



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11319/2016
HU/11327/2016
HU/11328/2016

THE IMMIGRATION ACTS

Birmingham Civil Justice Centre
On 27th July 2021

Decision & Reasons Promulgated
On 18th November 2021

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

JBO (1)
SAO (2)
EAO (3)

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Hingora, Counsel instructed by Burton & Burton Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Ghana. They are the children of Ms Harriet Dufie. Their applications for leave to enter the UK as the children of a person settled in the UK were refused by the respondent for reasons set out in three separate decisions

dated 6th April 2016. The appellants' appeals against those decisions were dismissed by First-tier Tribunal Judge Birk for reasons set out in a decision promulgated on 5th March 2018. The decision of First-tier Tribunal Judge Birk was set aside by Dr H Storey for reasons set out in his decision promulgated on 24th April 2019. He preserved the finding that the appellants are related to Ms Harriet Dufie as claimed and that they have a family life relationship with her. However, he remitted the appeals to the First-tier Tribunal for the Tribunal to consider afresh whether the requirements of paragraph 297 of the immigration rules are met, and whether the refusal of entry clearance was in breach of Article 8.

2. The appeals were heard by First-tier Tribunal Judge Parkes on 30th June 2019 and dismissed for reasons set out in his decision promulgated on 10th June 2019. Permission to appeal was granted by Upper Tribunal Judge Finch on 6th September 2019. Following a hearing on 7th February 2020, the decision of Judge Parkes was set aside by Upper Tribunal Judge Hemingway for reasons set out in a decision promulgated on 27th February 2020. Although Judge Hemingway was invited to remit the appeals to the First-tier Tribunal, the Judge declined to do so, and directed that the decision will be remade in the Upper Tribunal.
3. The matter was listed for a resumed hearing before me on 27th July 2021. I heard evidence from the appellants' sponsor, Ms Dufie. After hearing evidence and submissions from the parties, I reserved my decision and informed the parties that my decision would follow in writing. This I now do. Following the hearing, as directed, I was provided with a schedule of the money transfers evidenced in the appellant's consolidated bundle.

The background

4. The appellants applied for indefinite leave to enter the UK as the children of a parent settled in the United Kingdom. The first appellant was 16 at the date of application. The second appellant was 13 and the third appellant was 17 years old. The respondent was not satisfied that the appellants are related to the sponsor as claimed, or that the sponsor has sole responsibility for their upbringing. Furthermore the respondent was not satisfied that there are serious and compelling

family or other considerations which make exclusion of the appellants' undesirable, and suitable arrangements have been made for the appellants' care.

5. First-tier Tribunal Judge Birk found, based upon DNA evidence that the sponsor and appellants' are related as claimed, and that they have established a family life. Those findings were preserved by Upper Tribunal Judge Storey as I have set out.

Re-making the decision

6. The only ground of appeal available to the appellants' pursuant to s84(2) of the 2002 Act is that the respondent's decision is unlawful under s6 of the Human Rights Act 1998. The burden of proof is upon the appellants to show, on the balance of probabilities, that they have established a family and/or private life, and that the refusal of leave to enter would interfere with that right. It is then for the respondent to justify any interference caused. The respondent's decision must be in accordance with the law and must be a proportionate response in all the circumstances.

The issues

7. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent settled in the United Kingdom are set out in paragraph 297 of the immigration rules. In so far as the immigration rules are concerned, the issue is whether the appellants' sponsor, Ms Dufie, has had sole responsibility for the appellants' upbringing; or whether there are serious and compelling family or other considerations which make exclusion of the appellants' undesirable, and suitable arrangements have been made for the appellants' care.
8. If the requirements set out within the immigration rules are not met, the Tribunal will have to consider whether the refusal of entry clearance, is nevertheless in breach of Article 8 ECHR.

The Evidence

9. In readiness for the hearing of the appeal before me, the appellants' representatives provided the Tribunal with a 'Consolidated Bundle' comprising of 294 pages, relied upon by the appellants.

10. Ms Dufie adopted her witness statement dated 30th April 2021. She confirmed the statement had been drafted in accordance with her instructions and the content of the statement is true and correct. She confirms that she entered the UK in 2003 as a visitor but did not return to Ghana when her leave to enter expired, for economic reasons. She remained in the UK so that she could earn money to send to the appellants in Ghana so that they can build a good life for themselves. She states that in 2009 she was “granted status in the UK”, through her husband, a French national. She confirms she was granted permanent residence in 2014 and naturalised as a British citizen in 2015.

11. Ms Dufie states she met the appellants’ father, Thomas Owusu in or around 1997 in Ghana. She fell pregnant shortly after meeting him and gave birth to the third appellant in May 1998. She claims Mr Owusu was never an active father or partner, but she maintained the relationship with him because she did not want her children to grow up without a father. They went on to have two more children together. The first appellant was born in July 1999 and the second appellant was born in June 2002. She claims that even after the birth of the first appellant, Mr Owusu remained an inactive father, but she continued to tolerate his behaviour and allowed him to see the children when he turned up although he was not very interested in them. In 2001 he proposed to her. Ms Dufie claims she has not heard from Mr Owusu since the second month of her pregnancy with the third appellant. She claims in October 2003 (*when the third appellant would have been 1*), she made the very difficult decision to travel to the UK so that she could provide for her children. She had heard from a friend that a visit was being organised to the UK, and she took advantage of that visit because it would be the best opportunity she had to provide for her children.

