



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

Appeal Number: HU/01643/2020
HU/01646/2020

THE IMMIGRATION ACTS

Heard at Bradford

On 8 December 2021

**Decision & Reasons
Promulgated
On 19 January 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**EMMANUEL OKHENRUKWE OYIBOTIE
EMMANUELLA OKHENRUKWE OYIBOTIE**

Appellants

(ANONYMITY DIRECTION NOT MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Hashmi

For the Respondent: Mr McVeety, Senior Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Nigeria who claim to have been born in 1985 and claim to be half siblings. They appealed to the First-tier Tribunal against a decision of the Secretary of State dated 5 December 2019 refusing them entry clearance to the United Kingdom for settlement with a British citizen, Odafe Oyibo-Itie, their claimed father, hereafter referred to as the sponsor. The First-tier Tribunal, in a decision promulgated on 23 November 2020, dismissed their appeal. The appellants now appeal, with permission, to the Upper Tribunal.
2. The appeal before the First-tier Tribunal was 'on the papers', the appellants not having sought an oral hearing. The judge had not been satisfied that the documentary evidence discharged the burden of proof on the appellants in the appeal. At [11 (a)-(j)], he gave detailed reasons for rejected the documentary evidence which included the death certificates of the appellants' claimed mothers. In my opinion, the judge was entitled to conclude that this evidence failed to discharge the burden of proof. It was open to the judge to find that none of the facts which the documentary evidence purported to establish had been proved. This included the claim that the mothers of the appellants had died; that the sponsor had contributed to the maintenance (including school and medical fees) of the appellants; that the sponsor had contacted the appellants by telephone and, perhaps most significantly, that the sponsor is the biological father of the appellants. An DNA test produced by Anglia had been 'photocopied several times' and appeared to 'have been altered', whereas another test from Cellmark did not even indicate with any degree of likelihood that the sponsor was the father of the appellants. At [14] the judge doubted the authenticity of a tenancy agreement of the sponsor. The grounds indicate that the tenancy document was faulty as a consequence of a 'clerical shortcoming' but there is nothing to show that any attempt had been made to explain this to the judge. In short, the issues raised in the grounds amount to nothing more than a series of disagreements with findings available to the judge on the evidence.
3. The appellants also complain that the judge failed to carry out any assessment of their best interests and that he found it unnecessary 'to consider [their] Article 8 ECHR' (see decision at [23]). These challenges are without merit. Given his view of the evidence, the best interests of the children were not at issue as the appellants had failed even to prove that they were related as claimed to the sponsor. The judge did err by referring to the appeal being 'dismissed under the Immigration Rules' but that error is immaterial; it indicates that the judge should update his decision template but is otherwise insignificant. Article 8 ECHR was, as Upper Tribunal Judge Sheridan pointed out in the grant of permission, the only ground of the appeal but, since the appellants had failed to establish any relationship with the sponsor, there was no need for the judge to carry out a structured Article 8 ECHR analysis, as he states at [23].
4. For the reasons I have given, the appeal is dismissed.

Notice of Decision

The appeal is dismissed.

Signed

Date 16 December 2021

Upper Tribunal Judge Lane