



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

Appeal Numbers: OA/05943/2015
OA/05944/2015
OA/05946/2015
OA/05947/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 19 December 2017**

**Decision & Reasons
Promulgated
On 23 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**OLUFUNMILAYO [A] (FIRST APPELLANT)
[O O A] (SECOND APPELLANT)
[O A A] (THIRD APPELLANT)
[D O A] (FOURTH APPELLANT)
(ANONYMITY DIRECTIONS NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants: Mr A Adewole of Liberty & Co.

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. These are linked appeals against the decisions of First-tier Tribunal Judge Gandhi promulgated on 27 March 2017, brought with the permission of First-tier Tribunal Judge Saffer granted on 24 October 2017.

2. The First Appellant, [Olufunmilayo A] (d.o.b. [] 1970) is the mother of the other three minor Appellants whose names and personal details are a matter of record on file. The First Appellant is the partner of [Henry A], a person present and settled in the United Kingdom. The minor Appellants are his children. Applications were made for entry clearance which were refused for reasons set out in respective Notices of Immigration Decision dated 13 February 2015. The Appellants appealed to the IAC. Their appeals were dismissed for reasons set out in the linked decisions of First-tier Tribunal Judge Gandhi.
3. Of particular focus before the First-tier Tribunal, and in turn before the Upper Tribunal, was the financial requirements of the Rules. In short, it is said on behalf of the Appellants that the financial requirements of Appendix FM do not apply in respect of the minor Appellants. The Respondent resists that proposition - as is set out in brief terms in a Rule 24 response dated 22 November 2017.
4. Given the relatively narrow focus of the issue in the appeal I do not propose to set out a full rehearsal of all of the evidential materials in relation to relationship and income and so on. The appeals before the Upper Tribunal essentially turn upon a single point of law.
5. The substance of the argument advanced before the Upper Tribunal on behalf of the Appellants was raised before the First-tier Tribunal and dealt with by Judge Gandhi at paragraphs 15 and 16 in the following terms:

“15. Mr Adewole states that I should only look at the income threshold for the first Appellant (the partner) because the financial requirements do not apply to any children who qualify for Indefinite Leave to Enter. He states that the first appellant’s three children would qualify for Indefinite Leave to Enter in line with their father’s (the sponsor’s) Indefinite Leave to Remain. I note however that this is in contradiction to what had been stated in the skeleton argument. No reason has been provided for this change in argument and Mr Adewole has not relied on any law/case law which supports his contention that the children would be granted Indefinite Leave to Enter.

16. In any case I note that the Immigration Rules state that any leave granted to a child will expire at the same time as leave granted to the child’s parent (D-ECC.1.1). The Immigration Rules also state that entry clearance will be granted for an initial period not exceeding 33 months to the child’s parent i.e. the first Appellant (D-ECP.1.1). I therefore find that the higher financial threshold is relevant in this case.”

6. Permission to appeal was granted on the basis that Judge Saffer considered that *"It is arguable that the Judge may have materially erred in her assessment of the financial criteria to be met by a child seeking leave to enter for settlement as opposed to for a limited period"*.
7. I have considered the arguments set out in the Grounds of Appeal as amplified before me by Mr Adewole today. I have come to the conclusion that the premise of these arguments is essentially fundamentally misconceived. In my judgment Judge Gandhi was correct to conclude that the higher threshold applied by reference to the requirements of Appendix FM.
8. It is submitted on behalf of the Appellants that the First Appellant's application fell to be considered by reference to paragraph 281 of the Immigration Rules and thereafter the children's applications fell to be considered by reference to paragraph 297. I do not accept that argument.
9. In my judgement the starting point for consideration is paragraph A277 of Part 8 of the Immigration Rules. A277 identifies the fact of the introduction of Appendix FM and is in the following terms:

"From 9 July 2012 Appendix FM will apply to all applications to which Part 8 of these Rules applied on or before 8 July 2012 except where the provisions of Part 8 are preserved and continue to apply as set out in paragraphs A280 to A280B."

Accordingly it seems absolutely clear that unless an applicant can take advantage of the so-called transitional provisions in respect of the interaction between Part 8 and Appendix FM, it is Appendix FM that will apply to any application.

10. The circumstances in which paragraph 281 may be 'preserved' - or continue to be applicable - are set out at various points in paragraph A280 of the Rules. I have had the opportunity to go through those transitional provisions with Mr Adewole and nothing is identifiable therein that indicates that paragraph 281 is applicable to the First Appellant's application. In particular, with regard to paragraph A280(d) in respect of applications for entry clearance it is clear that the First Appellant's application did not fall within the transitional provisions, and is not 'saved' by any of the various exemptions with reference to such matters as being the partner of somebody in the HM Forces and so on.

11. It follows, as seems to have been clear to Judge Gandhi, that the First Appellant's case fell to be considered by reference to the provisions of Appendix FM - and therefore specifically with regard to Section EC-P 'Entry clearance as a partner'. As identified by Judge Gandhi such an application if successful would result in the grant of a limited period of leave in the first instance.
12. It is also abundantly clear that the children's applications therefore also fell to be considered by reference to Appendix FM. Paragraph 297, if it was of any application at all, is in respect of children accompanying a parent entering for settlement. The minor Appellants' mother would not have been entering for settlement, albeit that that may have been the long-term intention: in the first instance she would have been entering for a period of limited leave.
13. The provisions of Appendix FM in respect of children at Section E-ECC 'Eligibility for entry clearance as a child', make it abundantly clear that the financial requirements of Appendix FM are applicable.
14. In all such circumstances it seems to me that Judge Gandhi was correct to identify that the financial threshold calculated on the basis of a partner and three children was the applicable threshold, and was correct to reject the submission advanced by Mr Adewole to the effect that there was no additional financial requirement in respect of the children provided it was demonstrated that they would in general terms be adequately accommodated and maintained.
15. Accordingly I find no error of law in this regard and reject the grounds of challenge as essentially being fundamentally misconceived.
16. I note that at the commencement of the hearing today Mr Adewole acknowledged that if he was unable to persuade me in respect of his submissions on the financial requirements, he would not be able to establish that Judge Gandhi otherwise fell into error in respect of her Article 8 assessment. In that regard I have had consideration to those paragraphs of the Decision and Reasons of the First-tier Tribunal Judge from paragraph 19 onwards in which she gives consideration to Article 8, and in particular from paragraph 27 onwards where the Judge identifies that she is turning her mind to whether there are any compelling circumstances requiring the grant of leave to enter outside the Rules. It seems to me that the Judge has had proper consideration to all of the facts and circumstances in the case, and has taken into account the public interest considerations pursuant to section 117B of the 2002 Act (as identified at paragraph 30 of the Decision). I can find nothing therein that

would suggest that there was any material error of law: Mr Adewole was helpful and realistic in his concession.

Notice of Decisions

17. The decisions of the First-tier Tribunal contained no errors of law and accordingly stand.
18. Each of the appeals remains dismissed.
19. No anonymity directions are sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **21 January 2018**

Deputy Upper Tribunal Judge I A Lewis