



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/11863/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 19 January 2018

Decision and Reasons Promulgated  
On 07 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

MR JOAO JACQUES NZANZA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Jaquiss, Counsel for Britain Solicitors, Ilford

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Angola born on 4 October 1972. He appealed against the decision of the respondent dated 11 November 2015 refusing him entry clearance as a partner under Appendix FM of the Immigration Rules and also on Article 8 grounds outside the Immigration Rules. His appeal was heard by Judge of the First-Tier Tribunal Foulkes-Jones on 21 April 2017 and dismissed in a decision promulgated on 11 May 2017.

2. An application for permission to appeal was lodged and refused by the First-Tier Tribunal. An application for permission to appeal was made to the Upper Tribunal and was granted by Upper Tribunal Judge Bruce on 8 September 2017. The permission states that while the First-Tier Tribunal directed itself to the appropriate principles to be applied when considering the best interests of the appellant's children, it is arguable that it failed to go on to make clear findings on that matter.
3. There is a Rule 24 response from the respondent which states that the Judge has made findings with respect to the best interests of the children at paragraphs 23 to 27 and has stated that the status quo can continue until the requirements of the Rules with respect to financial and accommodation matters can be resolved.
4. On 2 November 2017 the appellant appeared before me and I found that there was a material error of law in the First-Tier Tribunal's decision, as although at paragraphs 21 to 27 the Judge has made findings about the best interests of the children and has quoted the relevant case law but she has not reached any conclusion, so the children's best interests have not properly been considered in the Article 8 balancing exercise. The balancing exercise is therefore flawed and this is a material error of law. I directed that the decision by First-Tier Tribunal Judge Foulkes-Jones should be set aside and I directed a second stage hearing.
5. This is the second stage hearing.

### **The Hearing**

6. A supplementary bundle has been produced by the appellant's representatives.
7. The appellant's sponsor, his wife Mbilo Ikembo, a British citizen, took the stand. She and the appellant have two children who are both British. Counsel for the appellant submitted that there has been a change of circumstances since the First-Tier Hearing. She submitted that the sponsor now has a new job earning £20,800 per annum. This is with AGS One in Brighton and there is a copy letter from this employer in the supplementary bundle. In this bundle there are also recent bank statements.
8. The Presenting Officer submitted that original documents should be produced from the sponsor's new employer.
9. The sponsor asked that her statement be used as evidence for the hearing and Counsel asked her if the appellant has been to the United Kingdom to visit her and the children and she said he has, as he had a five year family visit visa. Counsel asked her if it is current and she said it expired a few months ago.
10. The Presenting Officer questioned the sponsor asking when the appellant last visited the United Kingdom and she said in July 2017. The sponsor attended the hearing before me in November 2017 and the sponsor said that he had not left the United Kingdom in November, since arriving in July 2017, so he was here on his visit visa.

11. The Presenting Officer asked the sponsor when she applied for her job with AGS One and she said she applied in April or May but checks had to be done so she did not start until 12 January 2018. A copy of her employment contract is in the supplementary bundle. The sponsor had the original contract and the letter from the employers with her, so the originals were available and I saw them, as did the Presenting Officer.
12. The Presenting Officer made his submissions relying on the original refusal letter which is not based on new evidence.
13. Counsel made her submissions, submitting that at the First-Tier Hearing the financial requirements had not been satisfied and there was no evidence of suitable accommodation. There is now a tenancy agreement on file and the financial requirements can be met.
14. I was referred to the amendments to the Immigration Rules relating to children. Counsel submitted that the Rules are now more flexible even if the financial requirements cannot be met. I was referred to GEN.3.1.(1) and 3.2 and she submitted that the children in this case are relevant children who are British and are under the age of 18 years. She submitted that they would be affected badly by a decision refusing the application and she submitted that there are credible prospective earnings from the employment of the sponsor and that proportionality and Article 8 have to be considered. I was asked to give considerable weight to the employment contract and the letter from the sponsor's employer. As the children are British she only requires to earn £18,600 and I was also asked to give weight to the tenancy agreement and the letter from Newham London Borough giving permission for the appellant to live at the sponsor's address and stating that the house is large enough for him to live with his wife and children.
15. Counsel submitted that with regard to Article 8 outside the Rules and the best interests of the children it must be in their best interests for the appellant to come to the United Kingdom to be with his wife and the children. She submitted that visits are not enough and at present the appellant does not have a visit visa and there is no guarantee that he will get another one as visit visas should not be used for frequent and successive visits, which is what this appellant has been doing.
16. I was also referred to the Home Office IDI relating to Appendix FM on family life as a partner or parent and private life. She submitted that it would be unreasonable to expect a British citizen child to leave the EU and the IDI states that it will usually be appropriate to grant leave to remain when there is satisfactory evidence of a genuine and subsisting parental relationship, which, she submitted, there is in this case. The IDI states that there will be certain circumstances which outweigh the interests of a child and where leave to remain will not be granted but these examples are criminality, very poor immigration history, where a person has repeatedly overstayed and deliberate breaches of the Immigration Rules, and she submitted that none of these are relevant in this case. She submitted that it would in the circumstances of this claim, be unreasonable for the children and the sponsor to leave

the United Kingdom and that in these circumstances the appellant should be granted leave to enter and remain.

17. It was pointed that at no time has the appellant overstayed in the United Kingdom. He has always been in the United Kingdom in terms of his visa and now that his five year visit visa has ended he cannot visit his family in the United Kingdom. She submitted that the family is financially independent now that the sponsor has obtained this new job and that it must be in the best interests of the children to be with both of their parents. She submitted that it would be a disproportionate breach of Article 8 if entry clearance is not granted to the appellant.

### **Decision and Reasons**

18. In this case the appellant and the sponsor are in a genuine and subsisting relationship and have two children together born in 2006 and 2008. They are both British citizens and the sponsor is British. The appellant has a visit visa and has visited on a number of occasions and the children are in full time education.
19. At the time of the First-Tier Hearing the financial requirements could not be satisfied and the accommodation requirements could not be satisfied.
20. I have considered Article 8 outside the Rules. The Rules have been relaxed relating to family life and Appendix FM. I have considered GEN.3.1.(1)(3)(8) and the evidence in the supplementary bundle. I have also considered GEN.3.2 and I have to decide whether leave should be granted on the basis of Article 8 outside the Rules and proportionality.
21. I have also taken into account the Home Office IDI dated in August 2015 and the statement therein that it would be unreasonable to expect a British citizen child to leave the EU with his/her primary carer. In this case there is satisfactory evidence of a genuine and subsisting parental relationship and none of the circumstances which would outweigh the interests of a child apply in this case.
22. A primary consideration is the children's best interests and the Secretary of State's Section 55 duty. In this case I find that it would be unreasonable to refuse the appellant entry to the United Kingdom in the present circumstances. He no longer has the means to visit regularly and there is now a credible source of income and the housing situation has been clarified. The best interests of the children are an integral part of the proportionality assessment under Article 8 and when proportionality is assessed and the balancing exercise performed, I find it would not be reasonable for the sponsor and the children to relocate to Angola and that the children's best interests are to be with both of their parents in the United Kingdom. Continued separation of the appellant from his children could result in unjustifiably harsh consequences for the children. The appellant will have good prospects of employment in the United Kingdom. In this case I find that there are no factors outweighing the best interests of the children.

**Notice of Decision**

I allow the appeal under Article 8 outside the Rules.

Anonymity has not been directed.

Signed

Date 05 February 2018

Deputy Upper Tribunal Judge Murray