



given in Refusal Notices dated 12<sup>th</sup> November 2014. Those decisions were subsequently confirmed by an Entry Clearance Manager on 5<sup>th</sup> May 2016. The Appellants appealed, and their appeals were decided without a hearing by First-tier Tribunal Judge Oxlade (the Judge) on 19<sup>th</sup> October 2016. He decided to allow the appeals for the reasons given in his Decision of that date. The Respondent sought leave to appeal those decisions and such permission was granted on 25<sup>th</sup> April 2017.

### **Error of Law**

2. I must first decide if the decision of the Judge contained a material error of law so that it should be set aside.
3. The appeals were decided on Article 8 ECHR grounds only in accordance with Section 52 of the Crime and Courts Act 2014. The Judge found that the Appellants had a family life with the Sponsor which would be interfered with by the Entry Clearance Officer's decision to such a degree of gravity as to merit the consideration of the Appellant's human rights. The Judge also found that such interference was disproportionate. This was because the purpose of the proposed visit was genuine, and that the provisions of paragraph 41 of HC 395 were satisfied in their entirety. Those circumstances outweighed the public interest.
4. At the hearing, the Sponsor appeared unrepresented but indicated that she wished the hearing to proceed nonetheless.
5. Mrs Aboni argued that the decision of the Judge was in error of law as the Judge had not made a finding that there were additional ties between the Appellants and the Sponsor to justify a finding of family life between adults. Further, the Judge had failed to give sufficient reasons for his finding that the decision of the Entry Clearance Officer was disproportionate. The Judge had failed to address the substantive reasons given by the Entry Clearance Officer for refusing the applications and had therefore given insufficient weight to the public interest.
6. In response, the Sponsor understandably did not deal with the legal arguments of Mrs Aboni but instead described to me the purpose of the proposed visit and assured me that the intentions were genuine and that the Appellants would return to their own country when required to do so.
7. I do find a material error of law in the decision of the Judge which I therefore set aside. The Judge accepted that there was a family life between the Appellants and the Sponsor, but as they are adults, the Judge was required to make a finding in accordance with the decision in **Kugathas v SSHD [2003] EWCA Civ 31** which he failed to do. According to what the Judge wrote at paragraphs 25 to 30 inclusive of the Decision, he decided the appeals purely on the basis of the evidence of the Appellants as to their intentions. He therefore further erred in law in taking no account of the public interest. Merely to state that the

Appellants met the requirements of the Immigration Rules as to family visits is insufficient.

8. I did not proceed to remake the decision of the First-tier Tribunal. Clearly this is a genuine case in many ways whereby the Appellants if properly represented might be able to show that the appeal should be allowed. I therefore decided to remit the appeal to the First-tier Tribunal for the decision to be remade in accordance with paragraph 7.2(a) and (b) of the Practice Statements. The Appellants and the Sponsor would be well advised to obtain full legal representation for the hearing before the First-tier Tribunal.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision in the appeal will be remade in the First-tier Tribunal.

### **Anonymity**

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Date 3<sup>rd</sup> August 2017

Deputy Upper Tribunal Judge Renton

### **TO THE RESPONDENT FEE AWARD**

The First-tier Tribunal made no fee award. I set aside that decision in line with my decision to set aside the decision in the appeal of the First-tier Tribunal. Any new fee award can be made by the First-tier Tribunal when remaking the decision in the appeal.

Signed

Date 3<sup>rd</sup> August 2017

Deputy Upper Tribunal Judge Renton