12. Ms Dufie confirms she left her children with her mother, Juliana Broni. She claims she agreed with her mother that she would provide everything for the children and that her mother would be required to look after the children as per her instructions and directions. She claims her mother agreed, and they maintained that arrangement until she sadly passed away. She claims she has been both emotionally and physically responsible for the children and has spoken to the appellants’ every day since her arrival in the UK. She confirms she has always transferred money for the sole use of the appellants. The money was previously transferred to her mother, but when she injured her right ankle and could no longer

go and collect the money, she started transferring money via her cousin, Augustine Adusei. She claims the money sent has been used for the appellants' clothing, food, school fees and social activities.

13. Ms Dufie claims she had been unable to travel abroad until 2009. She met her current partner in 2008, when she was divorcing her previous partner. She fell pregnant in 2010, and following a difficult pregnancy, she gave birth to her son in April 2011. She was unable to travel to visit the appellants because she had to care for her son and was pregnant again in 2012. She gave birth to her youngest son in February 2013. She could not afford to travel to Ghana, and they decided as a family that it made more sense for her to send the appellants' money, rather than wasting the funds on plane tickets and other travel costs. She did however travel to Ghana in September 2017. She planned to be there for a week to care for her mother and see the appellants'. However, upon arrival she found out her mum had passed away, and she spent her time in Ghana with the appellants making sure they had everything they needed such as food, clothes and items for school. She returned to the UK because her employer had given her compassionate leave. She travelled to Ghana again in October 2017, for her mother's burial. She remained in Ghana for two weeks and spent time with the appellants. Unbeknown to her at the time, she was pregnant, and she gave birth to her daughter, JO, in June 2018. She states her three children in the UK are in full-time education and she has insufficient means to go to Ghana to spend time with the appellants. She states all her children wish to live under the same roof together, so that they can enjoy a proper family life together. She notes the concerns that have previously been expressed regarding her mother's death certificate, and she states that the "hand-written one previously provided", was the one she had obtained from the hospital. She did not think that she needed to obtain the full death certificate from the Registry Office but has now been able to obtain the full death certificate.
14. In her oral evidence before me, Ms Dufie claimed that after the second appellant was born, she did not hear from the appellants' father at all. She claims she made a lot of effort to search for him. When pressed to explain her efforts, she said that she went to his family home to ask about him and was told that his family had not seen him. That was after the second appellant was born in 2002. She claimed that whilst in Ghana, she received some financial support from her mother for food and other

“petty things”. It was not enough to take care of the children and she was struggling. She worked by buying and selling things whenever she could. She said the appellants’ father had not returned after she had left Ghana and since leaving Ghana, neither she nor the appellants have tried to contact him. She said that she came to the UK to get the best life for the appellants because her mother did not have enough money to look after them all. She said that she was responsible for decisions regarding the appellants’ schooling and the appellants’ attend the church that the family had attended before she travelled to the UK. She said that she remained responsible for providing money for the appellants’ food, clothes, and school fees. Her mother was not in a position to provide for the appellants’ financially. She has continued to provide the financial support required by the appellants’ since her mother passed away.

15. In cross-examination, Ms Dufie accepted there is no evidence of her maintaining contact with the children through social media. She claimed that she had lost her mobile phone upon which the ‘WhatsApp’ messages are recorded. Ms Dufie was referred to the applications made by the appellants. In answer to questions 45 and 46, it is said that the name of their father is ‘Thomas Kofi Owusu’. She was referred to the name of the father shown on the birth certificates of her children born in the UK. Their father is said to be ‘Thomas Owusu Yeboah’. It was suggested by Mrs Isherwood that it would be unusual for an individual to have two relationships with people who have very similar names, and it was put to Ms Dufie that the appellants and her children in the UK have the same father. Ms Dufie said she had never given that any thought, and that if the appellants’ father had been helping her, she would not have left the appellants in Ghana.
16. Ms Dufie accepted that when she came to the UK in 2003, should did not simply intend to visit the UK but intended to work so that she could look after her children. She confirmed that the father of her children in the UK, has transferred money to the appellants’. It was put to her that he had done so because he is their father. Ms Dufie denied that and claimed that he has simply helped her send money to Ghana. She maintained that she did look for the appellants’ father when she was in Ghana but could not find him. She confirmed that she only has a brother in Ghana, Lawrence Osei, who she last heard from, when her mother died. She said that was his name in Ghana, but she does not know what his name is now. Ms

Dufie was referred to the death certificate that is at page 36 of the consolidated bundle. The informant, Daniel Owusu Ansah is described as the 'son' of the deceased. Ms Dufie said that is someone who lives in the local area and is not her brother. She was referred to the reference to 'Owusu' in that name. She said that did not matter and it does not mean that they are from the same family. Ms Dufie said that her mother had a stroke and that was what had killed her.

