



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/00564/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Determined at Field House without a
hearing
On 6 December 2017**

**Decision & Reasons
Promulgated
On 7 December 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**SHIPA BEGUM
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. On 6 November 2017 I gave the following directions:-
 1. Having had regard to the decision of the First-tier Tribunal, and to the decision of the respondent, it appears to me that there may have been a misunderstanding as to which Immigration Rules are applicable.
 2. It does not appear to be in doubt that the appellant's mother is settled in the United Kingdom or that she is the sole surviving parent, the appellant's father having died in 1999 – see First-tier Tribunal Judge's decision at paragraphs [8] and [13]. It would thus appear that the application should have been considered under paragraph 297 of the Immigration Rules as E-ECC 1.6 is applicable only where the parent has *limited* leave to remain which is not the case here (see the paragraph entitled "Family life as a child of a person with limited leave..." which precedes paragraph E-EC- C). Further, this would appear to be a case

falling within paragraph 297 (i) (d) in which case the appellant does not need to show that her mother has had sole responsibility for her. The sub-paragraphs in paragraphs 297 (i) are to be read disjunctively, not cumulatively.

3. It is therefore my preliminary view that the decision of the First-tier Tribunal should be set aside and that the appropriate course of action would be remake the decision allowing the appeal as the sole reason given for refusal under the Immigration Rules is a failure to show sole responsibility under paragraphs E ECC 1.6. and no basis is put forward as to why, given that the Immigration Rules were in fact satisfied, it is nonetheless necessary in a democratic society or proportionate to refuse Entry Clearance.
4. Unless within ten working days of the issue of these directions there is any written objection to this course of action, supported by cogent argument, the Upper Tribunal will proceed to determine the appeal without an oral hearing on the above basis, setting aside the decision and substituting it with a decision allowing the appeal.
5. In the absence of a timely response by a party, it will be presumed that it has no objection to the course of action proposed
2. The appellant has by a letter dated 14 November 2017 agreed to the proposed course of action.
3. The respondent has not, however, engaged with the directions but has in a letter dated 17 November 2017 responded to the grounds of appeal in generalised terms. There is no attempt whatsoever to engage with the directions made. While reference is made to the finding of sole responsibility being sustainable, there is no engagement with whether the correct provisions of the Immigration Rules were applied, nor is any proper reason given for requesting an oral hearing supported by arguments relevant to the matters raised in the directions. The letter of 17 November 2017 cannot properly be considered as a response to the directions, nor has there been any subsequent correspondence from the respondent.
4. In the circumstances, I am satisfied that it is in the interests of justice to determine the appeal without a hearing and that no cogent argument has been provided as to why the decision of the First-tier Tribunal should not be set aside and remade allowing the appeal for the reasons set out above in the directions made on 6 November 2017.
5. Given the findings made that the appellant did in fact meet the requirements of the Immigration Rules, careful consideration should be made as to the basis on which entry clearance should now be granted.

Summary of conclusions

1. The determination of the First-tier Tribunal did involve the making of an error of law and I set it aside.
2. I remake the decision and allow the appeal on human rights grounds.

Signed

Date: 6 December 2017

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul

