



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal No's: OA/10696/10697/10698/10699/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 29th July 2014**

**Determination Promulgated
On 31 July 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ENTRY CLEARANCE OFFICER, GAMBIA

Appellant

and

FATOUMATA NJIE and her three sisters

Respondents

For the Appellant: Ms Hoey, of Drummond Miller, Solicitors
For the Respondent: Mr Young, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The parties are as described above, but are referred to in the rest of this determination as they were in the First-tier Tribunal (where the ECO, not the SSHD, was correctly the respondent).
2. The first appellant ("the appellant") is a citizen of Ghana, born on 6th January 1994. Along with her three younger sisters she applied for entry clearance to join their

mother, who had been granted indefinite leave to remain in the UK. The ECO refused all four applications.

3. By determination promulgated on 10th February 2014 First-tier Tribunal Judge Doyle allowed the appeals of the appellant's siblings under the Immigration Rules. At ¶15 (a) to (f) he considered the appellant's claim outwith the Immigration Rules, noting that the effect of the successful appeals of her co-appellants would be to separate them from her. She was 19 years of age at the date of decision and 20 years of age at the date of the hearing. The judge cited case law to the effect that whether family life exists among adult siblings for the purposes of Article 8 is a question to be decided on the facts of each case, and that family life is not suddenly cut off at the age of 18. He found in this case a relationship of dependency beyond normal emotional ties, the appellants and sponsor having had difficult experiences throughout the years of separation and this appellant being "not an independent adult ... still a schoolgirl who needs her mother and needs her siblings. The appellants and their sponsor still grieve the loss of the sponsor's oldest son in September 2012". The judge found that the decision was a disproportionate interference with article 8 rights.

4. The ECO appeals to the Upper Tribunal on the following grounds:

The judge does not consider the guidance in ... *Gulshan* ... [2013] UKUT 640 ... namely [only] if there are good grounds for granting leave ... outside the Rules it is necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under the Rules ...

...

The judge omitted to consider whether there are case specific good grounds for granting leave outside the Rules and whether there are compelling circumstances for considering the appeal outside the Rules ... The judge has not considered the correct approach ...

5. The substance of the grounds relates to the first appellant only, although all 4 reference numbers are given. The grant of permission was made in relation to all four original appellants, and all the cases were listed for hearing in the Upper Tribunal. By agreement, and for avoidance of doubt, Mr Young formally withdrew the ECO's case in relation to the other three appellants.
6. Mr Young relied particularly on *Gulshan* at ¶24 (b) and 27 on the need to find arguably good grounds before even looking outside the Rules. He submitted that the judge had identified no such grounds. Ms Hoey submitted that the matters the judge identified at ¶15 constituted such grounds.
7. I indicated that the ECO's appeal would not succeed.
8. The judge did not mention *Gulshan* or other case law along the same lines, but there is no need for citation, provided that the correct approach is taken in practice. His specific reasons for looking outside the Rules, and for allowing the appeal outside the Rules, are plainly set out at ¶15. The ECO's grounds of appeal to the UK in reality are aimed not at the judge's legal approach but at the substance of his

decision. The question the judge had to answer was not one purely of fact, but it was a highly fact-sensitive assessment. The decision may have been finely balanced, and a contrary decision might even have been difficult for the appellant to challenge; but the judge did not take into account any irrelevant factors, and did not fail to take into account any relevant factors. Judges are well aware of the strength of circumstances necessary to justify going outwith the Immigration Rules.

9. In my view, therefore, the judge was entitled to look outside the rules, and to strike the balance in favour of the appellant. He gave legally adequate reasons, related to the facts of the case, and the SSHD shows no basis on which the Upper Tribunal might interfere.
10. The ECO's appeal to the Upper Tribunal is dismissed in respect of the first appellant and withdrawn in respect of the other three. The effective outcome is that **the determination of the First-tier Tribunal, in relation to all four appellants, shall stand.**

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

29 July 2014
Upper Tribunal Judge Macleman