



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/03719/2017  
HU/02489/2017

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 6<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 12<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MR CALEB IMPRAIM ABOAGYE  
(2) MISS REENA BAABA ABOAGYE  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

Respondent

**Representation:**

For the Appellants: Ms Bremang (Solicitor), R&A Solicitors  
For the Respondent: Mr McVeety (Senior HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of Judge T R Smith, promulgated on 31<sup>st</sup> January 2018 following a hearing in Bradford on 15<sup>th</sup> January 2018. In the determination, the judge dismissed the appeal of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellants**

2. The Appellants are both citizens of Ghana and are siblings. The first Appellant was born on 13<sup>th</sup> April 1999 and the second Appellant was born on 19<sup>th</sup> July 2001. They are aged 18 years and 16 years respectively. They applied to join their father, Mr Christian Yeboah Aboagye, on the basis that they were dependent upon him, but their application was refused on 20<sup>th</sup> December 2016 under paragraph 297 of HC 395.

## **The Hearing**

3. At the hearing before me on 6<sup>th</sup> August 2017, it was agreed between both Mr McVeety, the Senior Home Office Presenting Officer, and Ms Bremang, the solicitor on behalf of the Appellants, that the judge had erred in law in not considering that part of paragraph 297 that deals with an application of children from overseas where one of their parents is dead and they are seeking to join the other parent who is in the United Kingdom. In this case, although the judge did set out paragraph 297 (at paragraph 29) he did not refer to paragraph 297(i)(d). This refers to a situation where "one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead". Instead, the judge focused specifically only upon subparagraph (f) and concluded that "the dispute between the parties was limited to whether there were 'serious and compelling family or other considerations which make exclusion of the child undesirable'" (see paragraph 30).
4. It was agreed between the representatives before me that this was an error because the evidence before the judge was that the Appellants' biological mother "died in a road accident on 12<sup>th</sup> January 2015" (paragraph 34). The Appellants had therefore been living with the Sponsor's mother, Mrs Quayson, and although it was the case that their present predicament arose because Mrs Quayson, "could no longer look after the Appellants" (paragraphs 35 to 36), nevertheless, the fact that there was specific provision in the Rules for a consideration of a situation where one parent was already present and settled in the UK and "the other parent is dead" meant that consideration should have been given to this aspect of the Rules as well.

## **Error of Law**

5. In the circumstances, I am satisfied that the decision of the judge, in failing to consider paragraph 297(1)(d) amounted to an error of law under Section 12(1) of TCEA 2007 such that I should set aside the decision. This is not least because the materiality of the fact that the Appellants' mother had died became evidently plain during the course of the determination. The judge observed towards the end that, "in my judgment the death of the Appellants' mother is irrelevant to my consideration given that she has never been the principal carer for, at the very minimum, in excess of ten years ..." (paragraph 90).
6. Yet, there was evidence in the form of a mother's death certificate before the judge, so as to suggest that this was a material consideration, in circumstances where the refusal letter did not accept the authenticity of the death certificate to have been proven. The

judge went on to say that, “I do not need to make any form of judgment as to the authenticity of the Appellants’ mother’s death certificate” (paragraph 91).

7. The significance of the death certificate of the mother continued to loom in the background of the determination because the judge also referred to “the production of his late wife’s death certificate” (paragraph 109) when referring to the sponsoring father’s wife’s death, who had argued that he could not produce the original death certificate because the family could not find it.
8. This led the judge to conclude that, “I find it surprising that such an important document could not be located” (paragraph 109). Whether or not the death certificate remains of significance is a matter which must be decided by another judge.
9. Suffice it say, that for the purposes of this Tribunal, the failure to consider paragraph 297(1)(d) in terms, given that it gives particularised attention to a situation where one parent is present and settled in the UK “and the other parent is dead”, means that an error of law was made by the judge. This is agreed between the representatives before me, and I so conclude.

#### **Notice of Decision**

10. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier to be determined by a judge other than Judge T R Smith.
11. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

8<sup>th</sup> September 2018