



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

Appeal Number: HU/01558/2018

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On 2<sup>nd</sup> August 2019**

**Decision & Reasons Promulgated  
On 20<sup>th</sup> August 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MISS ABIOLA SHERYL LEE MONTIQUE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr A Abraham (Counsel)

For the Respondent: Mr D Mills (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge S C Clarke, promulgated on 27<sup>th</sup> December 2018, following a hearing at Nottingham on 7<sup>th</sup> December 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a citizen of Jamaica, was born on 29<sup>th</sup> November 1999, and is a female. She appealed against the decision of the Respondent, Entry Clearance Officer, dated 6<sup>th</sup> December 2017, refusing her entry clearance, in order to come to settlement to the United Kingdom as the daughter of [TW], her sponsoring mother, who is a British citizen, and is settled in the UK. The relevant Immigration Rules are paragraph 297(1)(e) and (f) of HC 395.

### **Submissions**

3. At the hearing before me on 2<sup>nd</sup> August 2019, Mr Mills, appearing on behalf of the Respondent Secretary of State, began by stating that this was a matter on which it would be conceded that there was an error of law in the decision below, by the Secretary of State, responding to the appeal against that decision made by the Appellant on this occasion.
4. The reasons were that the witness statement of the Appellant and the oral evidence of the Sponsor unequivocally maintained that the Sponsor has been actively involved in the life of the Appellant, despite having to leave her behind as a baby in Jamaica, and the judge does not even comment on that.
5. At the same time, there are no adverse credibility findings made by the judge against the Sponsor. Indeed, the judge makes it clear that the Sponsor had been “an open witness”.
6. Secondly, there were school letters from the Appellant’s school in Jamaica confirming that it was the sponsoring mother in the United Kingdom who had been paying the fees and having active interest in the child’s upbringing.
7. Third, the Entry Clearance Officer had refused the application on the basis of “maintenance”, but by the time that the Entry Clearance Manager had considered the question, it had been conceded that maintenance was no longer an issue, but the judge made no comment on this.
8. For his part, Mr Abraham submitted that he had provided a 1,000 page bundle and the matter had been copiously documented and well-presented and the concession by the Respondent Secretary of State was one that he could only welcome.
9. He had handed up to the Tribunal the Grounds of Appeal as well as the notes of Counsel below, appearing before Judge Clarke, which he now felt it unnecessary to go through, the concession having been made.
10. Mr Mills submitted that I should make a finding of an error of law and allow the appeal.

**Error of Law**

11. I am satisfied that the decision of the judge below amounted to an error of law (see Section 12(1) of TCEA 2007) for the reasons that have been conceded by the Respondent Secretary of State, as represented today by Mr Mills.

**Re-making the Decision**

12. I have remade the decision on the basis of the concession today, the evidence before the judge below, and the submissions that I have heard before this Tribunal. This is a case where the written witness evidence of the Appellant has not been undermined. The Sponsor's evidence, where she was described as a "open witness", has not been undermined. The evidence of both of them is consistent. The sponsoring mother has been providing for the Appellant and by all accounts has "sole responsibility" (a term which has long been held to be interpreted not in a literal manner which would render it meaningless in its application in this jurisdiction), and there has been long-standing contact between the sponsoring mother and the Appellant child in this case. In addition to this, there are no financial considerations in terms of maintenance. On a balance of probabilities, the Appellant discharges the burden of proof that is upon her and this appeal is allowed.

**Notice of Decision**

The decision of the First-tier Tribunal below amounted to an error of law. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.

No anonymity direction is made.

This appeal is allowed.

Signed

Dated

Deputy Upper Tribunal Judge Juss

17<sup>th</sup> August 2019

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have made a fee award of any fee which has been paid or may be payable.

Signed

Date

Deputy Upper Tribunal Judge Juss

17<sup>th</sup> August 2019