



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10254/2016

THE IMMIGRATION ACTS

Heard at Field House
On 15 January 2018

Decision & Reasons Promulgated
On 17 May 2018

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

MISS SHANIQUA RENEE REECE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A M Kanu, Counsel, instructed by League for Human Rights
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of a First-tier Judge who dismissed the appellant's appeal against the decision of the Entry Clearance Officer on 13 March 2016 to refuse her application for entry clearance to join her mother in the United Kingdom and the two issues that required to be considered and were considered by the judge were first whether the mother has sole responsibility for the appellant and secondly the issue of whether there are serious and compelling family or other considerations which make her exclusion undesirable and where suitable arrangements have been made for her care. The central and fundamental difficulty with this case regards that second element, which was considered by the judge at paragraphs 32 to 34.
2. The appellant is a young lady born in 1998. She is a citizen of Jamaica and she has lived there all her life and, as the judge records quite accurately earlier on in the decision,

for example at paragraph 26, her mother came to the United Kingdom in the year she was born, leaving her there with her father, that is to say, the sponsor, her mother's father, so the appellant's grandfather. After he died the appellant went to live with her aunt but she died in 2015 and thereafter she lived with a neighbour, who now says she can no longer look after her.

3. Paragraph 32 is concerned, it seems, with an entirely different case, an appellant who had lived her whole life with her mother in Jamaica and there are quotations from relevant case law but, as the judge went on to say at paragraph 35, there is no evidence to show any established family or private life with the sponsor. Paragraph 34 refers to the appellant having lived her whole life in Nigeria with her mother and stepsiblings, which is clearly dealing with an entirely different case. That is obviously a matter of significant concern and although I take the point that Mr Clarke makes about this and his argument about a lack of materiality I cannot say that this is anything other than a fundamental erroneous application of the law to the facts of the case and that element of the decision is clearly unlawful.
4. The following issue really contains two separate points. One is whether the reasoning per se with regard to sole responsibility is flawed and the second issue is the impact on that in any event of the fundamental error with regard to the further issue. The challenge to the findings on sole responsibility is that the reasons for the limited visits were that the sponsor had to wait until she obtained indefinite leave to remain in 2009 but there was evidence that the appellant's biological father had never been part of her life and there had been therefore no shared responsibility. I again take the points that Mr Clarke makes in relation to this and the paucity of evidence as he says that there is other than going beyond assertions but I am sufficiently troubled by the fundamental mistake with regard to paragraph 297(i)(f) to consider that the decision as a whole is unsafe .
5. It may be that on a rehearing the same conclusions would be arrived at with regard to sole responsibility and Article 8 but, given the fundamental nature of the mistake later on in the decision, I think that the only proper outcome in this case is for the matter to be sent back for a full rehearing before a different judge at Hatton Cross, so that is what will happen in this case.

Notice of Decision

The appeal is allowed to the extent that it is remitted for a full rehearing in the First-tier Tribunal.

No anonymity direction is made.



Signed
Upper Tribunal Judge Allen

Date 11 May 2018