



IAC-BH-PMP-V1

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

Appeal Numbers: OA/02785/2014  
OA/02788/2014  
OA/02791/2014

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke  
On 12<sup>th</sup> June 2015

Decision & Reasons Promulgated  
On 19<sup>th</sup> June 2015

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GARRATT**

**Between**

**LETEBREHAN SOLOMON ZEWELDI  
ABRAHAM KIDANE TSEHAYE  
ASOMOROM KIDANE TSEHAYE  
(ANONYMITY DIRECTION NOT MADE)  
and**

First Appellant  
Second Appellant  
Third Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr T Royston, of Counsel instructed by Paragon Law

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion, I shall continue to refer to the parties as they were before the First-tier Tribunal.

## **Background**

2. On 15<sup>th</sup> January 2015 Judge of the First-tier Tribunal Parkes gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal S J Pacey in which he allowed the appeals against the decision of the respondent to refuse entry clearance for the first named appellant as a partner and the second and third named appellants as her children in accordance with the provisions of Appendix FM of the Immigration Rules.

## **Error on a point of law**

3. The grounds of application contended that, in allowing the appeal on Article 8 grounds outside the Immigration Rules, the judge failed to apply the guidance of the Upper Tribunal in *Gulshan* [2013] UKUT 00640 (IAC) by identifying compelling circumstances not recognised by the Rules. In particular it is submitted that the appellants and the sponsor could continue their family life together in Sudan should they wish to do so and there was no reasoning in the decision to explain why it would be unjustifiably harsh for them to continue family life there. The grounds suggest that any separation of the parties will be temporary at best.
4. At the commencement of the hearing before me Mr McVeety conceded that more recent case law has overtaken the guidance set out in *Gulshan*. The need to identify compelling circumstances was not required. He indicated that the respondent would rely upon the grounds but he had no further comment to make.
5. Mr Royston drew attention to the Rule 24 response which submits that the argument in the grounds is misconceived bearing in mind, inter alia, the decision of the Court of Appeal in *MM* [2014] EWCA Civ 985. The grounds were in error in referring to a test of unjustifiable harshness in relation to return to Sudan. Further, there was no evidence from either party that the appellant could reside permanently in Sudan.
6. Mr Royston also expanded upon the grounds by emphasising that the judge had applied the correct tests and given appropriate consideration to proportionality. It was self-evident that the sponsor could not go to Sudan as Eritrea was his country of origin and his other family members were living unlawfully in Khartoum as the conclusions of the judge in paragraphs 21 to 24 make clear.

## **Conclusions and reasons**

7. After hearing the submissions particularly bearing in mind the comments made by Mr McVeety I indicated that I was satisfied that the decision did not show an error on a point of law and now give my reasons for doing so.
8. The grounds attack the decision on the basis that the judge did not follow the procedure and guidance recommended in *Gulshan* by identifying compelling circumstances outside the Immigration Rules that would enable him to deal with the Article 8 claim on that basis. In fact, the decision shows that the judge did identify exceptional circumstances as that guidance required. The reasons are given in paragraph 18. However the need for any such intermediary test has now been removed by the comments of the Court of Appeal in *MM* and subsequent case law.

9. The grounds are also wrong to suggest that the judge should have identified circumstances making it unjustifiably harsh for the parties to continue their family life in Sudan. The appellants are from Eritrea and not Sudan and, at the time of their applications, were living illegally in Khartoum. The judge deals with this issue in paragraph 18 having already identified that the appellants are asylum seekers in Sudan but originated from Eritrea. Additionally, the judge deals with the possibility of the appellants making any further application from Sudan which will meet the relevant requirements of the Rules reaching conclusions open to him.
10. The grounds do not show an error on a point of law. The decision carefully considers the proportionality of the respondent's refusal having regard to Section 117B of the Nationality, Immigration and Asylum Act 2002 and taking into consideration the best interests of the child appellants and the sponsor's financial position. It reaches a cogently reasoned decision open to the judge.

### **Notice of Decision**

The decision of the First-tier Tribunal does not show an error on a point of law and shall stand.

### **Anonymity**

Anonymity was not requested at the hearing before me nor before the First-tier Tribunal and so I do not make a direction.

Signed

Date

Deputy Upper Tribunal Judge Garratt