Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/05925/2019 (P)**

HU/05927/2019 (P)
HU/06315/2019 (P)

THE IMMIGRATION ACTS

Decided Under Rule 34 (P)
On 3 November 2020

Decision & Reasons Promulgated
On 5 November 2020

Before

UT JUDGE MACLEMAN

Between

C O [I] + 2

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

DETERMINATION AND REASONS (P)

1. The appellants are a mother and her two children, all citizens of Nigeria. On 27 February 2019, the ECO refused their applications to join the sponsor, the husband and father of the family, who is settled in the UK.

2. Due to a discrepancy over the naming of the sponsor between his passport and other documentation, the ECO was not satisfied about the claimed relationships among the parties. The ECO also found that the eligibility financial requirement was not met, for non-production with the applications of certain documentation.

3. The refusal notices advised the appellants to submit any additional evidence they might have to meet the concerns raised, which they did. On review in light of the grounds of appeal and supporting bundle, an Entry Clearance Manager on 13 September 2019 maintained the decisions, but referring only to the absence of documents relating to the sponsor's employment.

4. FtT Judge Eban dismissed the appellants' appeals by a decision promulgated on 18 December 2019. She found that the evidence for the appellants established the marital and parental relationships required. She found at [14] that the document in issue for financial purposes, a CT600 company tax return, was not with the applications when they were made; at [15] that it was with the application to the respondent for reconsideration; and at [19] that an application made at the date of the hearing would succeed. At [26] she dismissed the appeal, because there were no unjustifiably harsh consequences in requiring the appellants to re-apply.

5. By a decision issued on 13 August 2020, UT Judge Lindsley granted permission, on the view that it was arguably an error to admit and accept new evidence about relationships, but not about finance, and to weigh the public interest against the appellants, when they met the requirements of the rules at the date of the hearing. The UT also set directions with a view to deciding without a hearing (a) whether the FtT erred in law and (b), if so, whether its decision should be set aside.

6. Judge Lindsley observed that the appellants might wish to consider whether to re-apply, given that success in their appeals might in the longer term be relatively disadvantageous. They have presumably weighed that option, in continuing these proceedings.

7. There are no submissions in response on file for the ECO. The appellants' representatives responded on 19 August 2020, making no comment on any need for a hearing. The UT may now proceed, in terms of rules 2 and 34, to decide (a) and (b), as above, without a hearing.

8. The appellants submit that as documentary evidence, DNA evidence, and a subsequent English language test certificate were all accepted by the Entry Clearance Manager and admitted by the FtT to resolve issues raised by the ECO, there was no good reason not to treat the form CT600 in the same way.

9. The scheme of the rules and the statutory structure for appeals are both designed, to a large extent, against improving cases as they proceed. The requirement to submit documents with an application is prescriptive, exists for good policy reasons, and is usually to be enforced. It is not often a disproportionate interference with human rights to expect someone to make an application which conforms to the rules.

10. Each case, however, turns ultimately on its own facts. There is force in the appellants' argument that, given the way their case has developed, it is impossible to see why other issues were resolved by evidence which was not with the original applications, but not the matter of the form CT600. The respondent did not offer any justification to the FtT for drawing a line of distinction within evidence tendered after the applications, and has made no such submission to the UT. I conclude that the FtT erred by drawing a distinction which was not justified on the facts as the FtT had found them to be, and that it should have struck the proportionality balance on the other side.

11. The decision of the FtT is **set aside**, and the appeal, as brought to the FtT, is **allowed**.

12. No anonymity direction has been requested or made.

Hugh Macleman

UT Judge Macleman
3 November 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.