



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

Appeal Numbers: OA/02188/2013  
OA/02190/2013  
OA/02195/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6<sup>th</sup> January 2015**

**Decision & Reasons  
Promulgated  
On 12<sup>th</sup> January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**(1) MR H DIALLO  
(2) MR M DIALLO  
(3) MISS A DIALLO  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER, ACCRA**

Respondent

**Representation:**

For the Appellants: Mr J Dinh (Solicitor)

For the Respondent: Mr E Tufan (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Lobo promulgated on 30<sup>th</sup> September 2014, following a hearing at Taylor House on 4<sup>th</sup> September 2014. In the determination, the judge allowed the appeals of Mr H Diallo, Mr M Diallo, and Miss A Diallo. The Respondent, Entry Clearance Officer, applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellants**

2. The Appellants are all citizens of Guinea, they were born on 20<sup>th</sup> September 1995, 1<sup>st</sup> April 1995 and 1<sup>st</sup> March 1996 respectively. They appealed against the decision of the Respondent dated 27<sup>th</sup> November 2012 refusing them leave to enter the United Kingdom as the relatives of a person present and settled in this country under paragraph 297 of HC 395 (as amended).

### **The Appellants' Claim**

3. The Appellants' claim is that they are the siblings of their sponsoring brother, Mr Fido Diallo, who is a British citizen, who had entered the UK and applied for asylum, and had subsequently been granted indefinite leave to remain on legacy grounds. When subsequently the Sponsor, Mr Fido Diallo, discovered that his siblings were still alive in Guinea, he assumed responsibility for them through the Savane brothers, and sent them monies and arranged for their schooling, and was now sponsoring their entry to the UK to join him here.

### **The Judge's Findings**

4. The judge considered paragraph 297 of HC 395 and focused on the "sole responsibility" test. Under a heading "conclusions" the judge observes (at paragraph 21) that:

"Their parents are dead, they have a relative who is settled in the United Kingdom who they wish to join. That relative has had sole responsibility for their upbringing and in any event for them to remain in Guinea would be dangerous as there are serious and compelling family or other considerations which makes their exclusion undesirable and suitable arrangements have been made for their care in the United Kingdom" (paragraph 21).

The judge went on separately to consider also the requirement of "compelling circumstances" and observed that:

"Because their lives are in danger, as evidenced by the letters from the Savane brothers, I find that there are compelling circumstances, not sufficiently recognised under the Rules which enable consideration of the Article 8 rights of the Appellant to be considered under Razgar" (paragraph 23).

The appeal was allowed.

### **Grounds of Application**

5. The grounds of application state that the judge erred in law in finding that the Appellants could succeed under the "sole responsibility" test or that they could succeed because there were "serious and compelling considerations", or that they could succeed under Article 8, because insufficient findings had been made with respect to each of these matters. On 14<sup>th</sup> November 2014, permission to appeal was granted.

## **Submissions**

6. At the hearing before me on 6<sup>th</sup> December 2015, Mr Tufan, appearing on behalf of the Respondent, Entry Clearance Officer, had two fundamental submissions to make. First, that paragraph 297 had been misunderstood by the judge. This was because if one looks at paragraph 297 (which appears at page 785 of Phelan & Gillespie), it is clear that only paragraphs 297(1)(a) to (c) deal with the situation where the parent is the person being joined in the United Kingdom by the children. This, however, was a case where it was not the parent who was settled in the UK. This was a case where it was a “relative”. In that event, paragraph 297(1), paragraph (f) refers to:

“One parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable ....”.

7. There was no reference in this provision to the requirement of “sole responsibility”. The only reference here was to there being “serious and compelling family or other considerations”. Even if the judge had allowed the appeal also on the basis that there were “serious and compelling family or other considerations” he had failed to demonstrate in the determination how this was the case.
8. Second, the refusal letter referred to the absence of evidence with respect to maintenance and accommodation. The judge did not deal with these two aspects at all. One reason for the judge’s failure here could be that the core bundle only refers to page 1, and then page 3 without any reference to page 2. The intervening page has been remitted from the copying of the bundle.
9. On his part, Mr Dinh submitted that he would have to concede the judge did not deal with the maintenance and accommodation basis of the refusal by the Entry Clearance Officer. The failure here was of such magnitude that the only proper course of action was for this Tribunal to make a finding of an error of law, and then to remit the matter back to the First-tier Tribunal to be determined again. Second, the judge had allowed the appeal specifically on the basis that there were “serious and compelling family or other considerations which make their exclusion undesirable” (para. 21).
10. The judge had then explained why this was the case because he had said that, “because their lives are in danger, as evidenced by the letters from the Savane brothers, I find that there are compelling circumstances not sufficiently recognised under the Rules which enable consideration of Article 8 rights ...” (paragraph 23). If it is the case that no separate consideration was given to how there was in existence here “serious and compelling family or other considerations”, then the matter should be

remitted back to the First-tier Tribunal again for this to be properly determined.

11. Third, and in any event, findings with respect to all these matters are essential because they go to the determination of the question of whether the Appellants' Article 8 rights were infringed, a matter which the judge considered, but which was inevitably flawed given the lack of proper findings on the initial matters. Mr Dinh submitted that the proper course of action was for this matter to be remitted back to another judge in the First-tier Tribunal.
12. In reply, Mr Tufan submitted that evidence had not been placed before the judge on the core aspects, so the proper course of action was for this appeal to be dismissed.

### **Error of Law**

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12) of TCEA (2007) such that I should set aside the decision. First, the judge had wrongly placed emphasis on the satisfaction of the "sole responsibility" test when this was not an issue.
14. Second, there are no clear findings on why this appeal could be allowed on the basis that there are "serious and compelling family or other considerations" save for the judge to say that "because their lives are in danger, as evidenced by the letters from the Savane brothers" (paragraph 23).
15. Third, the determination of these questions directly feeds into the determination of Article 8 infringements by the Respondent Entry Clearance Officer, which issue cannot in itself be properly determined, without an initial priori determination.
16. I am satisfied that the errors are such that the only proper course of action is for this matter to be remitted back to the First-tier Tribunal under practice statement 7.2, to be determined by a judge other than Judge Lobo, notwithstanding the fact that in other respects the determination by the judge had been a well-crafted determination, for these matters to be determined afresh.

### **Notice of Decision**

17. 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. This matter is remitted back to the First-tier Tribunal at Taylor House, where it will be heard on 11<sup>th</sup> June 2015 over a period of one and a half hours. I direct that all necessary evidence must be filed three weeks before the date of the hearing on 11<sup>th</sup> June. Such evidence should include any necessary witness statements, and supporting evidence, together with

her skeleton argument from the legal representative on behalf of the Appellants. This appeal by the Respondent Entry Clearance Officer is allowed to the extent that it is remitted back to the First-tier Tribunal.

18. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

12<sup>th</sup> January 2015