IAC-AH-SAR-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: OA/14850/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**
**On 13 January 2016**

**Decision & Reasons Promulgated**
**On 26 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**C K**
**~~(ANONYMITY DIRECTION NOT MADE)~~**

Appellant

**and**

**ENTRY CLEARANCE OFFICER (ACCRA)**

Respondent

**Representation:**
For the Appellant: Mr J Martin of Counsel
For the Respondent: Ms A Everett, a Home Office Presenting Officer

## DECISION AND REASONS

### Introduction

**1.** This is an appeal by the appellant against a decision of the First-tier Tribunal who dismissed his appeal against a decision taken on 26 October 2014 to refuse his application for entry clearance for settlement to join his aunt and uncle in the United Kingdom.

### Background Facts

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**2.** The appellant is a citizen of India who lives with his parents in Ghana. His date of birth is 2 August 1999. He applied for entry clearance under Rule 297 of the Immigration Rules HC 395 (as amended) (the 'Immigration Rules'). That application was refused by the Entry Clearance Officer for the following reasons. The Entry Clearance Officer considered that the appellant had not provided any evidence to demonstrate that his aunt and uncle had continuing control and direction over his upbringing including the making of important decisions in his life. No details had been provided as to why he was leaving his parents in Ghana to go and live with his aunt and uncle in the UK. The Entry Clearance Officer was not satisfied that sole responsibility had been established. Further, the Entry Clearance Officer considered that the appellant's parents play an active part in his life now and as a result was not satisfied that he met the requirements of paragraph 297 of the Immigration Rules. The Entry Clearance Officer also considered whether the application raised any exceptional circumstances consistent with the right to respect for family life contained in Article 8 of the European Convention on Human Rights ('ECHR'). The Entry Clearance Officer found that the appellant's application did not fall for a grant of entry clearance outside the Rules.

**The Appeal to the First-tier Tribunal**

**3.** The appellant appealed to the First-tier Tribunal against the Entry Clearance Officer's decision. In a determination promulgated on 16 June 2015 First-tier Tribunal Judge Heatherington dismissed the appellant's appeal. The judge found that there were no serious and compelling family or other considerations which made the exclusion of the appellant from the UK undesirable. The judge also found that the appellant's aunt and uncle would be able to fund the appellant's education from the United Kingdom. Outside of the requirements of the Immigration Rules the judge found that the appellant does not fall for a grant of entry clearance, finding that the best interests of the appellant are for him to remain in Ghana with his parents. The judge found that the appeal raised no exceptional circumstances, which, consistent with the right to respect for family life contained in Article 8 of the ECHR, would warrant a grant of entry clearance to come to the UK.

**The Appeal to the Upper Tribunal**

**4.** The appellant sought permission to appeal to the Upper Tribunal. On 3 November 2015 First-tier Tribunal Judge Zucker granted the appellant permission to appeal. Thus the appeal came before me.

**Summary of the Submissions**

**5.** The grounds of appeal assert that although the judge was correct to focus on the appellant's best interests, applying the decision in **Mundeba [2013] UKUT 00088** ('**Mundeba**') the judge's analysis in paragraphs 18 to 24 is not sufficiently detailed and does not take account of the evidence supplied by the appellant. For example, at paragraph 22 the judge stated

there are stable arrangements for the appellant's care in Ghana. This is at odds with the evidence and in conflict with the judge's finding in paragraph 26 that the appellant's family's financial difficulties were credible. The judge accepted in paragraph 27 that the appellant had been adversely affected by the situation and given those findings it is submitted that the judge failed to take these matters into account later in the same paragraph rendering the finding irrational. It is submitted that the judge has decided the issue of the appellant's best interests and whether there are serious and compelling family reasons just by referring to the Rules. It is asserted that those considerations seem to apply to an application outside the Rules but the appellant was arguing that he met paragraph 297 and in those circumstances those reasons for finding against the appellant are undermined. It was also submitted that the judge has taken into account irrelevant factors that are not in paragraph 297. This can be seen further when he considered whether there are any insurmountable obstacles to life continuing in Ghana.

