



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

Appeals: HU/24077/2016
& HU/24072/2016

THE IMMIGRATION ACTS

**Heard at Glasgow
On 15 February and 25 April 2019**

**Decision & Reasons Promulgated
On 1 May 2019**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**[D A]
&
[B A]**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

For the Appellants: Mr S Winter, Advocate, instructed by Katani & Co,
Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision follows on from:
 - (i) The ECO's decisions, both dated 10 October 2016, refusing entry clearance.
 - (ii) The appellants' grounds of appeal to the First-tier Tribunal.

- (iii) The decision of FtT Judge P A Grant-Hutchison, promulgated on 7 February 2018.
 - (iv) The appellants' grounds of appeal to the UT, stated in the application for permission to appeal filed on 23 February 2018.
 - (v) The grant of permission by FtT Judge Robertson, dated 8 March 2018.
 - (vi) The UT's directions, issued with the grant of permission.
 - (vii) The respondent's rule 24 response, dated 20 April 2018.
 - (viii) The UT's further directions, issued on 2 November 2018.
 - (ix) The appellants' applications for permission to lodge further documents.
2. The question identified in the directions issued on 2 November 2018 was whether the judge was entitled to say at [13] that there was "a singular lack of evidence" that the appellants are the children to whom the sponsor previously referred.
 3. The judge at [13] went on to say that there was no evidential link to DNA testing, agreeing with the submission recorded at [10 (b)] that there was "no chain of evidence".
 4. The judge granting permission thought that without specification of the missing link, arguably that finding was not adequately reasoned.
 5. It so happens that Mr Govan was also the presenting officer in the FtT. He clarified that his submission was based on the declaration form for DNA testing of the first appellant (page 19 of the appellants' 2nd inventory of productions in the FtT). This form includes a list of identification documents which might be produced. None of the boxes is ticked.
 6. That was a point the respondent was entitled to make. However, Mr Winter pointed to evidence before the FtT, but not mentioned in the decision, by which it *might* have been found that the appellants are the children previously referred to by the sponsor.
 7. I found at the hearing on 15 February 2019 that the judge failed to explain why (more likely than not) the evidence (as a whole) did not make out the case. That was an error of law by which the decision required to be set aside and remade.
 8. Mr Winter asked for a further hearing to be fixed, with a view to bringing further evidence.
 9. Mr Govan did not oppose that course.
 10. The further hearing was fixed for 25 April 2019.

11. Having considered further evidence produced, the respondent conceded that the appeal should be allowed.
12. The decision of the FtT is set aside, and the appeal of both appellants is **allowed on human rights grounds** (article 8).
13. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

25 April 2019
UT Judge Macleman