is no evidence of substantial regular payments being made to the boys directly or indirectly.
79. I am also very concerned of the apparent lack of candour with the court in the more recent order. It must have been in the mind of the appellants' father in August 2022 to bring them to the United Kingdom and those plans really ought to feature somewhere in the dealings with the court.
80. I am persuaded that the appellants mother, at least since August 2022 was not a responsible parent but I am not satisfied that JCB had sole responsibility. Rather shared it with his mother. This is not a case where the sole responsibility claim is made out.
81. I have to consider the best interests of the children, but that is hard to ascertain. Clearly they are not happy, particularly one is not happy at the moment, but it is impossible to say the reason for that. It is impossible to say that they would be better off in the United Kingdom. It appears that they are being educated and their needs are being met. Their mother has some involvement in their lives, if only to the extent of willing to cooperate with the



court order. I am really unsure where their best interests lie and it leads me to preserve the status quo. I think their best interests are to stay where they are because it has not been shown they would be better anywhere else.

82. I look for compelling reasons to allow them to come to the United Kingdom. I cannot accept that JCB would have left these boys in the care of their grandmother if that had been a fundamentally bad idea. He just would not have done that.
83. This is the sort of case where independent expert evidence about the boys' welfare might have been enormously useful but it is not there and I cannot assume what it would say. I am concerned that one of the appellants has a history of substance abuse and I realise how serious that can be but I do not have enough about that that will help me to ascertain if, in fact, there is any reason to think he would be better off in the United Kingdom. Tragically young people abuse substances there too and just changing addresses there is no reason to assume it will change temptations and distractions of that kind. Serious and compelling reasons are not made out.
84. On the assumption that JCB's evidence is right, he has had an unhappy relationship with their mother that has deteriorated because of her ill-health. He has found happiness in the United Kingdom where he has founded a new family. He left the boys in Colombia intending to bring them to the United Kingdom but found immigration harder to satisfy than he thought. What might have been a perfectly good arrangement with his mother as a temporary measure, was not ever intended to be a permanent measure and becomes more demanding as the boys grow and she ages. The problem is, I did not JCB to have been frank and full in his evidence. I do not accept that his mother is elderly or otherwise incapable of proving day to day care. There was no evidence or regular substantial payments to show that is alleged sole responsibility extended to meeting all their financial needs. Indeed evidence of how he exercised sole responsibility was exceeding thin, even though it was, perhaps, the nub of the appeal.
85. JCB not frank with the courts in Colombia. Cross-examination from Mr Clarke exposed a willingness to generalise when it came to arrangements for the children. I did not accept that it has been shown either that he probably has sole responsibility or that there are compelling and other circumstances in favour of allowing them to come. Outside that Article 8 adds nothing.
86. It follows therefore that I dismiss this appeal.

### **Notice of Decision**

87. This appeal is dismissed.

Jonathan Perkins  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**18 December 2023**