17. Ms Dufie maintained that she has provided evidence of her having sole responsibility for the appellants in the form of evidence of money transfers and her evidence that she speaks to them everyday. It was put to Ms Dufie that the letters from the schools do not confirm that the school fees are paid by her. Ms Dufie said that she pays the money to 'Augustine', and he pays the money to the schools. For clarification, I referred Ms Dufie to the receipt at page 45 of the consolidated bundle in respect of third appellant's fees which states that a payment of 5471 Ghanain Cedis ("GHS") was made on 1st December 2020. I invited Ms Dufie (*and Mr Hingora if he could assist*) to identify in the consolidated bundle, evidence of that sum having been transferred by Ms Dufie to the school or to someone in Ghana for that fee to be paid. Ms Dufie accepted there was no evidence before me of a corresponding payment from the UK to Ghana to cover that fee. Similarly, the appellant was unable to identify any corresponding payments from the UK to Ghana to meet the fees set out in the statement of account relating to the third appellant's school fees that is at page 46 of the consolidated bundle. Ms Dufie said that in relation to the payment of 6,202.60 GHS made on 24th August 2017, there is evidence that she had sent 2801 GHS to Augustine Adusei in June 2017, at page 124 of the consolidated bundle. She said that she would send whatever she could afford to Ghana, and that sometimes, Augustine would help her, using his own money on the understanding she will pay him back.
18. Ms Dufie said that she had chosen the primary schools attended by the appellants. She had lived in Ghana previously and had searched on 'Google', to find suitable schools. She claims that she dealt with the enrolment of the children herself. When asked why she did not pay the school fees directly to the schools, she said that her mother had been the one to look after the children. She sent the money required to her mother, and her mother would make the relevant payments.

19. In addition to the statement of Ms Dufie and her oral evidence before me, I have statements before me made by each of the appellants, together with a witness statement of Augustine Adusei dated 31st July 2017. He describes himself as a very close friend of Harriet Dufie and confirms that he has been receiving monies from her since January 2016 on behalf of her children. He states that he has “.. *Always given the full amount of the monies sent by Harriet to her children, [the appellants].*” He states that he is aware that Ms Dufie used to send money to her mother, however her mother had a stroke in January 2016, and he has been assisting since then.

The submissions

20. On behalf of the respondent, Mrs Isherwood submits the sponsor is not a credible witness and the claim that she has had sole responsibility for the appellants upbringing is not supported by the evidence before the Tribunal. She submits there are significant gaps in the evidence, and the answers given by the sponsor in her evidence before the Tribunal are vague and unclear. She submits it is surprising that the sponsor would meet and have children by two people with the same name, and that the lack of any effort to find the appellants’ father is telling. Mrs Isherwood submits Ms Dufie was quite prepared to lie to secure entry to the UK as a visitor knowing she intended to remain in the UK to work, and although she claims she did that for the children, it is clear that she has no respect for the law, and it is likely that she would lie again so that the appellants can now join her in the United Kingdom. Mrs Isherwood submits little weight can be placed on her evidence. Mrs Isherwood submits that when looking at the death certificate relied upon to evidence the death of the appellants’ maternal grandmother, the certified copy of the entry in the register of deaths states the informant, Daniel Owusu Ansah, to be the son of the deceased. Either the death certificate is incorrect and therefore an unreliable document, or the appellants have a maternal uncle in Ghana, whose details Ms Duthie has failed to disclose. Mrs Isherwood submits there is no evidence of any decisions made by the sponsor relating to the children and although there is some evidence of remittances sent by the sponsor, the evidence regarding the financial support provided including the funds for the costs of the appellants education, is unsatisfactory. The sums paid to cover the school fees cannot be reconciled with the remittances sent by the sponsor. There is no up-to-date evidence of money being sent by the sponsor to the appellants, but there is

some evidence of someone with the same name as the appellants father sending money. Mrs Isherwood submits the sponsor does not have sole responsibility for the appellants' upbringing and there is no clear picture of the circumstances that the children face in Ghana. All that is said is that the family would like to live together. There is no evidence regarding the appellants' relationship with their siblings in the UK, and in all the circumstances, the decision to refuse entry clearance is not disproportionate.

21. In reply, Mr Hingora adopted the skeleton argument settled by him and dated 26th July 2021. He submits the requirements of paragraphs 297(i)(e) and (f) of the immigration rules are met by the appellants. He refers to the test set out in TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 and submits that when considering whether the sponsor has continued control and direction of the appellants' upbringing including making all the important decisions in their lives, it is clear that relatives such as Ms Dufie's mother were looking after the appellants on behalf of Ms Dufie. He submits Ms Dufie has maintained authority, direction and control over all important decisions involving the children. He refers to the evidence before the Tribunal from the schools and set out in the evidence of Ms Dufie and the appellants. Mr Hingora submits the degree of financial support provided by the sponsor for the purposes of their upbringing, is a further indicator of an obligation from an exercise of responsibility, which when taken together with the totality of other forms of support, demonstrates a continuing, genuine and positive concern on the part of the sponsor in the welfare and bringing of the appellants. Alternatively, he refers to the decision of the Upper Tribunal in Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 88 and submits it would be undesirable to exclude the appellants from the UK. They have developed emotional needs relying on the sponsor and as a starting point, their best interests are served by being with the sponsor in the UK. He submits the appellants father has clearly abandoned the appellants and abdicated his role as a father. Finally, he submits the natural consequence of refusing the appellants' leave to enter is that the family life established could only continue if the sponsor and her family in the UK, relocate to Ghana. However that would have an impact upon the sponsor's family and private life in the UK where she is financially independent and contributing to society. The sponsor would be unable to support all of her children in Ghana and in

any event, relocation to Ghana would have adverse consequences on the sponsor's daughter, JO, who clearly requires ongoing treatment and support from other agencies, that the sponsor would simply be unable to secure in Ghana.

