



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/05706/2016**

Appeal Numbers:

HU/05704/2016

HU/05705/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 22 December 2017**

**Decision & Reasons
Promulgated
On 04 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**JAO
SBO
CAO**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Unrepresented

For the Respondent: Mr S Kandola, Home Office Presenting Officer

Anonymity:

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellants are citizens of Ghana born in March 1998, April 1998 and June 2000 who applied for entry clearance to the UK. The appellants claim to be the children (either biological or adopted) of the Sponsor.
2. On 30 January 2016 the Secretary of State refused the application for entry clearance. The appellants appealed to the First-tier Tribunal where their appeal was heard by Judge Black. In a decision promulgated on 3 July 2017, the appeal was dismissed. The appellants are now appealing against that decision.
3. The First-tier Tribunal found that the appellants were unable to satisfy the requirements of the Immigration Rules and considered the appeal outside the Rules under Article 8 ECHR.
4. In the course of assessing the position under Article 8 ECHR, the judge made the following findings:
 - (a) At paragraph 23 the judge stated that the second and third appellants are the biological children of the Sponsor and their mother JM.
 - (b) At paragraph 24 the judge found that JM died in February 2000, stating:

“I accept [JM] has died and that she is the mother of the second appellant (as mentioned in this declaration). It is not clear why there is no mention of the third appellant in this declaration, given that it is claimed that she is also the daughter of [JM].”
5. At paragraph 40 the judge stated:

“The appellants have a limited family life with the Sponsor who visits them occasionally in their own country. They have contact with their mother and she is their primary carer. They continue to do so notwithstanding the refusals.”
6. At the error of law hearing, I asked Mr Kandola if he was able to reconcile the apparent contradiction between the judge’s finding at paragraph 24 that JM had died and his finding at paragraph 40 that the appellants have contact with their mother. Mr Kandola acknowledged that these findings were irreconcilable but argued that it must be that at paragraph 40 the judge was only referring to the first appellant.
7. I am unable to reconcile the contradiction between the aforementioned findings in the decision. The judge made a clear finding that the second appellant’s mother is deceased. However, when evaluating the proportionality of refusing entry clearance to the appellants the judge

stated that they (without distinguishing between the appellants) have contact with their mother who is their primary carer. This contradiction in the judge's findings pertains to a factual issue which is central to the appeal and as such constitutes a material error of law.

8. Remaking the decision will require the factual circumstances to be considered afresh. Given the extent of further fact-finding this will entail, the appeal should be remitted to the First-tier tribunal to be heard before a different judge.

Notice of Decision

9. The decision of the First-tier Tribunal contains a material error of law and is set aside.
10. The appeal is remitted to the First-tier Tribunal to be heard afresh before a different judge.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 2 January 2018