



IAC-FH-CK-V2

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

Appeal Numbers: VA/00594/2014  
VA/00595/2014

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 22 June 2015  
Prepared 22 June 2015

Decision & Reasons Promulgated  
On 16 July 2015

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**ENTRY CLEARANCE OFFICER - NAIROBI**

**and**

**MR AUGUSTINO JUMA KULANG LADO  
MRS LUCIA SIAMA MARAZAN LOMBO  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondents

**Representation:**

For the Appellant: Mr N Smart, Senior Presenting Officer  
For the Respondents: Mr A Gomez of Citadel Immigration Lawyers

**DECISION AND REASONS**

1. In this decision the Appellant is referred to as the ECO and the Respondents are referred to as the Claimants.

2. The first and second Claimant, nationals of Southern Sudan, dates of birth respectively 1 January 1938 and 1 January 1955, appealed against the ECO's decisions dated 17 December 2013 to refuse entry clearance with reference to paragraph 41 of the Immigration Rules HC 395 (as amended) on the basis that the Appellants had not shown that it was a genuine visit and that they would leave at the end of the period of visit.
3. The ECO's decisions did not attract a right of appeal in their own right. Rather when the matter came before First-tier Tribunal Judge Sangha (the judge), who on 21 August 2014 promulgated a decision allowing the appeals on Article 8 ECHR rights and nevertheless did consider the merits of an appeal against the paragraph 41 refusals.
4. The ECO appealed the decision of First-tier Tribunal Judge Sangha and permission was granted by First-tier Tribunal Judge Frances on 1 October 2014.
5. The position in law has slightly moved on in the sense that there has been greater clarification of the extent to which Article 8 may be turned to in visit visa entry clearance cases with references to the case of Mostafa (Article 8 in entry clearance) [2015] UKUT 112 and Adjei (visit visas - Article 8) [2015] UKUT 261. Mr Gomez wholly and properly as did Mr Smart drew these cases to my attention as well as other cases around the issues not least Ghising (family life - adults - Gurkha policy) [2012] UKUT 160 (IAC).
6. The problem which the judge faced was that he started from an examination of the merits of an appeal against paragraph 41 of the Immigration Rules in respect of each Claimant and having found those matters in favour of the Claimants then went on to conclude, plainly with those points in mind, that the appeal of the Claimants should succeed under Article 8. It has troubled many courts whether or not Article 8 can be turned to in such circumstances bearing in mind that removal of the right of appeal against the ECO decisions was intended to prevent any general opportunity to simply re-examine the merits. It is quite plain from the cases of Mostafa and Adjei that the first question is whether Article 8 rights are actually engaged at all and it is only then if they are so engaged that one will go on to consider whether or not there was for example non-compliance with paragraph 41 of the Rules and thus being or becoming a material fact in the proportionality exercise ultimately to be concluded.
7. In this case it is clear that the Sponsor, whose credibility and reliability was accepted and of whom there is no personal criticism whatsoever, gave evidence before the judge. The judge was impressed with the evidence and concluded that the Sponsor was a reliable witness of fact. What the judge did not actually go on to do with any thoroughness or indeed depth was to truly examine what was the family or possibly even private life basis of the relationship between the Sponsor, the son of the Claimants and them. Rather, as is clear, what was essentially being argued for perfectly understandable reasons was the opportunity for the Claimants to visit the United Kingdom, it plainly being a cheaper and more convenient means by which they could meet up as a family. There was, on the examination that the judge did, no

dependency going beyond normal emotional ties in the relationship between the Sponsor and his parents. No-one can gainsay the importance of such relationships but the question is whether or not the nature of Article 8 ECHR rights, which is plainly fact-sensitive, were shown to be engaged. The findings that the judge made recognised the emotional relationship that is to be expected between son and parents but there was no dependency by them on him nor by him on them. Therein lies the practical problem that the Sponsor, Mr Kulang, faced and he set out the reasons why he cannot visit Sudan and his UK commitments of work and children at school and the effects of interruption upon their education and presumably the cost constraints that obviously arose for him upon meeting in a third country.

8. Taking the positive findings of fact made in favour of the Claimants and the Sponsor, it is my conclusion that the Original Tribunal erred in the assessment of whether or not Article 8 ECHR rights were actually engaged or that the ECO's decision was a significant interference in the exercise of such rights. I do not for one minute doubt the genuineness of the Sponsor's wish to see the Claimants in the United Kingdom but I do not find that Article 8 was the means to do so.
9. For this reason I therefore find that the Original Tribunal's decision was in error of law in allowing the appeals under Article 8.
10. Reliant upon the findings made by the judge I reach in the light of the Court of Appeal decision in *Kugathas* [2003] EWCA Civ 31 that the connection between the Sponsor and his parents is ongoing in the sense of financial dependency upon the Sponsor and in the sense that as their child there remains the inevitable continuing connection of sympathy in connections between parents and their son. However, in this case of course the Sponsor is an adult, formally recognised as a refugee and now a British national with his family and children in the United Kingdom. I do not find in the light of the case law that there is the necessary dependency over and above that generally contemplated as may exist between the children of parents and any continuing financial obligations or dependency by them. I appreciate that there is a practical difficulty so far as the Sponsor judges the position as to a return to South Sudan. Nevertheless I conclude that that practical difficulty is not material in assessing dependency. It may be entirely material to the question of proportionality but upon the findings of fact made and the submissions made to me I am satisfied that as a matter of law there is not the necessary dependency to establish Article 8(1) rights are engaged.
11. In those circumstances the findings of fact, as opposed to the conclusions drawn therefrom, made by the judge plainly indicate that at the date the matter was considered by the judge he found the Claimants reliable in the sense of coming for the purposes of a visit and intending to leave at the conclusion of the visit. The judge also found that the Sponsor had sufficient means and was a reliable witness of fact. Plainly, if any further application is made it would be useful to have particular regard to the ECO's reasons for refusal in terms of the points that he took against the credibility of the Claimants.

12. In this respect it seems to me also that the fact that the Claimants have not previously travelled to the United Kingdom from their home country cannot of itself be a reliable indicator of anything other than that fact. A wider picture in terms of their intention needs to be addressed and those are matters for a further application based upon those considerations and reliant upon the positive findings of fact made by the judge.
13. The Original Tribunal's decision was in error of law in the assessment of Article 8 ECHR.
14. The appeal of the ECO is allowed. The following decision is substituted.

**NOTICE OF DECISION**

The appeals of the Claimants with reference to Article 8 ECHR grounds are dismissed.

**ANONYMITY ORDER**

No anonymity order was made nor do I find is one necessary or appropriate.

Signed

Date 7 July 2015

Deputy Upper Tribunal Judge Davey

**TO THE RESPONDENT**

**FEE AWARD**

In the circumstances the appeal of the Claimants being dismissed no fee award in the sum of £140 made by each Claimant is payable.

Signed

Date 7 July 2015

Deputy Upper Tribunal Judge Davey