



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

Appeal Number: HU/07959/2015  
HU/07961/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 December 2017**

**Decision and Reasons  
Promulgated  
On 28 December 2017**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**ANNA [R]  
[B B]  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT  
On behalf of the Entry Clearance Officer**

Respondent

**Representation:**

For the Appellant: Ms I Mahmud, Counsel instructed by Irvine Thanvi Nata  
Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is a challenge by the respondent, however for convenience I shall continue to refer to the parties as they were before the First-tier Tribunal.
2. The appellants are mother and son and nationals of Honduras born respectively on [ ] 1979 and [ ] 2005. The respondent challenges the determination of First-tier Tribunal Judge Samimi promulgated on 13 April 2017 allowing their appeal against the respondent's decision of 10 September 2015 to refuse their application for family reunion under paragraphs 319O, 352AA and 352D. The ECO was not satisfied that the first appellant had been in a relationship akin to marriage before the sponsor's departure or that the second appellant was the son of the sponsor.
3. Judge Samimi found the sponsor to be truthful and allowed the appeals.
4. The respondent sought permission to appeal on the basis that the judge had failed to consider the deliberate deception practised by the sponsor and first appellant when assessing their credibility and also that she failed to appreciate that the second appellant could not meet the requirements of the rules as he was not the child of the sponsor.
5. Permission was granted by Judge Pickup on 19 October 2017. Although he refers only to the arguable merits of the grounds in respect of the second appellant, there is no attempt to restrict the grounds that may be argued.
6. **The Hearing**
7. Mr Tarlow relied on the grounds, argued that the judge had failed to deal with the issues raised by the respondent and erred when she considered the circumstances of the child. He asked that the decision be re-made by the Upper Tribunal as no further evidence was required.
8. Ms Mahmud submitted that the rules did not specify that the sponsor must be a biological parent and that the child was not considered separately when the ECM reviewed the decision. The outcome of the first appellant's appeal would be determinative of the outcome of the second appellant's appeal. She submitted however that if an error of law were to be found, another hearing was sought before the First-tier Tribunal as evidence about the relationship between the sponsor and the child would be required.
9. Mr Tarlow was content to rely on the grounds and submissions already made and had nothing further to add.

**10.** At the conclusion of the hearing I reserved my decision which I now give.

## **11. Conclusions**

**12.** The respondent identified two arguable errors in the determination but both parties focused on the second issue and made no submissions on the first. It is nevertheless part of the grounds relied on by Mr Tarlow and is a matter I must consider.

**13.** There are difficulties with the conduct of both the appellant and the sponsor which the judge failed to grapple with. The ECO notes that the sponsor was illegally in the UK for a number of years and that when she sought to enter the UK in 2008, the appellant said she knew no one in the UK.

**14.** The judge found the sponsor to be truthful. She noted that the appellant had deliberately concealed the sponsor's presence in the UK so as to protect his position but found this to be a reasonable and plausible explanation. As pointed out by the respondent, this was deliberate dishonesty which should have been taken into account when credibility was assessed. Alternatively, it is possible that the appellant was truthful when she said she knew no one in the UK which impacts upon the issue of whether there was a pre-flight relationship. These are matters which needed to be tackled but which the judge did not consider. The documentary evidence also needed to be considered in this context.

**15.** On the second issue, the judge failed entirely to address and resolve the issue of the parentage of the second appellant. The rules make it plain that a child must be the child of the refugee. If the judge considered that this included a stepchild, then she should have given reasons for so finding. This was a matter plainly raised by the ECO and the judge was required to consider it. For these reasons, I find that the decision is flawed and it is set aside other than as a record of proceedings.

**16.** I have considered the submissions made by both parties as to disposal. Ms Mahmud indicated that further evidence would be called and in those circumstances this appeal is remitted to the First-tier Tribunal for a fresh hearing and for a fresh decision to be made by a judge other than Judge Samimi.

**17. Decision**

**18.** The First-tier Tribunal made errors of law such that the decision is set aside. The matter shall be re-heard and decided afresh by another judge of the First-tier Tribunal at a date to be arranged.

**19. Anonymity**

**20.** No request for an anonymity order was made and I see no reason to make one.

Signed

A handwritten signature in black ink, appearing to read "R. Keir". The signature is written in a cursive style with a small dot at the end.

Upper Tribunal Judge

Date: 21 December 2017