



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/12534/2015  
HU/12537/2015

THE IMMIGRATION ACTS

Heard at Glasgow  
On 3 July 2017

Decision & Reasons Promulgated  
On 4 July 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HENRY & SALIMA RUTAGENGWA

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr C McGinley, of Gray & Co, Solicitors

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

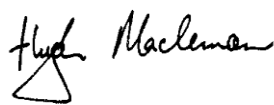
1. The appellants are brother and sister, born on 10 June 1998 and 10 September 2004, citizens of the DRC (Democratic Republic of Congo). They both sought entry clearance to join their father, "the sponsor", in the UK.
2. The ECO refused both applications, under reference to ¶352D of the immigration rules and to article 8 of the ECHR, for reasons stated in notices dated 5 November 2015.
3. The appellants appealed to the FtT. The statutory basis of appeal available to them was limited to article 8. They said in their grounds that they did meet the requirements of ¶325D; the decisions to refuse entry were "therefore a

disproportionate interference” with their family and private life; the decisions were “contrary to s.55 of the Borders, Citizen and Immigration Act 2009”; and the family life of the appellants and sponsor “cannot reasonably be expected to be enjoyed elsewhere”.

4. Judge Agnew refused the appeals for reasons explained in her decision promulgated on 16 November 2016. She accepted at ¶29 that at the time of application the requirements of the rules were met. However, as to article 8 she was not satisfied that there was “a meaningful parent / child relationship” (¶30). She agreed that compliance with ¶352D was a factor to take into account (¶32) but found the evidence “less than frank, open and reliable” and that the decisions had a proportionate outcome.
5. The grounds of appeal to the UT refer to *Mostafa* [2015] UKUT 00112, “... ability to satisfy the rules is not the question to be determined but is capable of being a weighty, though not determinative, factor when deciding whether refusal is proportionate ...”.
6. The grounds say that the judge failed to assess the article 8 appeal to the appropriate standard or to provide adequate reasons; there were no inaccuracies within the entry clearance applications; the impact of refusal on the relationship between sponsor and appellants was erroneously considered; the refusals interfere disproportionately with their relationships; the judge made too restricted an approach to the assessment; there was evidence that the sponsor’s asylum claim was made in 2005 but refugee status granted only on 25 September 2013, a circumstance outside his control; he could not visit the children in the meantime; he lost contact, and re-established it only through the Red Cross in 2009; he visited the children in Kenya in 2015; and there were compelling circumstances to justify the appeal being allowed.
7. Mr McGinley submitted further as follows. Although the grant of permission hinted that where further applications to the ECO could be made under the rules, article 8 might be irrelevant, that would be of no use to the first appellant, because he had reached the age of 18 (by the time of the hearing in the FtT) and so could not succeed in a further application under the rules. It would be an even plainer breach of article 8 to separate two siblings who had grown up together. Mr McGinley adopted the further observation in the grant that the public interest in immigration control was [arguably] irrelevant where the rules were met. *Mostafa* arose from a visit visa application. A case arising from a rule about refugee family reunion had a stronger base. The rule was presumably designed to bring about results compliant with article 8. The sponsor had not delayed in trying to bring the children to the UK. The evidence was that the mother had abandoned the children. The appeal was one so obviously calling out to be allowed on family life grounds that it could only in reason have been allowed.
8. Mrs Pettersen submitted that the judge’s decision was justified by her findings about the evidence, or rather the absence of satisfactory evidence, as to the true state of family relationships. She accepted that the comment at ¶33 that the sponsor’s connection with the appellants was no more than biological was not literally

justified, but she said that was to be read in context of the findings about the contradictory and skimpy nature of the evidence, no “meaningful” parent / child relationship, and the judge not being satisfied about the claimed abandonment of the children by their mother and the nature of their care over the years. The reasoning of those conclusions was not criticised in the grounds. The judge was simply not satisfied that the evidence showed the true history and situation of the appellants, and so was entitled to conclude that no disproportionate outcome was demonstrated.

9. I reserved my decision.
10. I do not doubt that the rule is designed to comply with article 8, as well as with the general policy of refugee family reunion. In a straightforward case of reunion of all core family members (e.g., mother and children together joining a husband and father) it seems likely that an erroneous refusal under the rules would fall to be corrected either by fresh applications to the ECO or, if that was not available for some reason, under article 8. To that extent, there is force in the argument for the appellants. However, the rule does not reflect article 8 to the absolute effect that an erroneous refusal means that an appeal must succeed under article 8. Whether article 8 rights exist and have been infringed, and whether interference is disproportionate, depends on the facts of the case.
11. The judge recognised at ¶31 the positive obligation on the UK to facilitate family reunion, and at ¶32 that meeting the requirement of the rules was a factor (which could only be in favour of the appellants).
12. If the facts had been found to be as the appellants continue to assert through the sponsor, the outcome would almost certainly have been different. However, the judge explained at ¶9 - 28 why she found that the evidence failed to establish the contentions advanced about the appellants’ personal circumstances, the absence of relationship with their mother, or the nature of their relationship with their father. The grounds reassert the appellants’ position as if it were established fact, but show no error in the judge’s findings to the contrary. The evidence was found to be very weak, for reasons which have not significantly been criticised. The grounds in essence are only disagreement with findings properly reached, and with a proportionality assessment which was based on those findings, is explained in some detail at ¶33 - 38, and falls within the judge’s reasonable range. The UT has no basis on which to interfere.
13. The decision of the First-tier Tribunal shall stand.
14. No anonymity direction has been requested or made.



4 July 2017  
Upper Tribunal Judge Macleman