**6.** In his oral submissions Mr Martin asserted that the judge took into account irrelevant factors and failed to apply the correct test. He submitted that the findings are not clear on central issues. The judge looked exclusively at the situation in Ghana and the emotional needs of the appellant when undertaking a best interests' analysis. The case of **Mundeba** says that best interests have to inform the decision but does not answer the question of serious and compelling reasons. The judge's conclusions from paragraph 25 of the decision paraphrases what is in 297 of the Immigration Rules. The question of adequate care in the country of origin is not the same as serious and compelling family circumstances. In paragraph 27 the judge records that the appellant has been taken out of school and understands that this has caused him embarrassment. In the preceding paragraph the judge found financial difficulties were credible, that is the reason that the appellant was taken out of school and this was confirmed by the school's letter at page 10 of the appellant's bundle. At paragraph 27 he asserted that there is a lack of appreciation of the embarrassment that was caused by the unavoidable consequence of the family's circumstances in Ghana. At the end of paragraph 27 the judge observes that the UK cannot offer universal health or education, these are not matters that come within a consideration of the test of serious and compelling circumstances that would make exclusion of the child undesirable. The judge has taken into account extraneous matters that are not relevant. Referring to the **Mundeba** case he submitted that head note 4 sets out that family considerations require evaluation of the child including emotional needs. In this case there are unacceptable social, economic and environmental issues and must include consideration of whether the environment is unstable to meet the needs of the child. It was submitted that owing to the electricity crisis, the significant inflation, the family were restricted to one meal a day. It was not only withdrawal of the child from school that ought to have been taken into consideration. The appellant had finished the end of year 10 at school and is now shut off from that development of his education. At paragraph 29 the judge has

not answered those points. There is no analysis of the practical situation the appellant found himself in in Ghana. It was submitted that the judge had failed to answer the right questions.

**7.** The respondent served a Rule 24 (of the Tribunal Procedure (Upper Tribunal) Rules 2008) notice opposing the appellant's appeal. It is submitted that the grounds of appeal are mere disagreements with the judge's findings and an attempt to reargue issues, which were fully considered. It is asserted that the Tribunal in **Mundeba** provided guidance as to the parameters of paragraph 297(i)(f). Reference was made to paragraphs 33 and 34 of the decision in **Mundeba** and it is asserted that the First-tier Tribunal Judge had due regard to the high threshold and the meaning of very compelling circumstances when making his findings of fact. While the financial difficulties of the appellant's family may be credible, the material advantages of life in the United Kingdom is not the test, see paragraph 50 of **Mundeba**.

**8.** Ms Everett submitted that there is no error of law in the First-tier Tribunal decision and that the judge directed himself correctly. The judge was required to consider serious and compelling reasons. He looked correctly at the case of **Mundeba** and the guidance in **Mundeba** at head note 4 which sets out the consideration of the best interests of a child will usually involve continuity of residence. The judge commences with those considerations at paragraph 18 and at paragraph 19 considers that the appellant has no social ties to the UK. In paragraph 20 the judge considers that the appellant does not have any illness and there is no evidence that he would not have access to healthcare if he was ill in the future. At paragraph 21 the judge looks at the ties in the UK. She submitted that the judge had directed himself correctly. The judge considered the precarious nature of the family's economic situation impacting in such a way that denial of that opportunity brings him within the test. The evidence supports the view that there is not enough food, which is a serious matter, but the judge looked in the round and found that the sponsor could support him; there was no need to take him away from his parents. She submitted that the comment about the health service in the UK was irrelevant and it does not render the rest of the reasoning in error. The appellant's case is that he is within a loving family that is in economic difficulty that will impact on the appellant and does form part of the judge's reasoning at paragraphs 28 and 29. The economic needs could be obviated by support by the relatives in the UK.