22. Mr Hingora submits the evidence before the Tribunal must be considered holistically, and any minor inconsistencies in the evidence is not to say that Ms Dufie is not a credible witness. Her evidence is supported by documents and in particular, evidence of remittances and letters from the schools attended by the appellants. Mr Hingora submits that taken together, the evidence establishes that Ms Dufie is invested in the children, and separation has had a profound effect on her. The statements of the appellants refer to the difficulties they have faced since their grandmother passed away. The best interests of the children are to live with at least one of their parents, and here, the best interests of the children are served by their being able to live with their mother and siblings in the UK. Mr Hingora submits the decision to refuse leave to enter is disproportionate in all the circumstances, and in breach of the Article 8 rights of the family.

23. Mr Hingora acknowledged the concerns regarding the death certificate of the appellants' maternal grandmother. He informed me that the original of the death certificate that is at page 37 of the appellants' consolidated bundle is not available for inspection by me at the hearing but is held by the appellants representatives. He said the original would be provided to the Tribunal for me to consider. I was told that the copy of the 'Certified Copy of Entry in Register of Deaths' that is at page 36 of the consolidated bundle has been lost. Following the hearing, the Tribunal received an email from the appellants representatives providing me with a schedule of money transfers identifying the date of the transfer, the identity of the sender, the identity of the recipient, and the amount of funds transferred. The appellants representatives also confirm in that email that the copy of the death certificate that is at page 37 of the consolidated bundle is the only copy that she has. It is said that Ms Dufie believed that she had the original of that document in her possession, but upon inspection, she has confirmed that it is not the original document, but a photocopy.

Findings and Conclusions

24. The appellants have appealed the respondent's decisions to refuse their application for entry clearance, under s82 of the Nationality, Immigration and Asylum Act 2002 on the ground that the decisions are unlawful under s6 of the Human Rights Act 1998. First-tier Tribunal Judge Birk previously found the appellants' are related to the sponsor as claimed and they have established a family life. Those findings have been preserved.
25. I find that the decision to refuse the appellants leave to enter has consequences of such gravity as to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The issue in this appeal, as is often the case, is whether the interference is proportionate to the legitimate public end sought to be achieved. The burden shifts to the respondent to establish that the decision is proportionate. The importance of, and weight to be given to immigration control has been underscored by Parliament in s117 of the Nationality, Immigration and Asylum Act 2002 (as amended).
26. Although the appellants' ability to satisfy the immigration rules is not the question to be determined, it is capable of being a weighty factor when deciding whether the refusal is proportionate to the legitimate aim of enforcing immigration control. As set out by the Court of Appeal in TZ (Pakistan) [2018] EWCA Civ 1109, compliance with the immigration rules would usually mean that there is nothing on the Secretary of State's side of the scales to show that the refusal of the claim could be justified. At paragraphs [32] to [34], the Senior President of Tribunals confirmed that where a person meets the rules, the human rights appeal must succeed because 'considerable weight' must be given to the respondent's policy as set out in the rules. Conversely, if the rules are not met, although not determinative, that is a factor which strengthens the weight to be attached to the public interest in maintaining immigration control.
27. In reaching my decision I have had regard to the evidence relied upon by the appellants that is to be found in the appellants consolidated bundle comprising of some 294 pages, together with the schedule of money transfers that was sent to the

Tribunal after the hearing of the appeal before me. I have had regard to all the evidence that is before the Tribunal whether it is expressly referred to in this decision or not.

28. I have had the opportunity of hearing Ms Dufie and seeing her evidence tested in cross-examination. In reaching my decision I have considered whether the account of events relied upon is internally consistent and consistent with any other relevant information and evidence before me. In considering the evidence of Ms Dufie, I have borne in mind the fact that events that occurred some time ago, can impact on an individual's ability to recall exact circumstances. I also recognise that there may be a tendency by a witness to embellish evidence because although the core of the claim may be true, they believe that by embellishing their evidence, the claim becomes stronger. I also remind myself that if a Court or Tribunal concludes that a witness has lied about one matter, it does not follow that he has lied about everything. I have also been careful not to find any part of the account relied upon, to be inherently incredible, because of my own views on what is or is not plausible.

Paragraph 297 of the immigration rules

29. The appellants rely upon paragraph 297 of the immigration rules:

Requirements for indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom

The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

(i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:

...

(e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; or

(f) 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 and suitable arrangements have been made for the child's care: and

...

30. In TD (Paragraph 297(i)(e): "sole responsibility"), the Upper Tribunal noted, at paragraph [10] of its decision, that a parent who has settled in the UK may retain "sole responsibility" for a child where the day-to-day care or responsibility for that child is necessarily undertaken by a relative abroad. The Upper Tribunal highlighted that financial support is clearly relevant since it may be an indicator of the obligations stemming from an exercise of responsibility by a parent. At paragraph [16] of its decision, the Upper Tribunal said:

"Financial support, particularly sole financial support, of a child is relevant since it may be an indicator of obligation stemming from an exercise of "responsibility" by a parent but it cannot be conclusive. **[my emphasis]** There may be other reasons why an individual financially supports a child and so it can only be a factor to be taken into account along with all the other facts. Rudolph v ECO, Colombo [1984] Imm AR 84 illustrates this."

