



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/09476/2015  
HU/09466/2015  
HU/09474/2015

THE IMMIGRATION ACTS

Heard at Field House  
On July 16, 2018

Decision & Reasons Promulgated  
On July 25, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

[A F S]

[M S]

[A S]

(ANONYMITY DIRECTION MADE)

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

**Representation:**

For the Appellant: Ms Chowdhury, Counsel, instructed by Stuart and Co Solicitors  
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers

should not be identified. The effect of such an “anonymity order” may therefore be to prohibit anyone (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court.

2. The appellants are citizens of Gambia and siblings who were born on October 17, 1998, September 8, 2001 and May 20, 2004 respectively.
3. The appellants each lodged applications for entry clearance on May 22, 2015 under paragraph 297 HC 395 to join their mother in the United Kingdom.
4. The respondent refused their applications both under the Immigration Rules and article 8 ECHR on September 7, 2015 on the basis the appellant’s failed to provide evidence of contact with their mother or evidence that she had spent any time with them since she left Gambia to live in the United Kingdom. No evidence was provided to demonstrate that their mother had been financially responsible for the appellants or that she had provided any emotional support.
5. The appellants lodged grounds of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on October 20, 2015. As their applications were lodged after April 6, 2015 their appeals were limited to human rights appeals.
6. Their appeals came before Judge of the First-tier Tribunal Sullivan (hereinafter called “the Judge”) on May 19, 2017 and in a decision promulgated on June 9, 2017 the Judge refused their appeals on human rights grounds.
7. The appellants appealed those decisions on July 6, 2017. The appellants argued the Judge had erred firstly, there had been a procedural unfairness in that following the hearing on May 19, 2017 the Tribunal issued further directions and, in a letter, dated May 25, 2017 the appellants responded to those directions both by fax and by a letter sent by recorded delivery. This document was not forwarded to the Judge and secondly, the Judge accepted the appellants’ mother had sole responsibility and that her sister had merely acted on her instructions providing day-to-day care and in such circumstances the appeal should have been allowed under paragraph 297(i)(e) HC 395.
8. Permission to appeal was initially refused by Judge of the First-tier Tribunal Andrew on December 28, 2017 on the basis the grounds were misconceived because the only available ground of appeal was on human rights grounds.
9. Permission to appeal was renewed to the Upper Tribunal and Upper Tribunal Judge Plimmer granted permission to appeal on May 15, 2018 stating:
  - (a) As the Tribunal did not await that information there was an arguable error but the materiality of such an error was questionable because the Judge accepted the appellants’ mother had sole responsibility;
  - (b) There was an absence of any evidence regarding the appellants’ mother’s partner or whether or not she could reasonably return to the Gambia. She had entered the United Kingdom as a spouse and her witness statement and the grounds of appeal failed to acknowledge that the appeal was on human rights grounds only

and therefore it was important to provide evidence as to why family life could not be enjoyed in the Gambia (see Charles (human rights appeal: scope) [2018] UK UKUT 89 (IAC)).

10. Upper Tribunal Judge Plimmer directed:
  - (a) The appellants' solicitors had to provide a witness statement within 14 days of the decision been sent out by the Tribunal setting out what steps were taken to put evidence of what is referred to in paragraph 5(b) above and in particular explaining why the grounds of appeal and witness statement failed to acknowledge that this was a human rights appeal and to serve any appropriate evidence relevant to the issue with an appropriate application to explain why such evidence was not available to the First-tier Tribunal together with any amended grounds of appeal.
  - (b) The respondent was to provide a Rule 24 response within 28 days of the decision been sent to him setting out whether, in light of the Tribunal's finding that the Immigration Rules were met whether the decision would be withdrawn and secondly dealing with any evidence served by the appellants' solicitors under paragraph 6(a) above.
11. On checking the court file, I noted the letter that had been sent by the appellants' solicitors had been received but the Judge had endorsed that it had only been sent to him on June 5, 2017 and he had only seen it on June 10, 2017 which was the day after the decision had been promulgated.
12. In response to the Tribunal's directions a letter, dated June 8, 2018, was sent by the appellants' representatives which contained a statement from the aforementioned representatives together with amended grounds of appeal that were now relied upon. Mr Bramble indicated that this had not been received and consequently no response had been submitted. He however stated that the grounds of appeal were opposed.

