



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

**Appeal Number:  
OA/00243/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House  
Reasons Promulgated  
On 29 January 2016**

**Decision &**

**On 4 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**THE ENTRY CLEARANCE OFFICER  
(MANILA)**

Appellan  
t

**and**

**MR JUNE VINCENT BAGUIO PAIGALAN  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer  
For the Respondent: Mr S Jeshani, counsel instructed by Aston Brooke Solicitors

**DECISION AND REASONS**

1. The Entry Clearance Officer (ECO) appeals the decision of First-tier Tribunal Judge J Robertson, promulgated on 5 August 2015, allowing an appeal against a decision to refuse the respondent leave to enter the United Kingdom as a dependent child of a Tier 2 migrant under paragraph 319H of the Immigration Rules.



## Background

2. The respondent's application was refused on 24 November 2014 under paragraphs 319H (b), (f)(ii) and (iii). The reasons given were that a copy of the sponsor's UK biometric residence permit had not been provided with the application; the ECO was not satisfied that the sponsor had and continued to have sole responsibility for the respondent's upbringing or that there were serious and compelling family or other consideration which made her exclusion from the United Kingdom undesirable.
3. In appealing the ECO's decision, the respondent asserted that the decision was not in accordance with the Rules, that the decision breached Article 8 ECHR and the ECO was urged to reconsider. No specific arguments were made on the respondent's behalf.
4. An Entry Clearance Manager (ECM) reviewed the decision under appeal on 25 February 2015 and maintained the decision, noting the absence of any additional documents or information. The ECM was not satisfied that the decision breached Article 8 given that the sponsor had not lived with the respondent since 2008, as the sponsor had chosen to travel to the United Kingdom in order to study.
5. At the hearing before the FTTJ, a further ground of refusal was raised, that is that the respondent could not be satisfactorily accommodated without recourse to public funds because the sponsor's tenancy agreement referred to the sponsor and the respondent sharing one room which would not be in accordance with the Housing Act 1985. The issue of the sponsor's leave to remain was resolved prior to the hearing because it had been verified that her leave to remain was valid until 16 August 2016. The FTTJ found that the accommodation was adequate and that the sponsor had sole responsibility for the respondent.

## Error of law

6. The grounds of application argue, that the FTTJ erred in taking into account post-decision evidence of the accommodation available for the respondent, in the form of a letter from the sponsor's landlord which stated that "*a second room would be provided*" if entry clearance was granted.
7. Accordingly, it was said that the FTTJ materially erred in law in finding all of the requirements of the Rules were met. FTTJ Mark Davies granted permission to appeal; stating that it was arguable that the FTTJ made an error of law in taking into account "*post application evidence.*"
8. At the hearing before me, Mr Tufan indicated that he was not pursuing the grounds of appeal with any vigor. I asked him to take me to the post-application evidence relied by the FTTJ and he was unable to do so. On the contrary he acknowledged that the landlord's letter and tenancy agreement were provided to the ECO in support of the application for entry.

9. Given Mr Tufan's concessions, which I accept were rightly made, I had no need to hear from Mr Jeshani.
10. At the end of the hearing, I announced that the First-tier Tribunal made no error of law and upheld the decision. My reasons are as follows.
11. On 30 October 2014 the respondent sought entry to the United Kingdom. The aforementioned application was accompanied by a letter from the sponsor's landlord dated 21 September 2014, as well as a tenancy agreement for the proposed accommodation. The landlord's letter confirmed the level of rent, the extent of the accommodation rented and the specific arrangements in place for the respondent's accommodation on the understanding that he would be joining the sponsor in the United Kingdom from 24 December 2014. I am satisfied that those documents were before the ECO because they are contained in the ECO's evidential bundle which was before the FTTJ and they are listed on the first page of the ECM's review under the heading of "Documents submitted with the application." The FTTJ therefore did not refer to post-application evidence in finding that the accommodation requirements had been met.
12. I accordingly dismiss the Entry Clearance Officer's appeal.

### Decision

- (1) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law
- (2) The decision of the FTTJ is upheld, with all findings preserved.

No application for anonymity was made and I could see no reason to make such a direction.

Signed

Date: 30 January 2016

Deputy Upper Tribunal Judge Kamara