



**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal number: HU/09035/2019  
(V)**

**HU/09039/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard Remotely at Manchester  
CJC**

**Decision & Reasons Promulgated**

**On 8 September 2020**

**On 10 September 2020**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**[S Z]**

**[F Z]**

**(ANONYMITY ORDER NOT MADE)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellants: Ms L Afful of Lawrencia & Co Solicitors

For the Respondent: Mr M Diwnycz

**DECISION AND REASONS (V)**

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion of the hearing I announced my decision and a brief statement of my reasons but reserved my full reasons to be provided in writing, which I now give. The order made is described at the end of these reasons.

1. The appellants are sisters and both citizens of Ghana with dates of birth given respectively as 19.2.05 and 22.2.07. They have appealed to the Upper Tribunal with permission against the decisions of the First-tier Tribunal promulgated 11.5.20, dismissing their linked appeals against the decisions of the Entry Clearance Officer, dated 17.4.19, to refuse their applications for entry clearance as the children of a person present and settled in the UK, pursuant to Appendix FM of the Immigration Rules.
2. The applications were refused because the respondent was not satisfied that the eligibility requirements of sole responsibility were met. The respondent was not satisfied that the appellants had a relationship with their sponsoring mother. In addition, the sponsor's claimed income as a director of a limited company was not evidenced as required under Appendix FM-SE. In particular, the payslips and bank statements did not cover the required period and other documentation required under FM-SE, as set out in the refusal decisions, was not provided. Neither were there any exceptional circumstances found to justify granting entry clearance under GEN 3.1, 3.2, or outside the Rules pursuant to article 8 ECHR.
3. The First-tier Tribunal could only consider the appeal on human rights grounds outside the Rules. However, the extent to which the Rules were met was a highly relevant consideration. The challenged relationship with the sponsoring mother had been satisfactorily evidenced by the DNA reports, as the judge accepted. The judge applied the R (Razgar) v Secretary of State for the Home Department [2004] UKHL 27 stepped approach but found that the appellants had not demonstrated that their mother had had sole responsibility for them. The sponsor's evidence was found to be confusing, evasive, and inconsistent. The judge also noted a paucity of documentary evidence supporting the sponsor's claimed income. The judge concluded that the decisions of the Entry Clearance Officer were not disproportionate and, therefore, dismissed the appeals.
4. The grounds argue that:
  - a. The judge failed to consider all issues on appeal, in particular the best interests of the appellants pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009;
  - b. The judge failed to give effect to the binding decision of a superior court, namely T (Section 55 BCIA 2009 - entry clearance) Jamaica [2011] UKUT 00483 (IAC) requiring consideration of best interests of children, even if those children are outside the UK;

- c. The judge's decision was influenced by her own opinion that it may better serve the grandmother for the girls to remain with her. It is argued that because her focus was on the welfare of the grandmother, the judge failed to consider the objective evidence showing that the grandmother was unwell and unable to look after the children;
  - d. The decision discloses procedural irregularity in that the decision was dated 13.1.20 but not promulgated until 11.5.20 and not received by the appellants for a further three months. It is also argued that at [1] of the decision the judge erred in stating that the appellants applied as children of a person present and settled in the UK when in fact the applications were made as the children of a parent with limited leave to enter.
5. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
  6. The grant of permission turned on an issue identified by the First-tier Tribunal Judge granting permission and not raised as a ground of appeal or relied on by Ms Afful in her submissions.
  7. On 27.7.20, permission to appeal to the Upper Tribunal was granted by Designated First-tier Tribunal Judge Shaerf, considering it arguable that at [12] of the decision the judge erred in identifying the ratio of TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049. A person may retain sole responsibility without having the day to day control which can be delegated to another, such as the appellants' grandmother. However, it has to be noted that the appellants have not in any way appealed the finding that the sponsor did not have sole responsibility for the appellants. Even I raised this point with Ms Afful, she not apply to amend her grounds, explaining that it had been decided to pursue the grounds as drafted because, in her submission, they disclosed grave errors in the decision of the First-tier Tribunal. In the circumstances, I am unable to make any finding as to an error of law in respect of the sole responsibility issue.
  8. Ms Afful made the further point that sole responsibility was not the only point raised in the appeal and complained that the judge neglected to address the best interests of the children. Whilst in normal circumstances the judge should address the best interests of the children in any article 8 proportionality assessment, even if outside of the UK, on the facts of this case the appeal was dismissed because the judge found that the appellants failed to demonstrate that their mother had sole responsibility for them. If that is the case, then considerations of best interests have little relevance and an absence of a specific finding on best interests is not material to the outcome of the appeal. Put another way, it would be difficult to see how an appeal that failed on sole responsibility could have found it nevertheless in the best interests of children to come to the UK to

join a mother with whom they do not have a close relationship. Even if, for the sake of argument, their circumstances were such that their best interests were to come to the UK, on a finding that the sponsor did not have sole responsibility for them, it is difficult to see how the respondent's decision refusing entry clearance can be disproportionate. There was a route for entry of children to join a mother but the Rules require her to demonstrate that she has sole responsibility, or that one of the other qualifications apply, but they could not meet those requirements. It was for that reason at [20] of the decision the judge found the failure to meet the Rules carried substantial weight on the respondent's side of the proportionality balancing exercise. It should also be noted that at [21] of the decision the judge found no compelling or exceptional circumstances to justify granting leave outside the Rules. It follows that no error of law is disclosed by either of the first two grounds which essentially argue the same point.

9. In relation to the third ground and the complaint as to the judge's statement at [13] of the decision that it may better serve their grandmother for the appellants to be there to assist her, the comment was not material to the outcome of the decision. The judge followed that statement of view or opinion with this: *"However, that is a matter for the sponsor, who states I note, that she is very concerned about her mother's health."* It is clear that the judge did not rely on this observation but considered it a matter for the sponsor. It follows that no error is disclosed by this ground of appeal.
10. I also find that there is no merit at all in the last ground of appeal, as any error of description of the precise nature of the application is immaterial. Nor has any prejudice been identified by the alleged late-receipt of the decision, which occurred for reasons currently unknown.
11. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

## **Decision**

The appellants' linked appeals to the Upper Tribunal is dismissed

The decision of the First-tier Tribunal stands and the appeals remain dismissed.

I make no order for costs.

I make no anonymity direction.

Signed: DMW Pickup

Upper Tribunal Judge Pickup

Date: 8 September 2020