



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU222892016  
HU222912016  
HU222922016

**THE IMMIGRATION ACTS**

Heard at Centre City Tower, Birmingham  
On 2<sup>nd</sup> August 2017

Decision & Reasons Promulgated  
On 10<sup>th</sup> August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JG (FIRST RESPONDENT)  
AS (SECOND RESPONDENT)  
KS (THIRD RESPONDENT)  
(ANONYMITY DIRECTION MADE)

Respondents

**Representation:**

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

For the Respondents: Mr B Sillah (Sponsor)

**DECISION AND REASONS**

## **Introduction and Background**

1. The Secretary of State appeals against a decision of Judge Juss of the First-tier Tribunal (the FtT) promulgated on 10<sup>th</sup> January 2017.
2. The Respondents before the Upper Tribunal were the Appellants before the FtT and I will refer to them as the Claimants.
3. The Claimants are citizens of Sierra Leone. They are siblings born 6<sup>th</sup> August 1998, 10<sup>th</sup> May 1999, 17<sup>th</sup> October 2001 respectively.
4. The Claimants applied on 25<sup>th</sup> May 2016, for entry clearance to enable them to join the Sponsor in the UK.
5. The applications were refused on 23<sup>rd</sup> August 2016. It was not accepted that adequate maintenance or accommodation would be available in the UK, and therefore the requirements of paragraph 297 of the Immigration Rules were not satisfied. Because photocopied birth certificates had been produced, rather than originals, it was not accepted that the Claimants were related to the Sponsor as claimed. Article 8 of the 1950 European Convention on Human Rights was considered, and it was accepted that refusal of entry clearance may result in a limited interference with family life, but it was contended that the decision was justified and proportionate in the interests of maintaining effective immigration control.
6. The Claimants appealed, and their appeals were heard by the FtT on 6<sup>th</sup> January 2017. The appeals were allowed.
7. The Secretary of State applied for permission to appeal to the Upper Tribunal. In summary it was contended that it was not clear whether the FtT was purporting to allow the appeal under the Immigration Rules, but in any event the FtT did not have jurisdiction to do so, and it was contended that the FtT had not had regard to the evidential requirements of the rules, and had failed adequately to reason the conclusion.
8. It was clear that the appeal had been allowed under Article 8, but it was contended that the FtT reasoning was inadequate, and there was no acknowledgment of the public interest. There was no attempt to conduct a balancing exercise, considering the rights of the Claimants against the competing public interest. There was no mention of section 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).
9. Permission to appeal was granted by Designated Judge Macdonald who found it arguable that the FtT reasoning was inadequate because there was no reference to the public interest and no mention of section 117B of the 2002 Act.
10. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

## **The Upper Tribunal Hearing**

11. The Sponsor attended to represent the Claimants. He was accompanied by Mrs Sesay, a family friend, who wished to assist as a McKenzie friend. Mrs Aboni had no objection, and I agreed to allow Mrs Sesay to assist the Sponsor.
12. Mrs Aboni submitted that the FtT decision should be set aside for the reasons contained within the grounds upon which permission to appeal was granted.
13. It was contended on behalf of the Claimants, that the FtT had not made a mistake of law, and therefore the decision should stand.
14. At the conclusion of submissions I reserved my decision.

## **My Conclusions and Reasons**

15. The relevant Immigration Rule to be considered in this case is paragraph 297, but the application made by the Claimants for entry clearance, is deemed to be a human rights application. Therefore the refusal is a refusal of a human rights claim, and the only Ground of Appeal available is that the decision is unlawful under section 6 of the Human Rights Act 1998.
16. It was therefore incumbent upon the FtT to consider Article 8 of the 1950 Convention, but in so doing, the FtT was obliged to consider whether the relevant Immigration Rule was satisfied. If paragraph 297 was satisfied, this did not automatically mean that the appeals must succeed, but satisfying the Immigration Rule is a significant factor in favour of the applicant for entry clearance.
17. In this case I find the FtT was therefore correct to assess maintenance and accommodation which had been put in issue in the refusal decision. It appears that there was no dispute as to relationship before the FtT.
18. The FtT found that the maintenance and accommodation requirements contained within paragraph 297 were satisfied. Those requirements entail the applicant for entry clearance proving that adequate maintenance and accommodation would be available.
19. It is not clear what is meant in the Grounds of Appeal, at paragraph 1, when there is reference to the evidential requirements of the Immigration Rules. This may be a reference to the evidential requirements set out in Appendix FM-SE, which relate to applications made pursuant to Appendix FM. This was not an application made pursuant to Appendix FM.
20. The FtT has allowed these appeals pursuant to Article 8 of the 1950 Convention. The FtT did not err in considering the maintenance and accommodation requirements as an important factor. I find no realistic challenge has been made to the FtT conclusions that adequate maintenance and accommodation will be available for the Claimants.

21. The FtT recognised that because the Claimants were minors when their applications were made, and the third Claimant is still a minor at the date of the Upper Tribunal hearing, their best interests are a primary consideration and were considered as such by the FtT.
22. I do not accept the contention that the FtT has provided inadequate reasoning. I find the conclusions reached in relation to maintenance and accommodation are adequately reasoned. The Secretary of State may disagree with the conclusions, but has not shown that there is an error of law.
23. I do not find that the FtT reasoning in relation to Article 8 is inadequate. The Secretary of State correctly points out that the FtT has made no reference to section 117B of the 2002 Act. This, without more, is not an error of law, provided that the FtT has had regard to the considerations contained in section 117B.
24. In my view, the FtT does consider the public interest, and conduct a balancing exercise. The FtT specifically refers to the five stage Razgar approach at paragraph 29. The public interest is considered at paragraph 30, the FtT considering the economic wellbeing of the country, the prevention of crime, the protection of the rights and freedoms of others, and finds “no hint whatsoever of any wrongdoing or illegality by any of the parties concerned.”
25. In considering the public interest the FtT took into account the finding that the Claimants could be adequately maintained and accommodated. Maintenance of effective immigration controls is referred to in section 117B(1), and I conclude that this has been adequately considered.
26. Section 117B(2) confirms that it is in the public interest that individuals seeking to enter the UK can speak English. This has not been specifically mentioned in the FtT decision and I find this is an error, but it is not material. This is because the Claimants were minors when they made their application, and it is relevant to note that there is no requirement in paragraph 297 for children seeking to enter under that provision to be able to speak English.
27. Section 117B(3) confirms it is in the public interest that individuals seeking to enter the UK are financially independent. The FtT has considered this, taking into account that the Claimants are children, and specifically finding that they will be adequately financially maintained by the Sponsor.
28. The remaining sub-sections of section 117B have no application to an entry clearance application.
29. For the reasons given above, I find no material error of law, and therefore the decision of the FtT stands.

## **Notice of Decision**

The FtT did not materially err in law. The FtT decision stands and the appeal of the Secretary of State is dismissed.

## **Anonymity**

Unless and until a Tribunal or court directs otherwise, the Claimants are granted anonymity. No report of these proceedings shall directly or indirectly identify them. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made because the Claimants were minors when they made their applications for entry clearance, and is made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 4<sup>th</sup> August 2017

Deputy Upper Tribunal Judge M A Hall

## **TO THE RESPONDENT FEE AWARD**

No fee award was made by the FtT. As the decision of the FtT stands, so does the decision not to make a fee award.

Signed

Date 4<sup>th</sup> August 2017

Deputy Upper Tribunal Judge M A Hall