



**Upper Tribunal
(Immigration and Asylum Chamber)
number: OA /04141/2015**

Appeal

O

A/04145/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 12 July 2017

On 19 July 2017

Before

Upper Tribunal Judge John FREEMAN

Between

PARVEZ AHMED & RUMANA BEGUM

Appellants

And

Entry Clearance Officer, NEW DELHI

Respondent

Representation:

For the Appellant: *Anawar Miah*

For the Respondent: Mr S Staunton

DECISION AND REASONS

This is an appeal, by the appellants, against the decision of the First-tier Tribunal (Judge Nathan Moxon), sitting at Hatton Cross on 15 November 2016, to dismiss dependent relative appeals by citizens of Bangladesh, born 4 December 1997 and 1 January 1999. They had applied for visas to join their father (the sponsor), who came here in 2007, and has had indefinite leave to remain since 2009. Visas were refused on the grounds that the entry clearance officer did not accept that

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.

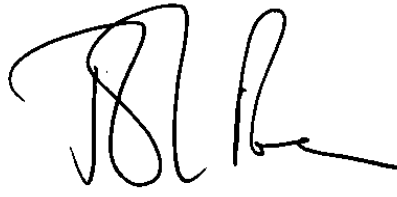
(2) persons under 18 are referred to by initials, and must not be further identified.

- (a) they were related to the sponsor as claimed; or
- (b) he had sole responsibility for them.

2. The judge had refused a very late application for an adjournment to obtain DNA evidence. Permission to appeal was given on the basis that this was nevertheless disproportionate to the overriding objective, since the appellants were out of the country, and so the respondent had nothing to lose by an adjournment, while DNA was the only reliable way of establishing the relationship.
3. While the hearing judge had found against the appellants on both grounds, the permission judge also considered it arguable that the resulting hearing had been unfair to the appellants, Mr Miah realistically conceded that the judge's findings on sole responsibility would have been unchallengeable without his refusal to adjourn. However, he clearly needed to show some kind of causal link between the two points.
4. DNA evidence has now been obtained, and shows an overwhelming likelihood that the sponsor is the father of the appellants. I agree that in the particular circumstances of this case it might have been proportionate to wait for the results; but the question is whether the judge's refusal to do so unfairly affected his findings on sole responsibility.
5. These findings were not challenged on any point intrinsic to them in the grounds of appeal; but Mr Miah argued that, because the sponsor had already applied for DNA testing before asking for the adjournment, more weight should have been given to his evidence on sole responsibility. Mr Miah said the sponsor had taken the view that, because he had divorced the appellants' mother after her departure in 2005, since when they had been living with their paternal grandparents, now too old to look after them, there was no need to provide any further evidence to show sole responsibility.
6. **Conclusions** That decision was of course one for the sponsor. The judge dealt with the evidence, or lack of it, in some detail, and went on at paragraph 43:

Even had positive DNA evidence been adduced to show paternity, I would nevertheless not be satisfied given the lack of evidence addressing the clear concerns of the Respondent, and which could reasonably have been expected to have been obtained in the 22 months since the refusal, the Sponsor has sole responsibility for the Appellants.
7. It is quite clear from this finding that the judge did not close his mind to the evidence on sole responsibility, and specifically considered it also on the basis that paternity had been shown, as indeed he did the appellants' human rights grounds: see paragraph 46. I do not accept that the judge's refusal to adjourn the hearing for DNA testing unfairly affected his sole responsibility findings, and in my view there was no arguable error of law in his decision.

Appeals dismissed

A handwritten signature in black ink, consisting of stylized, cursive letters that appear to be 'JBL' followed by a horizontal line.

(a judge of the Upper Tribunal)
13.07.2017