



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

Appeal Numbers: PA/00608/2018
PA/00612/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Tribunal
On 12 July 2019**

**Decision & Reasons
Promulgated
On 14 August 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**DAVID [D]
SARAH [D]
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr P Harvey instructed by Berlow Rahman

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Kenya. They appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of respectively 8 September 2017 and 20 December 2017 refusing asylum and human rights claims.
2. As it transpires I can deal fairly shortly with the issues in the case since there was agreement that the judge had erred in law.

3. The essence of the appellants' claims is that they are at risk on return to Kenya on account of their perceived political and religious beliefs as the children of [GD] who is as described in the judge's decision at paragraph 3 a high profile self-proclaimed "archbishop" who is currently awaiting trial in Kenya on charges of kidnapping babies.
4. The judge dismissed the appeal, finding that the appellants were not at real risk of serious harm on return to Kenya and also concluding that there were no compelling reasons for leave to be granted outside the Immigration Rules.
5. I deal with that final point first. It is clear from all the decision letters in the case of each appellant that they were granted 30 months' leave on the basis that a decision to remove would result in unjustifiably harsh consequences to them and their family. This does not appear to have come to the judge's attention since he said at paragraph 33 that there were no compelling reasons for leave to be granted outside the Immigration Rules.
6. Mrs Aboni was able to inform me that they had now been given documentation in respect of those periods of leave. There is no question clearly of the Secretary of State seeking to renege from what had been stated in the decision letters. Accordingly, it is clear that the appellants are entitled to and indeed have the 30 months' period of leave that they were granted in the decision letters, in each case. There is no materiality in my view to the judge's error in that regard since there is no question of that leave being sought to be taken away from them.
7. As regards the protection issues, it was common ground that the judge had erred with regard to his handling of several pieces of evidence. The first of these is the failure to refer at all to the evidence of the appellants' sister Rebecca who referred to ill-treatment of their father in a Kenyan prison both in terms of the conditions he is experiencing and the infliction of harm on him by the guards. Evidence to similar effect was provided in a statement by another brother, Daniel. Though his evidence is referred to in the judgment it does not cover that particular salient point.
8. The third piece of evidence not properly considered is that of Swaka Advocates. The judge doubted the authenticity of this evidence. It had been said to be attached to an email but the judge said that the email which was attached had not been produced. In fact Mr Harvey was able to show me that indeed that email was provided, in the third inventory of productions. The judge therefore erred in that regard also, and that is of materiality given the reference there also to the ill-treatment/Article 3 issues concerning the appellants' father. In addition, it was argued, and I see some force to this in addition, that in his paragraph 22 the judge failed fully and accurately to set out the submissions made on behalf of the appellants. The essential point being made was that although their

brother [AO] had been able to go to Kenya and visit their father's advocate, he did so on the basis of the protection of a British passport and bearing a different surname.

9. It is common ground that all these points are material to the issue of risk on return to the appellants on account of their perceived association with and identity of views with their father. This evidence is of clear materiality and was not properly if at all addressed by the judge. Accordingly, the appeal will have to be reheard. I agree with Mr Harvey that unfortunately the degree of rehearing that is necessary in this case is such that the matter will need to be reheard in the First-tier Tribunal.
10. I direct that the matter be reheard in Glasgow. It appears that there are funding difficulties resulting from the fact that the Scottish Legal Aid Board will not fund proceedings in England. That has caused problems for the appellants in connection with the hearing here in Birmingham. Accordingly, it is important that the matter when it is relisted is relisted for hearing in Glasgow.

No anonymity direction is made.



Signed

Date 7 August 2019

Upper Tribunal Judge Allen