



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003252
UI-2024-003253

First-tier Tribunal No:
HU/54656/2023
HU/54658/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 22nd of October 2024

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**OJ
OO**

(ANONYMITY ORDER MADE)

and

The Entry Clearance Officer

Appellant

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 16 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants and any member of their family is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellant or their family members. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge J P Howard who allowed the appellants human rights appeals in a decision promulgated on 1 May 2024.
2. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.
3. Permission to appeal was granted by First-tier Tribunal Judge Austin on 19 June 2024.

Anonymity

4. An anonymity direction has been made because the appellants are minors and to avoid any risk to the sponsor who is in a same-sex relationship.

Factual Background

5. The appellants are twin siblings and nationals of Nigeria now aged three years old. On 26 December 2022 applications were made for the appellants to enter the United Kingdom as the adopted children of Mrs O (hereinafter referred to as the sponsor).
6. Those applications were refused by way of decisions dated 22 February 2023 and it is these decisions which are the subject of these human rights' appeals. The first matter raised in the decisions to refuse entry was the respondent's observation that the British citizen sponsor is not present and settled in the United Kingdom nor intending to so settle owing to her having a job offer to work in Saudi Arabia. Therefore it was said that the appellants did not meet the requirements of paragraph 310(i)(a) to (f) of the Immigration Rules. Additionally, the respondent noted that Nigeria did not appear among the countries listed in The Adoption (Recognition of Overseas Adoptions) Order 2013 and as such the adoptions were not legally recognised in the United Kingdom. Nor did the respondent accept that the requirements of a de facto adoption were met owing to insufficient evidence.
7. Reference was made in the decisions to the inability of the sponsor to live with her civil partner in either Nigeria or Saudi Arabia as well as an absence of serious or compelling family or other considerations which made the exclusion of the appellants undesirable. Thus the application was also refused under paragraph 310(i)(g) of the Rules. Furthermore, the respondent did not accept that the appellants could be maintained and accommodated by the sponsor and the application was refused under 310(iv) and 316A (iv) of the Rules.
8. The applications further fell for refusal under paragraph A39 of the Rules because no valid medical certificates had been provided to confirm the appellants were free from pulmonary tuberculosis.

The decision of the First-tier Tribunal

9. At the hearing before the First-tier Tribunal, the appellant's representative accepted that the appellants could not meet the requirements of paragraphs 309A, 310 or 316A of the Rules and that the issue to be resolved was whether the refusal of entry clearance was a disproportionate interference with their rights under Article 8 ECHR.

10. The judge heard oral evidence from the sponsor and her partner, noting that the appellants were living in Saudi Arabia with the sponsor whereas the two children of the sponsor's partner lived with her in the United Kingdom, but had met the appellants and were in regular communication. The inability of the family to reside either in Nigeria or Saudi Arabia was found to give rise to unjustifiably harsh consequences and thus the appeals were allowed under Article 8.

The grounds of appeal

11. There is a single ground of appeal, that the First-tier Tribunal made a material misdirection of law on a material matter. The substance of that ground is that the judge failed to have 'proper regard' to the fact that the appellants' adoptions were not recognised by the United Kingdom.
12. Permission to appeal was granted on the basis sought.
13. A response to the Secretary of State's grounds of appeal was submitted on behalf of the appellants by UK Migration Lawyers on 10 September 2024. The appeal was opposed, with the submission made that the only issue before the First-tier Tribunal was that of proportionality, it having been conceded that the appellants could not meet the requirements of the Immigration Rules. It was contended that the concerns raised in the grounds ought to have been ventilated at the hearing before the First-tier Tribunal for the first time. Permission was sought to adduce additional evidence in the form of a social worker's report which was not available at the time of the initial hearing. No such evidence was attached to the email sent to Field House correspondence and copied to the respondent.

The error of law hearing

14. The matter comes before the Upper Tribunal to determine whether the decision contains an error of law and, if it is so concluded, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was attended by only a representative for the Secretary of State.
15. The Case Management System showed that a notice of hearing was sent to UK Migration Lawyers by email on 18 September 2024 and by post to the address given for the appellants in Nigeria. The said firm sent a letter to the Upper Tribunal by return stating that the firm had ceased acting for the appellants.
16. By 1055 hours there was no contact from any person on behalf of the appellants. I was satisfied that notice of hearing had been served to the appellants' representatives and the appellants at the address provided. The CSM notes that no email address had been provided for the appellants. Ms McKenzie made brief submissions and the conclusions below reflect those arguments and submissions where necessary. A bundle was submitted by the Secretary of State containing, inter alia, the core documents in the appeal, including the appellant's and respondent's bundles before the First-tier Tribunal.
17. At the end of the hearing I announced that the First-tier Tribunal had materially erred and that out of an abundance of caution given the absence of representation, the appeal would be remitted to the First-tier Tribunal with no preserved findings.

Discussion

18. This appeal concerns two small children who are said to have been adopted by the sponsor in Nigeria, a country whose adoption orders are not recognised by the United Kingdom in The Adoption (Recognition of Overseas Adoptions) Order 2013.
19. In the absence of confirmation that the appellants are to be treated as the children of the sponsor, there are obvious concerns regarding the trafficking of minors.
20. The judge materially erred in failing to apply the findings in *TY (Overseas Adoptions - Certificates of Eligibility) Jamaica* [2018] UKUT 00197 (IAC) in relation to the finding that there was a prohibition in bringing a child to the United Kingdom except where the Immigration Rules make other provision. It is common ground that the appellants could not meet the requirements of the Rules.
21. The error was that the judge treated Article 8 as a general dispensing provision and circumvented the very real concerns as to the best interests of these vulnerable appellants.
22. The First-tier Tribunal judge referred to no evidence to indicate that the appellants would be subject to adoption proceedings and other necessary requirements once they enter the United Kingdom. For instance the sponsor had not submitted evidence to show that she had obtained a Certificate of Eligibility from the Department for Education nor contacted a local authority or registered agency in the United Kingdom to be assessed as a suitable person by an adoption panel, as required by the Adoption Act 2002, The Adoptions with a Foreign Element Regulations 2005 and paragraph 316A(viii) of the Rules. Contrary to what was said in the response to the grounds on behalf of the appellants, these issues were raised in the decisions refusing entry clearance.
23. I declined to retain the matter at the Upper Tribunal for remaking owing to the indication in the Rule 24 response that a social work report was now available. It is unclear whether this report was obtained from a local authority in the United Kingdom as required. Nonetheless, owing to the sudden withdrawal of representation and the fact that the appellants are abroad, the interests of justice indicate that these appeals require careful reconsideration.

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.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge J P Howard.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

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