



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
OA/20052/2013

Appeal Numbers:  
& OA/20056/2013

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Determination Promulgated  
Newport On 13 November 2014 On 24 November 2014**

**Before**

**The President, The Hon. Mr Justice McCloskey**

**Between**

**ENTRY CLEARANCE OFFICER, MANILA**

Appellant

**and**

**ANTON GEOFF JEREMIAH JEROME SINGH AND  
ZERAH LETITIA ESTHER TORA**

Respondents

**Representation:**

Appellant: Mr I Richards, Senior Home Office Presenting Officer  
Respondent: Ms J Tear (of Counsel), instructed by Wolferstans  
Solicitors

**DECISION AND DIRECTIONS**

1. These combined appeals originate in inter-related decisions made by the Appellant, the Entry Clearance Officer for Manila (hereinafter the "ECO") whereby the applications of the two Respondents for settlement in the United Kingdom were

refused. The Respondents' ensuing appeals to the First-tier Tribunal (the "FtT") were allowed. The ECO appeals with permission to this Tribunal.

2. The Respondents' applications engage paragraph 276 AG of the Immigration Rules. This is one of the provisions arranged in Part 7 establishing the requirements for the grant of leave to enter the United Kingdom. It provides:

*"The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the child of an armed forces member exempt from immigration control under section 8(4) of the Immigration Act are that:*

- (i) He is the child of a parent who is an armed forces member exempt from immigration control under section 8(4) of the Immigration Act 1971; and*
- (ii) he is under the age of 18 or has current leave to enter or remain in this capacity; and*
- (iii) he is unmarried and is not a civil partner, has not formed an independent family unit and is not leading an independent life; and*
- (iv) he can and will be maintained and accommodated adequately without recourse to public funds in accommodation which his parent(s) own(s) or occupy exclusively; and*
- (v) he will not stay in the United Kingdom beyond the period of his parent's enlistment in the home forces or posting or training in the United Kingdom; and*
- (vi) his other parent is being or has been admitted to or allowed to remain in the United Kingdom save where:*
  - (a) the parent he is accompanying or joining is his sole surviving parent or*
  - (b) **the parent he is accompanying or joining has had sole responsibility for his upbringing; or***
  - (c) there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care."*

I have highlighted subparagraph (vi)(b) as it is the provision which is germane to the resolution of this appeal.

3. The material facts pertaining to the family members concerned are uncontroversial. The two children, the respondents are now aged 16 and 17 years respectively and were born in Fiji. Both parents are also citizens of Fiji. The Respondents last saw their mother (the sponsor) in 2006, when she left to embark upon a career in the Royal Navy. They have resided with different grandparents in New Zealand and Fiji subsequently. Their father lives in New Zealand, the relationship with the mother having terminated around 2001.
4. The central reason for the ECO's refusal decisions is encapsulated in the following extract from the review determination:

*"The applicants have not resided with their mother since 2001 and for the majority of the time since they have lived with their paternal grandparents .... and eventually resided with their maternal grandmother. In addition, their father is clearly still involved in their lives given that he has given written consent for them to travel but also because this consent contains strict conditions only under which he will agree to his children moving to the UK. I do accept that their mother has a role in their lives but am not persuaded that sole responsibility has been demonstrated."*

The year **2001** in this passage should, accurately, be **2006**. In the preceding decisions of the ECO, to the final sentence in the above passage the following was added:

*".... or that there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable."*

5. At the conclusion of the hearing, I pronounced my decision *ex tempore* to the effect that the determination of the FtT cannot be upheld for the following reasons, in summary:
  - (i) It is impossible to ascertain from the text whether the Respondents' appeals were allowed under paragraph 276 AG of the Immigration Rules.
  - (ii) **If** the appeals were allowed under paragraph 276AG, it is not possible to deduce from the determination whether the appeals were thus allowed under subparagraph (vi) (b) or (c).

(iii) If and insofar as the appeals were allowed under subparagraph (vi)(b):

- (a) Such a conclusion is confounded by the unequivocal finding in [30] "*I find the maternal grandmother as she stated [in an affidavit] had sole responsibility for bringing up the appellants since 2009*".
- (b) There is no corresponding finding relating to the key person in the equation viz the Respondents' mother, the sponsor.
- (c) The analysis in (a) also applies to the Judge's statement in [34] of the determination that the mother "..... *has recently not only been supporting them financially but has been making important decisions in the appellants' lives together with the appellants' maternal grandmother*", followed by "*I find that the sponsor and her mother have joint responsibility ...*"

The criterion of "*sole responsibility*" is otherwise not addressed in the key passages of the determination.

- (d) There are no findings of fact sufficient to underpin a "*sole responsibility*" assessment, or conclusion, as regards the mother.
- (e) The finding that the mother "*.... in the last year or two .... has played a far more active role in the [Respondents'] lives*", in the absence of adequate particularisation and elaboration and associated specific findings of fact on the "*sole responsibility*" issues raised in the ECO's decisions and ventilated during the hearing is not sufficient to underpin a legally sustainable "*sole responsibility*" conclusion.
- (f) Having found that the evidence of the Respondents' father, contained in three successive letters, had been effectively manufactured by the mother, the determination fails to spell out the implications of this or to make any further related findings.
- (g) It is impossible to ascertain from the determination whether the appeals were allowed under Article 8 ECHR, either alone or in tandem with one of the provisions of paragraph 276 AG of the Rules.

- (h) If and insofar as the appeals were allowed under Article 8, the determination is manifestly flawed as there is no identification of the public interest/s in play and no proper balancing exercise. It is further undermined by the fundamental infirmity of failing to make clear, relevant and necessary findings of fact.
6. Confusion and obscurity are the hallmarks. The conclusion that the determination of the FtT is unsustainable in law in consequence is irresistible.

**DECISION**

7. Giving effect to the above analysis and conclusion:
- (i) The decision of the FtT is set aside.
  - (ii) I remit the appeal to a differently constituted FtT for the purpose of remaking the decision.
  - (iii) There is no question of preserving any findings of fact.
  - (iv) If the Respondents wish to rely on any further evidence this must be served and filed within 28 days hereof, accompanied by any appropriate procedural application to the FtT.

THE HON. MR JUSTICE MCCLOSKEY  
PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 13 November 2014