



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/15213/2017
HU/15218/2017

THE IMMIGRATION ACTS

**Heard at UT (IAC) Hearing in Field House
On 6 March 2019**

**Decision & Reasons
Promulgated
On 21 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

and

**PETRA AKUFFO ARYEE
MANUELLA TAKYI ARYEE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondents

Representation:

For the Appellant: Ms L Kenny, Senior Home Office Presenting Officer

For the Respondent: Mr M Sowerby, Counsel instructed by Pioneer Solicitors

DECISION AND REASONS

Background

1. The appellant in this case is the Entry Clearance Officer and the respondents are Ms Petra Akuffo Aryee and Ms Manuella Takyi Ayree, siblings and citizens of Ghana born on 16 June 1997 and 28 August 1998 respectively. For the purposes of this decision and reasons I refer to the parties as they were before the First-tier Tribunal where the siblings were

the appellants and appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer, dated 12 September 2017, to refuse to grant the appellants' entry clearance as the adult children of a person present and settled in the UK. In a decision promulgated on 28 December 2018, Judge of the First-tier Tribunal James allowed the appellants' appeals on human rights grounds, Article 8.

2. The respondent appeals with permission on the grounds that the First-tier Tribunal Judge erred in finding that the appellants enjoy family life with their father and that this was a misdirection of law. The grounds went on to argue that at [28] the judge appeared to conflate being unmarried with being dependent and without any further compelling reasons this was insufficient to allow the appeal and the grounds argued that the case law including in **Kugathas v SSHD [2003] EWCA Civ 31** had not been correctly followed and the judge had failed to properly apply the guidance that family ties between adults and their parents or siblings attract lesser protection unless there is "evidence of further elements of dependency, involving more than the normal emotional ties."

Error of Law Discussion

3. Although First-tier Tribunal Judge Davidge granted permission on entirely different grounds on the basis that (1) it was arguable that the judge had misapplied **Devaseelan** and; (2) that the judge had failed to give weight to the public interests considerations, the permission judge made no reference to the decision of the President in **AZ (error of law; jurisdiction PTA practice) Iran [2018] UKUT 00245** which provides including as follows:

"Permission to appeal to the Upper Tribunal should be granted on a ground that was not advanced by an applicant for permission, only if:

- (a) The judge is satisfied that the ground he or she has identified as one which has a strong possibility of success:
 - (i) for the original appellant; or
 - (ii) for the Secretary of State, where the ground relates to a decision which, if undisturbed, would breach the United Kingdom's international treaty obligations; or
- (b) (possibly) the ground relates to an issue of general importance, which the Upper Tribunal needs to address."

4. There was no suggestion or discussion by Judge Davidge as to whether the additional grounds which he identified would, if undisturbed, breach the United Kingdom's international treaty obligations or that the grounds related to issues of general importance.
5. Ms Kenny did not suggest this was the case and indeed confirmed that she sought only to rely on the grounds settled for permission to appeal (as summarised above).