**9.** Mr Martin submitted in reply that the points referred to in paragraph 4 in the head note to the **Mundeba** case are not pre-requisites, also they set out that the best interests will usually be served by a child remaining with his parents and having continuity of residence but that is simply another factor. In all cases under paragraph 297 there will be a change of location, the fact that the judge has correctly said it is not a medical case at paragraph 20 does not answer the question. Having to stop education is a fundamental right. The child was about to take his GCSEs. Regarding the assertion that the aunt and uncle were able to support the family in

Ghana, the last article in the appellant’s bundle highlighted the issues to do with the depreciation of the currency in Ghana and the issue concerning foreign currency is that it is simply impractical to send money to Ghana. On that basis the judge’s finding was incorrect as the aunt and uncle cannot practically provide resources to the appellant in Ghana.

## Immigration Rules

**10.** Paragraph 297 of the Rules is in these terms:

> “297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:
>
> (i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:
>
> …
>
> (f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and
>
> (ii) is under the age of 18; and
>
> (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
>
> (iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and
>
> (v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and
>
> (vi) holds a valid United Kingdom entry clearance for entry in this capacity.”

## Discussion

**11.** The only issue that arises under the provisions in paragraph 297 of the Immigration Rules in this case is whether there are serious and compelling reasons family or other considerations, which make exclusion of the appellant form the UK undesirable. The other requirements of that paragraph have been accepted as met.

**12.** The starting point is that there is a high hurdle to overcome in order to establish that that there are ‘serious and compelling family or other considerations’. In **Mundeba** it was held that:

> “34. In our view, ‘serious’ means that there needs to be more than the parties simply desiring a state of affairs to obtain. ‘Compelling’ in the context of paragraph 297(i)(f) indicates that considerations that are persuasive and powerful. ‘Serious’ read with ‘compelling’ together indicate that the family or other considerations render the exclusion of the child from the United Kingdom undesirable. The analysis is one of degree and kind. Such an interpretation sets a high threshold that excludes cases where, without more, it is simply the wish of parties to be together however natural that ambition that may be.
>
> …
>
> 36. The exercise of the duty by the Entry Clearance Officer to assess the application under the Immigration Rules as to whether there are family or other considerations making the child’s exclusion undesirable inevitably involves an assessment of what the child’s welfare and best interests require. Where an immigration decision engages Article 8 rights, due regard must be had to the UN Convention on the Rights of the Child. An entry clearance decision for the admission of a child under 18 is “an action concerning children...undertaken by…administrative authorities” and so by Article 3 “the best interests of the child shall be a primary consideration”. Although the statutory duty under s.55 UK Borders Act 2009 only applies to children within the UK, the broader duty doubtless explains why the Secretary of State’s IDI invites Entry Clearance Officers to consider the statutory guidance issued under s.55.
>
> 37. Family considerations require an evaluation of the child’s welfare including emotional needs. ‘Other considerations’ come into play where there are other aspects of a child’s life that are serious and compelling - for example where an applicant is living in an unacceptable social and economic environment. The focus needs to be on the circumstances of the child in the light of his or her age, social background and developmental history and will involve inquiry as to whether: -
>
> (i) there is evidence of neglect or abuse;
>
> (ii) there are unmet needs that should be catered for;
>
> (iii) there are stable arrangements for the child’s physical care.
>
> The assessment involves consideration as to whether the combination of circumstances sufficiently serious and compelling to require admission.”

**13.** The grounds in essence argue that there is a lack of reasoning, irrelevant factors have been taken into account and certain aspects of the evidence have not been taken into account. The appellant argues that the judge’s finding that there are stable arrangements for the appellant’s care in Ghana is at odds with the evidence that the appellant’s family’s financial difficulties were credible and that the appellant had been adversely affected by the situation rendering the finding irrational. It is asserted that the judge has not answered the practical situation the appellant found himself namely the electricity crisis, the significant inflation and that the

family were restricted to one meal a day. It was not only withdrawal of the child from school that ought to have been taken into consideration.

