



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

Appeal Numbers: HU/16328/2017
HU/16332/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 8th January 2019**

**Decision & Reasons
Promulgated
On 30th January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**MR K C A
MS K A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Gore of Counsel, direct access

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an Anonymity Order. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties. Failure to comply with this order could lead to contempt of court proceedings.**

2. These Nigerian Appellants appeal, with permission granted in the First-tier Tribunal, a decision of the First-tier Tribunal, (Judge Lucas) promulgated on 26 October 2018, in which the judge dismissed their appeals, brought on human rights grounds, against the refusal of their entry clearance applications. The applications were made in order to leave their father with whom they lived in Nigeria and settle with their mother here. The appellants are twins born on 01 May 1999, and so just shy of their 18th birthdays at the date of application in March 2017 and just over 19 as at the date of hearing before the First-tier Tribunal.
3. At the start of the hearing both representatives were in agreement that while permission to appeal had been granted according to the head note of the First-tier Tribunal decision from the reasoning in the body of the decision showed that the deciding judge had concluded that none of the grounds showed an arguable error of law. In the circumstances the “grant” offered no assistance. I was invited to proceed to determine whether there was an error of law as argued for in the grounds. Ms Gore clarified that she was not making any application to adduce further evidence, as implied by the grounds. Accordingly, I make my decision based on the evidence which was before the First-tier Tribunal.
4. The grounds assert that the judge was wrong to find that the sponsoring mother did not have sole responsibility in the context of the test of the Immigration Rules at paragraph 297 (1) (e). The evidence before the judge showed that she had sole responsibility, including that she had paid their school fees, and that they continue to follow the Roman Catholic faith which was her preference, whilst their father went to a different church.
5. I find that contrary to the grounds the evidence provided to the Judge was not determinative to show that the decision is perverse. The judge has considered all the evidence, setting it out carefully between paragraphs 4 to 13, including the matters referred to in the grounds. The submission that the judge has failed to consider the evidence of mistreatment overlooks that the judge has shown a very good familiarity and understanding of the evidence presented on behalf of the appellants in this regard setting it out specifically at paragraphs 7 and 14. The judge noted that the teenage children continued to be left in the care of their father even following the assertion of concern about their wellbeing (set out in the witness statement evidence, the father’s correspondence and the police report of March 2017). The judge was entitled to conclude that the evidence of the male appellant having complained in March 2017 to the police of mistreatment, and the father’s subsequent correspondence stating that as a result the step mother had left home, did not establish any genuine concern about the welfare of the appellants because they still remained in his house. The judge noted that there were other options open to the sponsor if she had been significantly worried, bearing in mind the age of the children (almost 18), and the fact that another sibling was in boarding school.

6. As the judge noted in his discussion of the evidence at 19, the sponsor left the appellants in Nigeria in the care of their father in 2007 and did not visit them between 2008 and 2014, and they remain in the care of their father. The judge's conclusion that the father has played an equally significant role in their lives is unassailable. It follows that I find that the appellant had failed to establish any error of law in the judge's decision.
7. Counsel in her submission argued a massive which were not encompassed in the grounds. Firstly, counsel argued a structural fault in the reasoning of the judge from the failure to make express reference to the alternative requirement to sole responsibility at 297 (1) (e), set out in the next subparagraph of the rule at 297 (1) (f), of compelling family or other considerations making exclusion of the children undesirable. The argument exceeds the grounds but in any event is without material merit. I am satisfied that the point is merely semantic, not least because the ground of appeal is that the decision constitutes a breach of human rights not that the decision is "not in accordance with the rules", so that an express reference to the rule is not required, but in any event a fair reading of the decision shows that the judge considered the issue of compelling circumstances beyond the issue of sole responsibility, so that the substance of the subparagraph at 297 (f) has been encompassed.
8. Secondly, Ms Gore sought to extend the grounds by arguing that insufficient regard has been paid to what must have been a positive credibility finding when the judge accepted that the appellants were related as claimed, contrary to the entry clearance officer. The submission overstates the point which at its highest is that with the application the evidence submitted was insufficient, but that by the time of the hearing and with the presence of the sponsor, the Home Office Presenting Officer did not dispute the relationship. Again, the submission fails because the matter is not in the grounds, but it too is without merit. The falling away of the relationship point did not result in a positive credibility finding which required the judge to accept the credibility of the evidence about the claimed abuse in Nigeria. They are discrete points. The argument garners no further sustenance from the absence of a mention of cross-examination in the decision on the evidence of abuse. Contrary to Ms Gore's submission that cannot be characterised as undisputed evidence amounting to a concession that they have been abused, so as to establish determinatively that they live in circumstances which compelled entry, because quite clearly the presenting officer's submission was that they did not.
9. There is apt guidance in *AS (Iran)* [2017] EWCA 1539: "*In approaching criticism of reasons given by a First-tier Tribunal, the Respondent correctly reminds us to avoid a requirement of perfection. As Brooke LJ observed in the course of his decision in R (Iran) v The Secretary of State for the Home Department [2005] EWCA Civ 982, "unjustified complaints" as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the*

principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded."

10. I find that the decision of the First-tier tribunal reveals no error of law.

Decision

The decision of the First -tier Tribunal dismissing these appeals against entry clearance reveals no error and stands.

Signed: 

Date 08 January 2019

Deputy Upper Tribunal Judge Davidge