31. Drawing together the threads, the Upper Tribunal, at paragraph [52], summarised the issue in this way:

Questions of "sole responsibility" under the immigration rules should be approached as follows:

- i. Who has "responsibility" for a child's upbringing and whether that responsibility is "sole" is a factual matter to be decided upon all the evidence.
- ii. The term "responsibility" in the immigration rules should not be understood as a theoretical or legal obligation but rather as a practical one which, in each case, looks to who in fact is exercising responsibility for the child. That responsibility may have been for a short duration in that the present arrangements may have begun quite recently.
- iii. "Responsibility" for a child's upbringing may be undertaken by individuals other than a child's parents and may be shared between different individuals: which may particularly arise where the child remains in its own country whilst the only parent involved in its life travels to and lives in the UK.
- iv. Wherever the parents are, if both parents are involved in the upbringing of the child, it will be exceptional that one of them will have sole responsibility.
- v. If it is said that both are not involved in the child's upbringing, one of the indicators for that will be that the other has abandoned or abdicated his responsibility. In such cases, it may well be justified to find that that parent no longer has responsibility for the child.
- vi. However, the issue of sole responsibility is not just a matter between the parents. So even if there is only one parent involved in the child's upbringing, that parent may not have sole responsibility.
- vii. In the circumstances likely to arise, day-to-day responsibility (or decision-making) for the child's welfare may necessarily be shared with others (such as

relatives or friends) because of the geographical separation between the parent and child.

viii. That, however, does not prevent the parent having sole responsibility within the meaning of the Rules.

ix. The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child's upbringing including making all the important decisions in the child's life. If not, responsibility is shared and so not "sole".

32. In Mundeba (s55 and para 297(i)(f)) [2013] UKUT 00088 (IAC), the Upper Tribunal confirmed that the exercise of the duty by the Entry Clearance Officer to assess an application under the Immigration Rules as to whether there are family or other considerations making the child's exclusion undesirable inevitably involves an assessment of what the child's welfare and best interests require. It said:

"34. In our view, 'serious' means that there needs to be more than the parties simply desiring a state of affairs to obtain. 'Compelling' in the context of paragraph 297(i)(f) indicates that considerations that are persuasive and powerful. 'Serious' read with 'compelling' together indicate that the family or other considerations render the exclusion of the child from the United Kingdom undesirable. The analysis is one of degree and kind. Such an interpretation sets a high threshold that excludes cases where, without more, it is simply the wish of parties to be together however natural that ambition that may be.

...

37. Family considerations require an evaluation of the child's welfare including emotional needs. 'Other considerations' come into play where there are other aspects of a child's life that are serious and compelling - for example where an applicant is living in an unacceptable social and economic environment. The focus needs to be on the circumstances of the child in the light of his or her age, social background and developmental history and will involve inquiry as to whether:-

- (i) there is evidence of neglect or abuse;
- (ii) there are unmet needs that should be catered for;
- (iii) there are stable arrangements for the child's physical care.

The assessment involves consideration as to whether the combination of circumstances sufficiently serious and compelling to require admission.

38. As a starting point the best interests of a child are usually best served by being with both or at least one of their parents. Continuity of residence is another factor; change in the place of residence where a child has grown up for a number of years when socially aware is important: see also SG (child of a polygamous marriage) Nepal [2012] UKUT 265 (IAC); [2012] Imm AR 939."

33. In reaching my decision, I have throughout had regard to the best interests of the appellants as a primary consideration, reminding myself that although the

appellants are now all over the age of 18, they were under the age of 18 as at the date of their application for entry clearance and the respondent's decisions to refuse the applications. The leading authority on section 55 remains ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4. In her judgment, Lady Hale confirmed that the best interests of a child are "a primary consideration", which, she emphasised, was not the same as "the primary consideration", still less "the paramount consideration".

34. As a starting point, I readily accept that the best interests of a child are usually best served by being with both or at least one of their parents. The appellants have however lived apart from their mother, since 2003. The first appellant makes no reference to her father in her witness statement. The second appellant simply claims his father is not involved in his life. The third appellant makes no reference to his father in his witness statement. In her witness statement, Ms Dufie claims she has not had any contact with the appellants father since the second month of her pregnancy that led to the birth of their youngest son, the second appellant. In her oral evidence before me, she claimed that she did not hear from the appellants' father after the second appellant was born. Ms Dufie's evidence regarding the efforts she made to search for him following the birth of the second appellant was very vague and when pressed, she said that all she had done was to go to his family home to ask about him. She claims she was told that his family had not seen him. She said the appellants' father had not returned after she had left Ghana and since leaving Ghana, neither she nor the appellants have tried to contact him. I am prepared to accept Ms Dufie's account of the appellants' father dropping in and out of their lives before the birth of the second appellant and I accept the appellants' father has not played any substantial role in their upbringing or contributed in any meaningful way. Although he is described as an 'inactive father', there is no reason why he should simply cut off all contact with his children without any explanation. On the evidence before me, I find it is likely the appellants' father remains in Ghana and I find he is likely to have had some contact, albeit infrequent, with the appellants.
35. It is uncontroversial that the appellants' mother, Ms Dufie is in the UK. I begin by considering whether she has had sole responsibility for appellants' upbringing. Ms Dufie left Ghana in 2003 when the youngest of the appellants, the second appellant,

was a year old. She claims the appellants were left in the care of their maternal grandmother, and they had agreed that she will look after the appellants as per Ms Dufie's instructions and directions. Ms Dufie claims that arrangement was maintained until her mother sadly passed away in 2017, and following the death of her mother, she has continued to have sole responsibility for appellants' upbringing and has been assisted by Mr Augustine Adusei.