**14.** The judge has considered the factors in light of the considerations set out in the **Mundeba** case. The fact that the appellant's family is in serious financial difficulty is not at odds with a finding that there are stable arrangements for his care. The grounds of appeal to the First-tier Tribunal indicated that the family have chosen to continue to continue to educate his sister so although the financial situation is difficult the family are currently paying for her education. There is evidence from the appellant's father that **sometimes** they had to have one meal a day. These factors clearly have an adverse effect on the family and should not be underestimated. However they affect the whole family including the appellant's sister. The judge has clearly considered all of the relevant factors and evidence. A judge does not have to set out in detail all of the pieces of evidence considered. In paragraphs 11-16 the judge addresses the financial problems and associated consequences. The judge found that the financial pressures result in some needs of the appellant not being met. The judge has not focussed exclusively on the withdrawal of the appellant from school.

**15.** The appellant asserts that there is a lack of appreciation of the embarrassment that was caused by the unavoidable consequence of the family's circumstances in Ghana. The judge recognised that the removal of the appellant from his school was as a result of financial difficulties – paragraph 11 and 14. The reference to embarrassment in paragraph 27 is recognised by the judge as resulting from his untimely removal from his school. In any event howsoever the embarrassment might have arisen this would not amount to a serious and compelling consideration so as to require admission.

**16.** It is asserted that the judge observes that the UK cannot offer universal health or education, these are not matters that come within a consideration of the test of serious and compelling circumstances that would make exclusion of the child undesirable. I accept that at this is not a relevant consideration. However, I do not consider that this taints the decision to any or any material extent.

**17.** The appellant asserts that the judge fails to consider the correct test namely the serious and compelling reasons and erred by considering almost exclusively best interests and erred when he considered whether there are any insurmountable obstacles to life continuing in Ghana.

**18.** I accept that it is not relevant whether there are any insurmountable obstacles to family life continuing in Ghana. This is not a fundamental finding by the judge. The evaluation of the appellant's circumstances was not considered through the lens of considering insurmountable obstacles.

**19.** Although the judge has considered the best interests of the appellant as a primary consideration he has not failed to consider the serious and

compelling considerations test. The judge correctly considered what the best interests of the appellant were in the context of the circumstances he faced in Ghana. The test involves evaluating family or other considerations, which make exclusion of the child undesirable. As set out above in **Mundeba** it was held that *'the exercise... inevitably involves an assessment of what the child's welfare and best interests require'.* At paragraph 20 the judge considered whether there is evidence that the appellant has an illness and if health care would be unavailable. At paragraph 22 he considered that there are stable arrangements for the appellant's care in Ghana and that there is no evidence of neglect or abuse. He refers in paragraph 27 to the appellant's removal form school and the possibility that the appellant has suffered psychologically as not amounting to a serious and compelling reason to require admission.

**20.** The appellant faces a high hurdle in establishing that there are serious and compelling family or other considerations, which make his exclusion undesirable. As set out in **Mundeba** there must be considerations that are persuasive and powerful. The appellant is being looked by his loving family who are meeting his needs. Although the appellant is not receiving an education, I do not consider, having regard to his age at the date of application and his age now, that this of itself is sufficient to create a serious and compelling consideration. The appellant is living in difficult circumstances as a result of his family's severe financial difficulties. These are not sufficient to amount to serious and compelling consideration requiring admission to the UK. Although the First-tier Tribunal decision is brief there is sufficient reasoning for the findings and conclusions reached. It was rationally open to the First-tier Tribunal on the facts of this case to find that there were no family or other considerations, which make the appellant's exclusion undesirable.

**21.** The judge's findings regarding the ability of the appellant's aunt to fund his education is not a pre-requisite to the judge's finding on the serious and compelling considerations issue. Whether or not the judge erred in failing to consider the practical difficulties is therefore not material.

**22.** There was no appeal against the findings on Article 8 outside of the Immigration Rules. In any event there are no circumstances that have not already been considered under the Immigration Rules to require a consideration outside of the Immigration Rules.

## Notice of Decision

**23.** The decision of the First-tier Tribunal did not involve the making of a material error on a point of law. The appeal is dismissed. The Entry Clearance Officer's decision stands.

~~**24.** I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.~~

Signed P M Ramshaw Date 25 January 2016

Deputy Upper Tribunal Judge Ramshaw