6. Although Mr Sowerby initially attempted to resist these grounds on the basis that permission was not granted on that basis, that is misconceived including as Judge Davidge, at [4] of the permission decision, confirmed that “the grounds reveal an arguable error of law” and unless specifically refused I am satisfied that all grounds settled in the permission application were arguable before me.
7. The main issue argued by the Secretary of State in the grounds for permission was that the judge’s decision fell foul of the case law in relation to whether or not family life exists for adult relatives. However, the judge, having set out in some detail the evidence before him at [18a] through to [18t] of the decision and reasons, directed himself in relation to the relevant jurisprudence, including of **Kugathas**, in respect of family life. The judge considered that there was evidence of both emotional and financial dependency and considered the sponsor’s direction of the appellants’ upbringing and their daily lives for a number of years, not least as they are not leading independent lives. The judge found that the sponsor’s contact and visits confirm this and their ties of affection remain in situ [27].
8. It is therefore misconceived for the respondent to argue that the judge erred as the judge had in mind and applied the correct test. Those findings also have to be considered in the context of the appellants’ situation which the judge had set out, including the judge had accepted, for the adequate reasons he gave, that the sponsor had had sole responsibility for the appellants since February/March 2014 and accepted that their mother had abandoned them.
9. The judge also accepted, at [28], that there were significant difficulties with the appellants’ current living situation with their aunt who was not “fully welcoming to their presence” and that this had led to the appellants’ relying even more on their father for support.”
10. In the context of the judge’s reasoned findings, which were evidence-based, the judge clearly gave more than adequate reasons for finding why there was family life and why the ties went beyond normal emotional ties between adult children and their father.
11. Ms Kenny in her oral argument submitted that the judge had failed to find compelling reasons for allowing the appellants’ appeal under Article 8; it specifically being her contention that the judge had in effect run a “near miss” argument in that these appellants had previously been unsuccessful before the First-tier Tribunal when they were minors, Judge Clarke finding in a decision promulgated on 14 April 2016, that their appeal at that stage fell to be dismissed. I do not agree. I note in passing, that even if Judge Davidge’s grounds had been properly before me, they have not been established, including as (contrary to that decision) the judge correctly directed himself in relation to **Devaseelan**, at [14], and took the previous judge’s case as a starting point and then considered the further evidence that was adduced, including why it had not been available before the First-

tier Tribunal. Although Judge Davidge identified a further new ground in relation to public interest considerations and the fact that the appellants did not meet the immigration rules, again the judge properly directed himself as to the public interest considerations and addressed this including at [9] where the judge accepted that the appellants could not meet the immigration rules and clearly therefore had this in mind and at [31] and [32] where he considered the public interest and took into account the need for an effective immigration system. It was open to the judge to come to the reasoned conclusions he did.

12. Although the First-tier Tribunal Judge may not have specifically highlighted why the appellant's case was compelling, it is evident on a fair reading of the decision that the judge found it to be so, including in the acceptance of the evidence that the appellants had been abandoned by their mother and were currently in a very precarious accommodation position and where they were dependent on their father including that he directed their education, chose their medical care, their religious instruction and their church attendance and that he regularly visited them. The judge also turned his mind to the fact that the appellants were over 18 but considered including as follows:

“In coming to my decision I have taken into account the case of **AP (India) v Secretary of State for the Home Department [2015] EWCA Civ 89** (13 February 2015) in particular paragraphs 41, 45 and 51. I find there is family life between the appellants and their father, and their ongoing separation constitutes sufficiently serious interference with their family life to engage their Article 8 ECHR rights, particularly in regard to their position as two single unmarried dependent female daughters taking into account the cultural milieu and context in Ghana. The abandonment and rejection by their mother, and placement in an extended family member's home which is not happy to do so, there are clearly some anxieties about the three young men being in the same household and how this conflicts with the father's strict religious views, as well as the paternal aunt's concerns about overcrowding and her wish not to house the daughters anymore. The father confirmed that due to cultural and gender division of Rules in Ghana that his daughters are required to cook, clean and care for the three boys, in order to remain in the household, even though the father provides payment for their accommodation and maintenance. This is also of concern for the father, as was their moving from the family home in 2014 upsetting their stable family household, when their mother abandoned them, and they had to move to live with their paternal aunt.

...”.

13. The judge also considered the guidance in **Singh [2015] EWCA Civ 630** regarding adult children and that there is not a bright light where a child will “suddenly cease to have a family life” at midnight when they turn 18.
14. The judge properly took into account, when considering family life, the compelling nature of this case and that family life had been continued at a distance. Whilst it may well be that another Tribunal may have reached a

different conclusion, that is not the test. The judge gave adequate reasons for the conclusions reached and they could not be said to be irrational.

15. The decision of the First-tier Tribunal does not contain an error of law such that it should be set aside and is maintained.
16. No anonymity direction was sought or is made.

Signed

Date: 19 March 2019

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

I maintain the fee award made in the First-tier Tribunal.

Signed

Date: 19 March 2019

Deputy Upper Tribunal Judge Hutchinson