36. The schedule of payments I have been provided with discloses payments being sent by Ms Dufie to her mother since August 2010. There is no particular pattern to the payments made, and various sums have been remitted between August 2010 and 23rd December 2015. The schedule also shows payments made by Ms Dufie since May 2016 to Augustine Adusei, and since May 2018, to the third appellant. The schedule also shows an occasional payment made by Ms Dufie's partner, Mr Thomas Owusu Yeboah during 2013 and 2014, to the appellant's grandmother and in 2018, a payment to the third appellant.
37. The evidence of Ms Dufie in her witness statement is that she left Ghana in 2003 because she could not provide for her children, as a single mother. In her oral evidence before me, she said that her mother gave her some financial support in Ghana, paying for food and "petty things", and although she worked buying and selling things, she was struggling, and her mother sometimes assisted. Although I accept that Ms Dufie regularly sent money to her mother between August 2010 and December 2015, and has more recently sent money to Mr Adusei, there is little evidence before me regarding the use of that money. I accept that some of that money will have been used to benefit the children and meet the costs of their upbringing, but I do not accept that the evidence in itself establishes that Ms Dufie has had sole responsibility for the appellants' upbringing.
38. I have considered whether the other evidence relied upon by the appellants supports the claim that Ms Dufie has had sole responsibility for the appellants' upbringing. At page 46 of the appellant's bundle there is a statement of account relating to fees paid in respect of the third appellant's attendance at the Kwame Nkrumah University of Science and Technology. The statement discloses an on-line payment of fees in the sum of 6202.60 GHS on 24th August 2017. The narrative states; "Online: Fees paid by [the third appellant]". There is no evidence of any

payments having been sent by Ms Dufie to anyone in Ghana between 9th June 2017 and 11th December 2017 for the payment of those fees. The statement also discloses an on-line payment of fees in the sum of 5,143.60 GHS on 31st August 2018. The narrative states; “Online: Fees paid by [the third appellant]”. Again, there is no evidence of any payments having been sent by Ms Dufie to anyone in Ghana during August 2018 for the payment of those fees. There was a payment sent by Ms Dufie to the third appellant of £403.85 on 30th July 2018 but applying an exchange rate of 6.24 GHS/£, that would only amount to 2,520.02 GHS. There is no evidence before me as to how any shortfall was met beyond the bare assertion by Ms Dufie in her evidence that the shortfall was met by Mr Adusei on the understanding Ms Dufie would pay him back. That claim is not supported by what is said in the statement before me, from Mr Adusei. Furthermore, if all of the money sent by Ms Dufie was used as part payment of those fees, it is difficult to see how any of the appellants’ other living costs were being met. At page 45 of the appellants’ bundle, there is a receipt issued by the Kwame Nkrumah University of Science and Technology to the third appellant confirming receipt of 5571.70 GHS on 1st December 2020. It is impossible to reconcile that payment, with the remittances sent by Ms Dufie to the third appellant or Mr Augustine Adusei, as set out in the schedule I have been provided with. I am not satisfied on the evidence before me, that the money sent by Ms Dufie to Ghana meets all the appellants’ school fees and day-to-day living costs.

39. I turn then to the letters from the schools attended by the appellants. The letter dated 1st August 2017 (*page 47 of the appellants’ bundle*) from the Assistant Headmaster of the school attended by the first appellant, states Ms Dufie has been bearing all the costs of her education and calls periodically, to ascertain the performance of the first appellant, although she has a guardian, her maternal grandmother, resident in Ghana. The letter from the school attended by the second appellant dated 30th June 2017 (*page 49 of the appellants’ bundle*) states Ms Dufie has been solely responsible for payment of his school fees, which are paid promptly through his Guardian, his maternal grandmother. That letter also confirms that Ms Dufie periodically calls the school to enquire about the academic performance of her son and what she can do to support him. There is a further letter from the Headmaster of the school (*page 50 of the appellants’ bundle*) which states; “Ms. Harriet

Dufie is the financier of his education, and she shows concern for his academic performance, welfare and other important issues about his education". I have given due weight to the content of those letters, but again I am unable to conclude that they support the appellant's claim that Ms Dufie has had sole responsibility for the appellants' upbringing. I have no doubt Ms Dufie has an interest in the appellants' education and welfare and that she communicates with the schools attended. However I do not accept that the evidence establishes that Ms Dufie is solely responsible for payment of any school fees and has continuing control and direction of the appellants' upbringing, including making all the important decisions regarding their education. The letter from the school attended by the second appellant states Ms Dufie has been solely responsible for payment of his school fees, which is paid promptly through his Guardian, his maternal grandmother. If the payment has been made by his maternal grandmother, it is difficult to see how the author of that letter would be aware that it is Ms Dufie that has been solely responsible for payment of the school fees. The letters relied upon by the appellants simply make a broad assertion that Ms Dufie has been solely responsible for payment of fees but there is no evidence before me that the fees have been paid by Ms Dufie. There is no explanation provided by Ms Dufie as to why she could not make payment of the fees due directly, given the evidence is that the fees were paid on-line. Furthermore, each of the letters refers to the appellants' maternal grandmother who is described as their "guardian", without addressing the role that she too plays in the children's lives.

