

OA 16794 2012
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**Upper Tribunal
(Immigration and Asylum Chamber)**

THE IMMIGRATION ACTS

**Heard at Field House
On 24 June 2013**

**Determination
Promulgated
On 25th June 2013**

Before

UPPER TRIBUNAL JUDGE WARR

Between

**CAROLINE MARTHA IGULOT
JESSE IGULOT
DEOGRATIOUS IGULOT**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr P Igulot (sponsor)
For the Respondent: Mr P Deller (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellants are citizens of Uganda born on 9 June, 1984, 9 February, 2007 and 26 May, 2011 respectively. They are represented by the sponsor who is the husband of the first named appellant. The second and third appellants are their children.
2. The sponsor is studying in the United Kingdom with leave to remain under Tier 4 until 30 November, 2019. The applications for entry clearance were refused on maintenance grounds and because the birth certificates provided were not contemporaneous and not original. The Entry Clearance Officer was not satisfied about the relationship of the appellants to the sponsor.
3. The appellants appealed against the decision and their appeals came before a First-tier Judge on 6 March, 2013. The judge resolved in the appellants' favour the issue of the birth certificates and there has been no challenge to that decision. He found that the passports were obtained in order to facilitate the children's travel.
4. In relation to the maintenance issue the sponsor provided the respondent's policy guidance applicable where there was an established presence by a student in inner London. The guidance illustrated that for a student making an application for a spouse and two children they must show £600 for the spouse and £600 for each child together with £1000 for themselves making a total of £2800 per month. This had to continue for two months making a total of £5600. On the evidence before the judge the judge found there was a shortfall as the sponsor's bank account only showed that £5403.21 was available during the relevant period. Accordingly the judge dismissed the appeals.
5. Permission to appeal was granted on 15 May, 2013. It was noted that it had been argued that under the guidance the maintenance sum of £1000 for the sponsor was not required and the total funds required were £3600 and not £5600 as the judge had found.
6. Mr Deller acknowledged that the guidance and the rules were "not in harmony" but it did appear clear that in so far as the sponsor was concerned it was not required for him to show that he could be maintained in a situation like this where he was not an applicant. This was the position under Appendix E as well as the guidance. Accordingly the judge had been in error to include the £1000 in his calculations. Taking the guidance and the rules together the sums required were £600 per month for each appellant for two months making a total of £3600. In so far as the guidance was wider than the rules the appeal would be allowed as the respondent's decision was not in accordance with the law.
7. In the refusal a point had been taken on the Bank Statements provided which the First-tier Judge had not specifically dealt with.

8. The sponsor said there was only one issue and he submitted the First-tier Judge had misunderstood the policy. He had given the Bank Statements to the First-tier Judge and the judge had raised no issue with them.
9. Mr Deller acknowledged that what the sponsor said was plausible. The evidence related to the position as at the date of decision. There had been no Presenting Officer before the First-tier Judge.
10. Mr Deller acknowledged that he was in difficulties given that no response had been filed in this matter.
11. The appellant had registered for his course of study on 26th September 2011, 8 months prior to the appellant's entry clearance applications. The judge appears to have accepted that the sponsor had an established presence in the United Kingdom and quoted the figures for dependants where the student was in central London.
12. It does appear that had the judge appreciated that the calculations only had to cover the appellants and not the sponsor himself he would have allowed the appeal. The sponsor was not applying for an entry clearance together with the appellants. He had entry clearance and was in the United Kingdom and the family was to join him.
13. Given that the judge would have allowed the appeal but for this error and in the absence of a response from the respondent seeking to uphold the decision for another reason I am satisfied that it would be right to remake the decision.

These appeals are allowed.

Fee Award

Any fee paid should be returned

Signed

24 June 2013

Upper Tribunal Judge Warr