Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/16940/2012
OA/16941/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 14th February 2014	**On 25th February 2014**

Before

UPPER TRIBUNAL JUDGE RENTON

Between

IBRAHIM SANNEH
FATOU CEESAY
(NO ANONYMITY DIRECTION MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - ABUJA

Respondent

Representation:

For the Appellants: Mr A Jafar, Counsel instructed by Windfall Solicitors
For the Respondent: Ms P Hastings, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellants are Fatou Ceesay, a female citizen of Gambia born on 6th October 1977, and her son, Ibrahim Sanneh, also a citizen of Gambia and born on 13th July 2009. They

both applied to the British High Commission, Abuja, for entry clearance as the spouse and child of the Sponsor, Babu Sanneh. Those applications were refused for the reasons given in Notices of Decision dated 14th August 2012. The Appellants appealed, and their appeals were heard by Judge of the First-tier Tribunal Telford (the Judge) sitting at Hatton Cross on 26th June 2013. He decided to dismiss both appeals for the reasons given in his Determination dated 19th July 2013. The Appellants sought permission to appeal that decision, and on 13th January 2014 such leave was granted.

Error of Law

2. It is first necessary for me to decide if the decision of the Judge contained an error on a point of law so that it should be set aside.

3. The Judge dismissed the appeals because he found the evidence of the Appellant not to be credible. As regards the subsistence of her marriage with the Sponsor the Judge found that there had been little "meaningful contact" between the Sponsor and his wife, and took into account the fact that the Sponsor had been married before and that that marriage had been of short duration, although a child had been born of that union. The Judge also found that there would be inadequate maintenance and accommodation for the Appellants in the UK. Finally, the Judge decided that the Respondent's decision did not amount to a disproportionate breach of the Appellants' Article 8 ECHR rights. The latter decision was not challenged in the grounds of application.

4. At the hearing, I head submissions from both representatives which are recorded in the Record of Proceedings. As regards accommodation, Mr Jafar argued that the Judge had erred in law because evidence now available from Reading Borough Council showed that the Sponsor would be rehoused in suitable accommodation on the arrival of the Appellants in the UK.

5. In response, Ms Hastings argued that the Judge had not erred in law. In reaching his decision as regards accommodation, the Judge had taken account of all the documentary and oral evidence available at the hearing and relating to the date of decision which had not included the correspondence from Reading Borough Council. This had been submitted subsequent to the hearing and indeed subsequent to the promulgation of the Judge's Determination.

6. I find no material error of law in the decision of the Judge. Unfortunately the Determination contains a number of errors. For example, as regards the subsistence of the marriage, the Judge failed to take account of the evidence before him of money transfers between the Sponsor and the Appellants, and as regards maintenance, the Judge completely overlooked the income which the Sponsor derived from his employment with G4S Security Company. However, it is trite law that to succeed the Appellants need to show that they satisfy all the requirements of the relevant Immigration Rule. There is no error of law in the Judge's decision concerning accommodation. The Judge dismissed the appeal because he found that requirement not to be satisfied, and it therefore follows that any error in respect of the subsistence of the marriage or maintenance is immaterial.

7. There is no error of law in respect of the Judge's decision concerning accommodation for this reason. The evidence from Reading Borough Council was not before the Judge and therefore it cannot be an error of law for him not to have taken it into account. The only evidence before the Judge was that the Sponsor lived in a bedsitting room which he would soon have to vacate as the building was to be demolished. He had been informed by Reading Borough Council that if the Appellants joined him he could apply for more substantial accommodation, but there was no evidence as to the potential success of such an application. The Sponsor had not sought other alternative accommodation. On the basis of that evidence, the Judge was entitled to come to the conclusion that the Appellants had not shown that there would be adequate accommodation for them in the UK.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to do so.

Signed Date

Upper Tribunal Judge Renton