40. At page 39 of the appellant's bundle, there is a letter which appears to have been sent by the appellants' maternal grandmother to Ms Dufie on 20th October 2015, in which she informs her daughter that she is "unable to cater for [the appellants]" due to her "amputated broken leg since six (6) months", which has had an impact upon her business activities and caused her to struggle. At page 38 of the appellants' bundle there is a medical report dated 26th June 2015 confirming the appellants' maternal grandmother was involved in an "eversion injury" in June 2013 when she accidentally slipped on a wet surface. She was treated in the accident and emergency centre where it was noted that her distal right leg was swollen and tender. X-rays of the ankle joint showed no bony fracture but there was evidence of a ligament injury. She was treated with oral analgesics and the ankle

joint injury was treated conservatively with a cast. Nevertheless, despite the injury suffered by the appellants maternal grandmother, it appears the appellant's maternal grandmother continued to care for the appellants' and there is no evidence before me to suggest that the appellants did not continue to receive an adequate level of care or that Ms Dufie took over responsibility for any of the appellants' unmet needs. The schedule of payments demonstrates Ms Dufie continued to send payments to her mother in much the same way that she had previously, until December 2015. There was then a gap in payments between December 2015 and 31 May 2016, when the remittances recommenced albeit less frequently during 2016 and 2017. There is no evidence before me as to how the appellants needs were met during that period.

41. The evidence before the Tribunal regarding the death of the appellants' maternal grandmother is unsatisfactory. In Ahmed -v- SSHD cup [2002] Imm. A.R. 318, Mr Justice Collins set out guidance as to the assessment of documents relied upon. It is for the appellants to show the reliability of the documents relied upon and I must consider whether the documents are reliable after looking at all the available evidence. Ms Dufie has not furnished the Tribunal with the originals of either of the death certificates that are to be found at pages 36 and 37 of the appellants' bundle. The document at page 37 is a form completed in manuscript, but the date of registration appears to have been amended from 11th September 2017 to 12th September 2017. The appellant's representatives have confirmed that the original of that document is in Ghana, and Ms Dufie only has a copy in her possession. There is no explanation provided as to why the original of the document remains in Ghana, who it is held by, or why Ms Dufie only has a copy and has not been able to obtain the original. In her witness statement, Ms Dufie claims that that certificate was one that she obtained from hospital. However it appears to be a document certifying the registration of the death in the register of deaths for Offinso, in the Offinso Municipal Registration District and does not appear to be a document issued by the hospital to confirm the death or cause of death. The copy of the Certified Entry in the Register of Deaths that is to be found at page 36, confirms that the death was registered on 12th September 2017, but it refers to the informant as being Mr Daniel Owusu Ansah, who is described as the 'son' of the deceased. The certificate describes the cause of death as "Cerebrovascular Accident".

42. There is evidence before the Tribunal to confirm Ms Dufie travelled to Ghana on 11th September 2017. In her witness statement she claims she was planning to spend a week in Ghana, caring for her mother and seeing the children, and when she landed, she found out her mother had passed away. She claims that she travelled again in October 2017 for her mother's burial, staying for two weeks and spending time with the appellants.
43. I reject the claim that the appellants' maternal grandmother passed away on 17th September 2017. When she was asked in her oral evidence about the information in the death certificate at page 36 of the bundle that the informant was the son of the deceased, Ms Dufie was vague in her evidence and claimed that was not a brother, but simply someone who lived in the area, despite 'Owusu' forming part of his name. Her evidence before me was that she has a brother in Ghana, whose name was Lawrence Osei. She claimed that was his name, but she does not know what his name is now. I reject her claim that her mother has passed away and her evidence that she last heard from her brother when her mother died, is not credible. There is no explanation before the Tribunal regarding the breakdown of any relationship that Ms Dufie enjoyed with her brother, and no explanation as to why they should not have kept in contact, if as she claims, her mother had passed away.
44. I note that although it is claimed that the appellant's maternal grandmother passed away in September 2017, Ms Dufie had already started directing remittances sent to Ghana to Mr Adusei in May 2016. That was before the claimed death of the appellants' maternal grandmother. I am quite prepared to accept that the appellant's grandmother is likely to have suffered from ill health and I find that Mr Adusei, and most likely, other relatives of the appellants including their maternal uncle, and their grandfather have played an increasing role in their lives because of the ill-health of their grandmother. Looking at all the evidence in the round, in the absence of any opportunity to examine the originals of the death certificates and any marks or stamps endorsed upon the documents, I attach little weight to the documents and do not accept the documents are sufficient for me to conclude that the appellants' maternal grandmother has passed away. The death certificate relied upon states the place of death to be St. Particks Hospital. Evidence from the hospital relating to the admission, treatment and death of the appellants' grandmother would readily have been available to the appellants and its absence is

notable, particularly given the concerns previously expressed about the death certificate relied upon by the appellants.

