



IAC-FH-NL-V1

**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 10<sup>th</sup> February 2016**

**Decision & Reasons Promulgated  
On 1<sup>st</sup> March 2016**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**MR HADI DIALLO  
MR MAMADOU DIALLO  
MISS ADAMA DIALLO  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER - ACCRA**

Respondent

**Representation:**

For the Appellants: Mr J Knight, instructed by Duncan Lewis & Co Solicitors  
For the Respondent: Mr S Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants made applications to join their brother, the sponsor here in the UK. The appellants are all citizens of Guinea and the ECO refused their applications on 27 November 2012. The appellants appealed against that decision and their appeals were allowed by the First-tier Tribunal. However that decision has subsequently been set aside as it contained a

material error of law and the appeals was re-heard by Judge of the First-tier Tribunal Monson who dismissed the appeals under the Immigration Rules and Article 8 in a decision that was promulgated on 30 June 2015 following a hearing at Taylor House on 11 June 2015. Permission was granted to the appellants by Judge of the First-tier Tribunal Fisher on 24 September 2015.

2. The grounds seeking leave to appeal are succinct. It is asserted that Judge Monson misdirected himself because he considered the circumstances at the date of the refusal decision and not the date of the hearing as regards Article 8 and in so doing did not take into account the incidents that occurred according to the sponsor evidence in February and March 2015.
3. The sponsor arrived in the UK in 2003 and he claimed asylum here. His application was refused and in 2010 he was granted indefinite leave to remain and then British citizenship in 2012. The judge heard evidence from the sponsor and he concluded that the appellants were related to the sponsor as claimed, but that the evidence relating to the sponsor's parents was not consistent because there was inconsistency between the sponsor's oral evidence and the information contained on the death certificates which were relied upon. The judge found anomalies in the documents relied upon generally and concluded that the sponsor was not a reliable witness of truth.
4. The judge properly directed himself at paragraph 46 that he properly considered the circumstances appertaining at the date of the refusal decision and concluded that the appellants had not established that at the time of the refusal decision they were still minors and in any event, they had not established that there were serious and compelling family or other considerations which made their exclusion from the United Kingdom undesirable. Thus they could not meet the requirements of the Immigration Rules. This decision is not challenged and there is no challenge to the credibility findings. The judge went on to consider Article 8 and he concluded that at the time of the refusal decision the appellants were living in an acceptable social and economic environment and that there is no evidence of neglect or abuse or of unmet needs which should be catered for and that he was satisfied that there were in place stable arrangements for their physical care. He concluded that the refusal decision maintained the status quo (see paragraphs 50 and 51).
5. The challenge to the decision and the grant of permission misunderstands the decision of the House of Lords in AS (Somalia) v Secretary of State for the Home Department [2009] UKHL 32 and I refer specifically to paragraph 19. The judge considered the evidence nevertheless in relation to incidents in 2015 and he found as follows at paragraph 43:
  - "43. The police documents support the proposition that there is currently a feud between the Diallo family and the Bangura family which has led to fights between male members on both sides on at least two occasions in the first part of 2015, the second of which was in late March 2015 a

bar where the sponsor's male siblings were watching a football match – and so not in hiding. The injuries sustained by the male siblings in an earlier fight at the beginning of February 2015 were not serious according to the medical evidence. ([A]'s claim of sexual assault appears to have been rejected altogether by a police doctor following an intimate examination). There is no medical evidence that the male siblings sustained any injuries in the fight in the bar. The owner took them to the police in order to demand compensation from them for the damage which had been caused. He explained that he had brought them along as the Bangura family were now 'on the run'.

44. But the police documents do not support the sponsor's asylum claim, and they do not support the proposition that at the time of the refusal decision the siblings were endangering Guinea because of a long-running feud with the Bangura family. The question which is put to Mr Bangura by the police interrogator is not that he is seeking revenge because a child of his was killed by the sponsor. The suggestion is that a child of his has been killed by the sponsor's siblings. In response, Mr Bangura does not claim that a child of his has been killed by the siblings or by the sponsor. His claim is that his family has been responding to aggression by the sponsor's siblings which began as recently as 1 December 2014. So, despite the sponsor's efforts to characterise it as such, the statement made by Mr Bangura to the police is not probative of the account of past persecution which he put forward in 2003."

6. The statutory regime requires the judge to consider the circumstances at the date of the decision. However, the findings that he made about the evidence relating to post decision events are not the subject of challenge. The judge did not accept the case as presented by the appellants and the sponsor relating to the post-date of decision alleged incidents and the connection between this evidence and the sponsor's claim for asylum. It is noteworthy that the judge rejected the evidence relating to Mamadou Savane and Ibrahim Savane generally as well as evidence concerning post-decision incidents. The application is misconceived and the grounds do not disclose an error of law in Judge Monson's decision.

### **Notice of Decision**

The appeal is dismissed. The decision of the First-tier Tribunal is maintained.

No anonymity direction is made.

Signed Joanna McWilliam

Date 26 February 2016

Upper Tribunal Judge McWilliam