



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/17962/2018  
HU/19125/2018  
HU/19126/2018  
HU/19128/2018  
HU/19129/2018  
HU/19130/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 5 September 2019

Decision & Reasons Promulgated  
On 17 September 2019

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR  
DEPUTY UPPER TRIBUNAL JUDGE D HARRIS

Between

I S U (FIRST APPELLANT)  
C E U (SECOND APPELLANT)  
S D U (THIRD APPELLANT)  
C F U (FOURTH APPELLANT)  
P C U (FIFTH APPELLANT)  
E T U (SIXTH APPELLANT)  
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**Representation:**

For the Appellants: Ms S Praisoody, Counsel, instructed by Global Solicitors & Advocates

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The first Appellant is the mother of the other five and they are all Nigerian nationals. By entry clearance applications made on 9 March 2018, they sought leave to enter to join the Sponsor in the United Kingdom, he being the first Appellant's husband and the father of the children. The Sponsor has at all material times had settled status in this country.
2. By a decision dated 25 July 2018, the Respondent refused the applications (deemed human rights claims) on the basis that the financial requirements under Appendix FM to the Immigration Rules had not been satisfied. This was the sole basis for the refusal of the applications, and it is a point to be noted. The matter then came before First-tier Tribunal Judge George ("the judge") on 17 April 2019. By a decision promulgated on 12 June 2019, the judge dismissed the appeals.

**The judge's decision**

3. It is fair to say that the judge's decision is an example of a considered and thorough exercise in analysing a large amount of evidence placed before him. At various stages of his decision he identifies errors made by the Respondent when refusing the applications. However, he goes on to identify a number of deficiencies in the evidence relating to the Sponsor's earnings as that related to the mandatory requirements under Appendix FM-SE to the Rules. These deficiencies related both to employed and self-employed income. In summary, the judge found that in a number of respects the requirements to provide specified evidence under Appendix FM-SE had not been met. These being mandatory requirements it followed that the Rules themselves had not been met.
4. The judge made a very clear finding that the Sponsor, as a matter of fact, earned in excess of the relevant income threshold relevant to the maintenance of all of the Appellants.
5. Having found that the requirements of the Rules were not met, the judge went on to consider Article 8 in its wider context. This of course involved a consideration of the significance of a failure to meet the Rules. Having regard to the best interests and welfare of the relevant children and other relevant factors in the proportionality

exercise, the judge concluded that the Article 8 claims could not succeed, and the appeals were all duly dismissed.

### **The grounds of appeal and grant of permission**

6. The grounds of appeal assert that the judge should in some way have exercised a discretion in respect of certain missing items of evidence. It is also said that the judge failed to place adequate or sufficient weight on certain documents. Finally it is asserted that the judge erred in respect of his assessment of the children's situation.
7. Permission to appeal was granted by First-tier Tribunal Judge Povey on 7 August 2019. It is right to say that in granting permission the judge raised a point not articulated in the grounds of appeal. He said that Judge George had arguably erred in failing to explain how he had distinguished between the principles within the substantive Rules and the methods by which those principles are evidenced. Reference is made to paragraph 76 of MM (Lebanon) [2017] UKSC 10.

### **The hearing**

8. Ms Praisoody relied on the grounds of appeal. She, in our view, quite properly, accepted that there had been evidential deficiencies in relation to Appendix FM-SE. She submitted however that as these were human rights appeals the judge was bound to make an overall proportionality assessment and that he was wrong to have concluded that the Respondent's decisions were indeed proportionate. This was particularly in view of the fact that the Sponsor had earned in excess of the relevant minimum income threshold.
9. Mr Walker submitted that the judge had given adequate consideration to all relevant matters and the conclusions reached were open to him.

### **Decision on error of law**

10. We conclude that there are no errors of law in the judge's decision.
11. As mentioned previously, we consider that his decision is an example of a thorough analysis of evidence presented. He adopted a balanced approach, finding both for and against the Appellants in certain respects. The findings on the evidential deficiencies relating to Appendix FM-SE were clearly open to him. Indeed, he was bound to conclude that certain mandatory specified evidence had not been produced, both in respect of employed and self-employed earnings.

12. His conclusions on the specified evidence issue are in no way inconsistent with his conclusion that the Sponsor had, as a matter of fact, earned in excess of the minimum income threshold. However, putting it bluntly, the Rules are the Rules, and Appendix FM-SE is part and parcel of those provisions. A failure to meet the mandatory requirements of FM-SE, particularly where these are numerous in nature, would inevitably lead to the conclusion that the Rules themselves had not been met.
13. The judge was entitled to go on and conclude that the failure to have met the Rules was a relevant factor in his assessment of Article 8 on a wider basis. In light of MM (Lebanon) and Agyarko [2017] 1 WLR 823, he was bound to regard this as a significant factor weighing against the Appellants in the balancing exercise.
14. The judge did not simply stop at that stage, but then, quite correctly, went on to take additional relevant matters into account, both in respect of the nature of the family's living arrangements over the course of time in respect of the children and with reference to section 117B of the Nationality, Immigration and Asylum Act 2002, as amended.
15. Having dealt with these relevant factors, the judge weighed everything up and came to conclusions that in our view were clearly open to him.
16. The grounds of appeal simply do not identify any errors of law, either in respect of the analysis of the evidence, the conclusions reached on Appendix FM-SE, or in respect of the overall balancing exercise.
17. In light of the above, the Appellants' appeals to the Upper Tribunal must be dismissed and the decision of the First-tier Tribunal shall stand.

### **Observations**

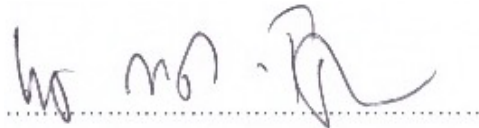
18. We would make a couple of additional observations in these cases. The first is to emphasise the fact that the sole basis that the Respondent refused the applications in the first place was in relation to the financial requirements under Appendix FM. There is absolutely no issue about the nature of the relationship as between the Sponsor and his family members in Nigeria or any other matters under Appendix FM. It is also important to note that the judge made a clear finding as to the Sponsor's actual earnings and that a number of matters taken against the Appellants by the Respondent have been found to be erroneous.
19. What the judge has in effect done is to provide something of a checklist, so to speak, in respect of the relevant evidence that would need to be provided in order for any potential fresh applications to stand a better prospect of success.
20. We appreciate the Appellant's and Sponsor's concerns about the costs of making new applications. However, that is not a matter that we can take into account. If a

decision is made to make fresh applications, our decision, in conjunction with that of the First-tier Tribunal, may be of some assistance. We would expect the Respondent to take on board what the two Tribunals have said in respect of the family's circumstances.

**Notice of Decision**

**The decision of the First-tier Tribunal does not contain errors of law and it shall stand.**

**The Appellants' appeals to the Upper Tribunal are dismissed.**

A handwritten signature in black ink, appearing to read 'Ms Norton-Taylor', written over a horizontal dotted line.

Signed

Date: 10 September 2019

Upper Tribunal Judge Norton-Taylor