



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

Appeal Number: HU/04059/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 October 2017**

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

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**[J B]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Z Raza, Solicitor

For the Respondent: Mr Duffy, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of the Philippines born on [ ] 2004. He appealed against the decision of the respondent dated 29 July 2015 to refuse to grant him entry clearance to the United Kingdom as the child of parent present and settled in the United Kingdom pursuant to paragraph 297 of the Immigration Rules.
2. The First-tier Tribunal dismissed the appellant's appeal in a decision dated 20 January 2017 on the basis that the appellant's sponsor has not

demonstrated sole responsibility for the appellant. The Judge also stated that submissions were made on the basis that the appellant may be entitled British nationality, but it was not an issue that she had jurisdiction to consider.

3. Permission to appeal was granted by First-tier Tribunal Judge JM Holmes in a decision dated 16 August 2017, stating that it is arguable that the Judge fell into error as it is open to the appellant to argue that he was in truth a British citizen and it was not open to the Judge to refuse to deal with that argument when it was raised. The Judge also granted permission on the grounds which are not relevant because it became apparent at the hearing that the appellant is indeed a British citizen.
4. I consider that the issue of the appellant's possible British nationality. That is a matter that the appellant drew to the attention of the First-tier Tribunal who refused to deal with it under the erroneous belief that she had no jurisdiction to do so. The Judge accepted that the appellant's mother had been granted British citizenship before his birth in 2009 and the appellant was born on [ ] 2004. Therefore, the appellant was born to a British citizen. The consequence of that is then pursuant to Section 1(a) of the British Nationality Act 1981, the appellant would be a British citizen from birth.
5. I also find that the appellant would to be entitled, on application, to be registered as a British citizen pursuant to Section 1(4) of the British Nationality Act 1981. Therefore, according to the law, the respondent has no power to exclude him from the United Kingdom. It is somewhat surprising that neither the appellant's legal representatives, the respondent or the First-tier Tribunal Judge thought it appropriate to consider whether the appellant was a British citizen from birth and/or could apply to be registered as a British citizen.
6. The senior presenting officer at the hearing accepted that the appellant is a British citizen by birth.
7. I find that the decision of the first-tier Tribunal contains a material error of law and I set it aside in its entirety. I remake the decision and allow the appellant's appeal on the basis that he is a British citizen and does not require entry clearance to enter the United Kingdom.

## **DECISION**

Appeal allowed.

I make no anonymity order.

I make a fee order in favour of the appellant for the cost of the filing fees.

Signed by,

A Deputy Judge of the Upper Tribunal

Ms S Chana

Dated this 5<sup>th</sup> day of November 2017