Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: OA/02824/2014
OA/02825/2014

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 26 February 2015	**On 24 March 2015**
Decision given 26 February 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A M S D
H M S D
(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondents: Mr C Lane, Counsel instructed by TRP Solicitors

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondents are referred to as the Claimants.

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2. The Claimants, nationals of Eritrea, respectively dates of birth 1 January 1997 and 1 January 1999, are brothers who appealed against the decisions of the ECO Abu Dhabi of 23 January 2014 to refuse entry clearance to join their sister, J D for a family reunion. Refusal was under paragraph 319X of the Immigration Rules HC 395 (as amended). The reasons for refusal were identical in respect of both Claimants and turned on the issues of the adequacy of maintenance and accommodation in the United Kingdom.

3. The Claimants appeals came before First-tier Tribunal Judge J Pacey (the judge), who on 4 November 2014 allowed their appeals on Article 8 ECHR grounds but dismissed their appeals with reference to the requirements of the Immigration Rules. The Secretary of State sought permission to appeal the decisions of the judge. On 22 December 2014 Upper Tribunal Judge Martin, sitting as a Judge of the First-tier Tribunal, granted permission to appeal.

4. At the hearing of the appeal it was made plain to me that the sole issue was whether or not the judge had properly considered the appeals with reference to Article 8 ECHR outside of the Rules. The judge set out factual matters and in considering Article 8 determined that the Secretary of State's decisions were an interference by a public authority with the right of respect and with the intention of enabling reunion of families. It is clear from the judge's reasoning, particularly at paragraph 35 of the decision, that the judge had regard to the very sad circumstances in which both Claimants were living in Sudan: Which certainly could be characterised as seriously deprived and little short of destitution.

5. The judge considered the accommodation that would be available to the Claimants were they to come to the United Kingdom and concluded that it was adequate and certainly better than those in which the Claimants presently lived.

6. The judge did recognise that the Sponsor's income derived from income support, it appearing she was also being in receipt of housing benefits, there was not adequate funding to enable them to live at the recognised minimum level; by way of the financial provision of family support. Nevertheless the judge concluded at paragraph 40: "The Claimants would not be entitled to public funds and hence would not be to that extent a burden on taxpayers. Their Sponsor is in receipt of public funds in her own right."

7. It is most unfortunate that there was no analysis of the public interest other than by those words. The judge said at paragraph 39 when dealing with proportionality "I have had regard to Section 117 of the 2002 Act", that is the Nationality, Immigration and Asylum Act.

8. Unfortunately there is not a Section 117 of the Act. There are Sections 117A, 117B, 117C and 117D added as amendments of the NIAA 2002. However, even if that is simply infelicitous language the fact is the relevant considerations directed to a decision-maker arise in respect of the considerations listed in Section 117B. Those identify amongst other things the interests, the public interest, in the economic wellbeing of the United Kingdom by persons seeking to enter; in being able to speak English because by doing so they are less of a burden on taxpayers and better able to indicate. Furthermore it is in the public interest, particularly in the interest of the economic wellbeing of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent because such persons are not a burden on taxpayers and are better able to integrate into society.

9. It is clear that simply being not entitled to receive public funds in any direct claimable way is not the end of the matter as the judge thought. It is plain that as a fact and it was worthy of analysis by the judge that these Claimants were Eritrean nationals with apparently no English language skills, of very limited education, no experience of reading or writing

English and who would come to the United Kingdom at an age when plainly they would have to have recourse to education and English language instruction. They would also potentially be requiring medical healthcare, adequate maintenance and accommodation and additional clothing costs. In those circumstances the public interest and not being a burden on the United Kingdom as well as being to its economic benefits were demonstrably matters that should have been considered by the judge.

10. In considering the sufficiency of the judge's reasoning I apply the approach identified in R (Iran) [2005] EWCA Civ 982, which clarified the need for proper reasoning being provided. I regret to say that the reasoning provided by the judge did not properly address the public interest. Given the lack of reasons I cannot speculate as to whether or not the decision might have been the same if the reasons had been better expressed. On the contrary, the lack of adequate reasons demonstrates that there was a material error of law.

11. The Original Tribunal's decision cannot stand. The decision will have to be remade. Case to be remitted to the First-tier Tribunal to be remade.

12. Findings of fact concerning the family relationship between the Claimants and Sponsor to stand. Findings of fact contained within paragraphs 35, 36 and 37 of the decision to stand. The finding of fact in relation to the disappearance of the second Claimant were not adequately reasoned with reference to the evidence before the judge, should not stand, will need to be reconsidered and analysed with reasons.

13. Finding of fact in paragraph 40 of the decision to stand.

14. No interpreter required.

15. Time estimate 2 hours.

16. Given the age of the Claimants an anonymity order is necessary.

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellants(Claimants) are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both parties. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 20 March 2014

Deputy Upper Tribunal Judge Davey