45. In any event, even if I had accepted the appellants' maternal grandmother has passed away, that would not have altered the outcome because I find on balance, Ms Dufie has at least one brother, Daniel, who remains in Ghana, and he is likely to have maintained some contact with the appellants although neither Ms Dufie nor the appellants made any reference to him in their witness statements. Furthermore, I note that on the 'Cellmark Sample Declaration Forms' (*pages 31, 33 and 35 of the appellants bundle*) the 'Parent/Guardian' identified as giving consent on behalf of the appellants is an individual that lives at the same address as the appellants' maternal grandmother and is described as being the appellants' 'grandfather'. Neither Ms Dufie nor the appellants give any evidence regarding the role that he has played in their lives. Having considered the witness statements of the appellants and the evidence of Ms Dufie, I find that the appellants and Ms Dufie have not been altogether frank with the Tribunal regarding the extent of their familial connections to Ghana. I do not find Ms Dufie to be a credible witness regarding the extent of her family connections to Ghana. Having had the opportunity of hearing her give evidence, I am quite satisfied that Ms Dufie is seeking to downplay the extent of her family connections in Ghana. Her evidence is undermined by information set out in the documents relied upon.
46. I reject the claim made by Ms Dufie that she has had sole responsibility for the appellants upbringing. Looking at the evidence before me holistically, I am not satisfied that Ms Duthie has sole responsibility in a practical sense having had regard to the evidence before me regarding the arrangements for the care of the children since 2003. The evidence of Ms Dufie before me that she would send whatever she can afford to Ghana, and that sometimes, Augustine Adusei would help her using his own money, on the understanding she will pay him back, was particularly telling. There is no evidence before me of Ms Dufie paying back any sums due to Mr Adusei, and contrary to the evidence of Ms Dufie, Mr Adusei claims in his witness statement that he has been receiving monies from Ms Dufie and he has always given the full amount of the monies to the appellants. He does not admit in his statement to providing any other assistance or meeting any shortfall. I find, on balance, responsibility for the appellants' upbringing has been

shared by Ms Dufie, the appellants' maternal grandmother, Mr Adusei and other family members that remain in Ghana, including the appellants' grandfather. On the evidence before me I find Ms Dufie has not established on balance that she has had continuing control and direction of the appellants' upbringing including making all the important decisions in their life. I am not satisfied she has had sole responsibility of the appellant's upbringing as required by paragraph 297(1)(e) of the rules.

47. I must therefore consider whether there are serious and compelling family or other considerations which make exclusion of the appellants' undesirable, and suitable arrangements have been made for the appellants' care. I have carefully considered the evidence set out in the witness statements of the appellants and I have no doubt that they would prefer to live in the United Kingdom with their mother and step siblings. I also acknowledge that there is evidence before me regarding the health of Ms Dufie's daughter, 'JO', who requires support from agencies.
48. The evidence before me establishes that the appellants have been able to attend school and continue their education. They have plainly been properly cared for following their mother's departure from Ghana. The broad claim made that the overall circumstances here are such that there are serious and compelling family or other considerations which make exclusion of the appellants undesirable, is not supported by any evidence regarding the appellants' circumstances in Ghana. Looking at the evidence before me in the round, I find there is no evidence of neglect or abuse, there is no evidence of any unmet needs. On balance, I am quite satisfied that there is a support network available to the appellants in Ghana, whether familial or otherwise, that the appellants can turn to, and will continue to benefit from. I find the appellants do not meet the requirements set out in the relevant immigration rules that are relied upon.
49. I have nevertheless considered whether there are exceptional circumstances which would render refusal of entry clearance a breach of Article 8 because such refusal would result in unjustifiably harsh consequences for the appellants, Ms Dufie and the appellants' step-siblings. I accept the decision to refuse the appellants entry clearance will undoubtedly have an impact upon their relationship with their mother and step-siblings.

50. I reject the submission made by Mr Hingora that the natural consequence of refusing the appellants leave to enter is that the family life established, could only continue if Ms Dufie and her family in the UK, relocate to Ghana. I have had regard to the nature of the family life and the way in which it has developed, endured and continued. I accept the appellants maintain regular contact with their mother using modern methods of communication and there is no reason why that cannot continue. The appellants have never met any of their step-siblings that live in the UK, and any contact they have with them, will undoubtedly continue in the same way it has over the years. The appellants have lived in Ghana throughout their lives and I find, they have been provided with perfectly proper and adequate care over a lengthy period.
51. I have considered whether the decision to refuse the appellants entry clearance is nevertheless disproportionate. The ultimate issue is whether a fair balance has been struck between the individual and public interest. In my final analysis and in carrying out the balancing exercise, I have also had regard to the respondent's policy as set out in the immigration rules. The appellants are unable to satisfy the requirements of the immigration rules for the reasons I have set out. I have also had regard to the public interest considerations set out in s117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). I acknowledge that the maintenance of immigration control is in the public interest.
52. The appellants' have lived in Ghana all their life and I am quite satisfied they are familiar with the culture and traditions in Ghana. A move to the United Kingdom would enable them to reunite with their mother, but that would mean a change in the place of residence where they have grown up. It would also result in separation from others that have played a significant role in their lives. The appellants' each speak of their wish to live with their mother in the UK, and the upset caused by the refusal of entry clearance. However, there is no evidence before me of any adverse impact upon the appellants mental or physical health, by the on-going separation from their mother. It is generally in the interests of children to have both stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong. The assessment of what is in the best interests of a child is inherently fact sensitive and I must carry out the assessment on the evidence before me. In the end, it is in my judgement in the best

interests of the appellants to remain in Ghana, and to continue their relationship with their mother and step-siblings in much the same way that it has endured over a significant number of years.

53. Having considered all the evidence before me in the round, and although I have accepted that the refusal of entry clearance will interfere with the appellants' family life and the family life of their sponsor and step-siblings, in my judgement, the interference for the purposes of the maintenance of effective immigration control, is proportionate, and it follows, lawful.

Notice of Decision

54. **I dismiss the appeal is on the basis that the refusal of entry clearance does not breach section 6 Human Rights Act 1998 (based on Article 8 ECHR)**
55. I make an anonymity direction.

Signed *V. Mandalia*

Date: 28th October 2021

Upper Tribunal Judge Mandalia