



IAC-BH-PMP-V1

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

Appeal Numbers: OA/10299/2014
OA/10297/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 23rd November 2015**

**Decision & Reasons Promulgated
On 8th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**MR R N
MISS R N
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T Bramall of Counsel instructed by Sterling Law, Solicitors
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 3rd September 2015 Judge of the First-tier Tribunal Nicholson gave permission to the appellants to appeal against the decision of Judge of the First-tier Tribunal Kaler in which she dismissed the appeals against the decisions of the respondent to refuse entry clearance as the children of the sponsor in accordance with the provisions of Appendix FM of the Immigration Rules particularly the specific financial requirements set out in paragraph E-ECC.2.1 subject to the specific evidential requirements set out in Appendix FM-SE.

2. In granting permission Judge Nicholson thought that neither the respondent, the judge or representatives had appreciated that the less onerous financial requirements of paragraph 297 of the Immigration Rules should have been applied to the application for leave as the sponsor appeared to be settled in the United Kingdom as defined in paragraph 6 of the Immigration Rules. On that basis the judge had incorrectly applied Appendix FM when determining the financial requirements of the Immigration Rules and so it was arguable that the judge erred in finding that the sponsor was not in receipt of sufficient earnings to maintain the appellants. Judge Nicholson did not, however, refuse permission on other grounds raised including the contention that the judge's consideration of human rights issues was inadequate and flawed.
3. Mr Bramall made initial submissions before me in which he maintained the contention that the judge should have considered the appeal on the basis that paragraph 297 of the Immigration Rules was relevant to each appellant. He thought that the appeal should be allowed and remitted back for the respondent to consider financial issues under the less onerous provisions of that rule. However, Ms Johnstone pointed out that the sponsor had not been granted indefinite leave to remain so did not have the settled status required by the rule. Additionally, even if he had, he would have been unable to show that he had sole responsibility for the children or that the mother of the children was being admitted for settlement on the same occasion.
4. Mr Bramall conceded that, if the sponsor did not have settled status then the amended grounds which he had submitted based upon the application of paragraph 297 of the Immigration Rules could not succeed. However, he argued that the issues relating to the sponsor's ability to meet the specific financial requirements set out in Appendix FM and FM-SE and the claimed inadequacy of the Article 8 decision remained. In this respect he continued to rely upon the terms of the original grounds dated 29th June 2015. The decision failed to address those points and, in relation to human rights issues, did not consider the existence of private and family life between the appellants and sponsor making the best interests of the child appellants a primary consideration. Reference was also made to the Upper Tribunal decision in *LD (Article 8 best interests of child) Zimbabwe* [2010] UKUT 278 (IAC) as to the inability of the parties to enjoy family life by correspondence and occasional visits.

Conclusions and Reasons

5. It is clear that the provisions of paragraph 297 of the Immigration Rules can have no application to this appeal because the sponsor does not have the settled status required by that rule. Thus, I consider the decision of the First-tier Tribunal on the basis of the grounds of application as originally put.
6. The respondent's refusal decision of 1st August 2014 sets out the specific areas of financial information in relation to the sponsor's pay and self-employment that did not comply with the evidential provisions of Appendix FM-SE. In particular, payslips did not cover the same period as a company tax return and no personal bank statements had been submitted to show receipt of pay covering the same period as the company tax return. Further, the required evidence of the payment of dividends had not been given to cover the specific period covered by the tax return. The judge deals adequately with each of these issues in the decision pointing out that the missing information had not been provided in accordance with the specific requirements of

Appendix FM-SE. No material error is shown in this respect even if the sponsor continues to maintain that he had an adequate income to meet the overall financial requirements.

7. In reaching the above conclusion I point out that the grounds of application do not invoke the application of the evidential provisions set out in paragraph D of Appendix FM-SE, no doubt because it is argued that the appellant did meet the requisite financial provisions.
8. As to human rights issues the judge notes in paragraph 14 that the appellants had not invoked Article 8 and certainly no such claim is made in the original grounds of appeal before the First-tier Judge. However, the judge concluded for herself that, as the application related to minor children wanting to join their father in the United Kingdom, she would deal with human rights issues. She noted that the appellants' mother had remained in Thailand to care for the children although she had been granted entry clearance. She further noted that the children were well cared for in that country. Although the judge does not give specific consideration to the best interests of the children in that situation it is not possible to say that her rejection of the human rights claim would have been different if she had. The sponsor had failed to show that he had adequate funds to meet the financial requirements for entry clearance for the children and there was nothing exceptional about their circumstances in Thailand where they were being cared for by their mother. A fresh application could be made for entry clearance without change to the present status quo. On this basis the decision of the First-tier Judge does not show a material error on a point of law.

Notice of Decision

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

Anonymity

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Garratt