



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

Appeal Number: HU/20106/2019

THE IMMIGRATION ACTS

Heard at : Field House

**Decision & Reasons
Promulgated**

On : 7 March 2022

On 29 March 2022

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MARIA CHARISSA ERMINO

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Pinder, Counsel

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Philippines, born on 14 August 2001. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her human rights appeal.

2. The appellant applied, on 31 July 2019, for entry clearance to settle in the UK under paragraph 297 of the immigration rules with her mother, Regina Lydia Garcia Ermino, the sponsor. The respondent refused the application on 7 November 2019 on the grounds that it was not accepted that the sponsor had sole responsibility for the appellant's upbringing, or that there were serious or compelling circumstances which made the appellant's exclusion from the UK undesirable. The respondent also considered that there were no exceptional circumstances leading to unjustifiably harsh consequences for the appellant for the purposes of Article 8.

3. The appellant appealed against that decision and her appeal was heard remotely, by video link, by First-tier Tribunal Judge Wood on 5 October 2021. There was no appearance on behalf of the appellant at the hearing and neither was the respondent in attendance. The Tribunal administration managed to contact the sponsor who then joined the hearing via audio only. She advised the judge that she had not been aware of the hearing as she had changed address and had not read her emails. The judge did not agree to adjourn the hearing and invited the sponsor to make submissions, which she did not wish to do. The sponsor was given an opportunity to submit any further documents upon which she sought to rely by 12 October 2021. The judge did not receive any documents by that date and he then proceeded to determine the appeal on the papers before him, on 8 November 2021. He dismissed the appeal on the basis that the sponsor had not successfully established that she had sole responsibility for the appellant.

4. The appellant sought permission to appeal on the grounds of procedural unfairness, asserting that she had been deprived of a fair hearing and that she had provided evidence to the Tribunal by email on 11 October 2021 which had not been considered by the judge.

5. Permission was granted in the First-tier Tribunal. The respondent, by way of a rule 24 response, did not oppose the appeal since it appeared that the sponsor had submitted evidence within the timeframe set which had not reached the judge before the case was determined. The respondent invited the Tribunal to set aside Judge Wood's decision and remit the case to the First-tier Tribunal for a re-hearing.

6. The matter then came before me, the respondent's rule 24 not having been drawn to my attention prior to the hearing.

7. In light of the respondent's concession, with which I am entirely in agreement, it is clear that there has been procedural unfairness in the appellant's appeal being determined without the benefit of the documentary evidence submitted within the required timeframe and the judge's decision has to be set aside in its entirety. The appropriate course is for the case to be remitted to the First-tier Tribunal to be heard *de novo*.

DECISION

8. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Wood.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 7 March 2022