### **SUBMISSIONS**

13. Ms Chowdhury relied on the grounds of appeal and submitted that as the Judge had concluded the Immigration Rule (paragraph 297(i)(e) HC 395) was met then this should have been a weighty factor in any proportionality assessment. The Judge should have allowed the appeal outright.
14. Mr Bramble invited the Tribunal to refuse the application. Whilst the Judge accepted the appellants satisfied paragraph 297 HC 395 it was clear that the Judge rejected the appeals under article 8 and in doing so had had regard to all the evidence but subsequently concluded refusing entry clearance was not disproportionate. Mere compliance with the Immigration Rules was insufficient as the appellants had to show there were compelling circumstances that justified an appeal being allowed. The Judge gave weight to compliance with the Immigration Rules and took into account the sponsor had established some form of private life in the United Kingdom and had a family life with the appellants. Whilst reliance was placed on the decision of Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC) he submitted that this was an

entry clearance case whereas the current applications were for indefinite leave to remain.

## FINDINGS

15. I am concerned with appeals against decisions to refuse the appellants entry clearance under article 8 ECHR. In giving permission to appeal Upper Tribunal Judge Plimmer raised an issue regarding additional evidence that had been served on the Tribunal but had not been taken into account by the Judge.
16. Having reviewed the Tribunal file I am satisfied that the information did not come to the attention of the Judge until after the decision had been promulgated. However, as the Judge concluded, in paragraph 21 of the decision, the sponsor did have sole responsibility of the appellants I am satisfied that there is no error on this issue as the material that was submitted only went to that issue and the Judge decided that issue in the appellants' favour.
17. Upper Tribunal Judge Plimmer gave permission but stated she was concerned about "the absence of any evidence regarding the sponsor's partner or indeed whether or not the sponsor could reasonably return to the Gambia. After all, the sponsor entered the United Kingdom as a spouse. Although, the appellants are legally represented, the sponsor's witness statement and the grounds of appeal entirely failed to acknowledge that the appeal was on human rights grounds only and therefore it was important to provide evidence as to why family life could not be enjoyed in the Gambia."
18. These concerns were adopted by Mr Bramble who opposed the applications to set aside the Judge's decision. He pointed to the fact that there was a total lack of evidence produced about private life or about any of the matters highlighted in the permission. His submission was that it was not the task of the Upper Tribunal to rectify deficiencies in the evidence by allowing further evidence to be adduced.
19. Ms Chowdhury's case, put at its highest, is that as the Judge found there was compliance with the Immigration Rules then it followed the Judge should have allowed the appeal under article 8 ECHR.
20. The Court of Appeal in TZ (Pakistan) and PG (India) and The Secretary of State for the Home Department [2018] EWCA Civ 1109 provided some useful guidance on the relationship between the Immigration Rules and Article 8 ECHR. At paragraph 34 the Court stated:

"The policy of the Secretary of State as expressed in the Rules is not to be ignored when a decision about article 8 is to be made outside the Rules... where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal provided their case engages article 8(1), for the very reason that it would then be disproportionate that person to be removed."
21. In granting permission Upper Tribunal Judge Plimmer was inviting the respondent to consider his position in light of the Judge's finding on sole responsibility albeit she

acknowledged the appeal papers before the Judge were lacking in material and detail. However, the Supreme Court make it clear that where article 8 is engaged then the fact the appellant's have satisfied the Immigration Rules would make it disproportionate for the appellants to be refused entry.

22. The Judge accepted that there was family life between the appellant and sponsor and also accepted the appellant satisfied paragraph 297(i)(e) HC 395 and accordingly I find that in refusing to allow the appeals under article 8 ECHR the Judge erred.
23. I raised with the representatives at the Hearing whether or not further evidence or a continuance would be necessary in the event I found there was an error and both representatives agreed the case could be dealt with on the papers already before me.
24. Having found there is an error I have gone on to remake the decision. I place great weight on the fact the Immigration Rule was met and following the guidance in EZ above I allow the appeals under article 8 ECHR.

### **DECISION**

25. There was an error in law for the reasons set out above.
26. I have remade the decision and allowed each of the appeals

Signed

Date 19/07/2018



Deputy Upper Tribunal Judge Alis

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

I do not make a fee award as the appeals have been allowed based on the evidence submitted with the grounds of appeal.

Signed

Date 19/07/2018



Deputy Upper Tribunal Judge Alis