Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/06694/2019
HU/07861/2019

THE IMMIGRATION ACTS

Decided under Rule 34
On 28th September 2020

Decision & Reasons Promulgated
On 5th October 2020

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MR SETH YEBOAH
MISS AKUA ACHIAA ANTWI
(Anonymity Direction Not Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. The first appellant, a national of Ghana, appealed against the respondent's decision of 15th February 2019 to refuse his application for entry clearance to the UK under paragraph 297 of the Immigration Rules as the child of a parent settled in the United Kingdom. First-tier Tribunal (F*t*T) Judge Sweet dismissed the appeal for the reasons set out in a decision promulgated on 19th February 2020. On 23rd June 2020, I granted the first appellant permission to appeal to the Upper Tribunal on one sole ground. In doing so, I observed:

> "…It is arguable that the judge failed to adequately address the Article 8 claim in the brief reference to the claim outside the rules set out at paragraph [35] of the decision. The grant of permission is limited to this sole ground."

2. There is a linked appeal (HU/07861/2019) by the appellant's sister, the second appellant, that was also dismissed by FtT Judge Sweet in the same decision. In that appeal, permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Davidge on 6th May 2020. The second appellant made her application when she was a child.

3. The only ground of appeal available to the appellant was that the respondent's decision is unlawful under s6 of the Human Rights Act 1998. The judgment of the Supreme Court in Agyarko -v- SSHD [2017] UKSC 11 confirms that the fact that the immigration rules cannot be met, does not absolve decision makers from carrying out a full merits-based assessment outside the rules under Article 8, where the ultimate issue is whether a fair balance has been struck between the individual and public interest, giving due weight to the provisions of the Rules.

4. I issued directions to the parties having regard to the Pilot Practice Direction and the UTIAC Guidance Note No 1 of 2020. I expressed the provisional view that the hearing in the appeals can and should be held remotely, by Skype for Business on a date to be fixed within the period 27th July 2020 to 28th August 2020.

5. In response to the directions issued by me, the respondent has filed a response to the grounds of appeal under Rule 24, dated 20th August 2020. In that response, the respondent confirms that the respondent does not oppose the appeal. The respondent accepts that insofar as the second appellant is concerned, the reasoning provided by Judge Sweet as to 'sole responsibility' is inadequate, and, insofar as both appellants are concerned, the judge failed to adequately address the Article 8 claims outside the rules. The respondent invites the Tribunal to set aside the decision of First-tier Tribunal Judge Sweet and to remit the matter to the First-tier Tribunal for hearing afresh. A copy of the rule 24 response received from the respondent was sent to the appellant's solicitors on 20th August 2020. The Tribunal

has received no further communication from the appellant's representatives and can only assume the appellants would not oppose the course proposed by the respondent.

6. In all the circumstances, I am satisfied that it is in accordance with the overriding objective and the interests of justice for there to be a timely determination of the question whether there is an error of law in the decision of the FtT. Taking into account the position adopted by the respondent, it is entirely appropriate for the error of law decision to be determined on the papers, to secure the proper administration of justice.

7. The respondent, rightly in my judgement, concedes the decision of Judge Sweet should be set aside, and in the circumstances I need say nothing more about the grounds of appeal. The respondent accepts the errors are material to the outcome of the appeal.

8. I accept that the decision of the F*t*T is infected by an error of law and that the appropriate course is for the decision of First-tier Tribunal Judge Sweet to be set aside. As to disposal, I agree that the appropriate course is for the matter to be remitted to the FtT for hearing *de novo* with no findings preserved. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.

9. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

10. The appeals are allowed and the decision of FtT Judge Sweet promulgated on 19th February 2020 is set aside.

11. The appeals are remitted to the FtT for a fresh hearing of the appeal with no findings preserved.

Signed *V. Mandalia* Date: 28th September 2020
Upper Tribunal Judge Mandalia