IAC-FH-AR-V1

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

Appeal Numbers: OA/05313/2014
OA/05314/2014

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 17 August 2015** | **On 7 October 2015** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**P N N**
**E M N**
**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**Entry Clearance Officer - Nairobi**

Respondent

**Representation:**
For the Appellant: Mr R Megha, instructed by Western Solicitors
For the Respondent: Miss A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Kenya born on 10 April 1998 and 18 May 1996 and they appealed against the decision of the Entry Clearance Officer dated 9 January 2014 to refuse them entry clearance to join their father, C N G who had been lawfully residence in the UK since 1986.

2. On 6 January 2015 First-tier Tribunal Judge Butler of the First-tier Tribunal dismissed their appeals both on the immigration grounds and on human rights grounds. He found, however, that the appellants' father had sole responsibility for the appellant s and that the appellants' mother effectively abandoned them to the care of their step mother, their father's now wife, who subsequently joined him in the UK in 2008 with their two youngest daughters. The judge found there was however insufficient income for their maintenance and also concluded that the appellant did not have adequate accommodation.

3. He found the sponsor had been in employment since 1997 and he had control of his "work flat" in question and alternated between the flat he owned and the service flat.

4. A Rule 24 response was submitted by the Secretary of State on the basis that the grounds of application were misconceived in respect of maintenance and accommodation: **KA and Others (Adequacy of maintenance) Pakistan [2006] UKIAT 00065** made it clear that the yardstick to be used was an objective comparison with the funds received by the family on income support and the level of income. The test was whether, after the housing cost of the family had been taken into account, the family's income was greater than that of a family on income support. In fact the respondent submitted that for a family of four children with two parents over the age of 18 years at the date of decision the following was required:

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|---|---|
| Couple | £112.55 |
| Dependent child | £65.62 (x4) |
| Family premium | £17.80 |
| Total | £392.43 |

5. With respect to the accommodation the respondent submitted that if the family lived together in the one bedroom flat that had been purchased by the sponsor it would be overcrowded. If, in order to prevent overcrowding the appellants were to be separated this would result in one of them living alone for some period as it was the evidence of the sponsor as cited in the ground at paragraph 1(b) that he alternated between his own flat and the service flat. It was difficult to see how a minor child could be considered to be accommodated adequately if he were left alone at night for certain periods.

6. An error of law was found in the decision of Judge Butler on the basis that the judge stated that he found the income of the family to be insufficient but did not show how he arrived at the figure required. The basis of calculation could not be clearly discerned. Further with regard to accommodation the judge failed to take into account that the sponsor had been in his employment since 1997 when concluding that the tenure was precarious. The fact that he was only engaged in a licence did not necessarily make the tenancy precarious or inadequate compared with other rental options.

7. At the resumed hearing before me a further bundle was submitted but I reminded the parties that although the Immigration Rules did contain an element of projecting forward, the relevant date for my decision was 9 January 2014.

8. Mr Megha pointed out the papers where were before the First-tier Tribunal which included P60s for the tax years ending 5 April 2013 for C N G, the first sponsor who indicated that he earned £16,886.29 and for the same tax year a P60 was submitted for the sponsor wife, Mrs CN and showed that she had earned £14,187.71. I note that details of the wife's employment were also enclosed in the application for the appellants.

9. There was no dispute that paragraph 297 was the relevant section of the Immigration Rules for the purposes of this determination. The weekly gross income for the couple amounted to £597.57 and the total weekly outlay in relation to accommodation costs (mortgage payments) and council tax was £131.18 (the mortgage payment taken from the bank statements at the time of the decision) and £20.89 respectively. I calculated that £445.50 was left over. This satisfies the income requirements of £392.43 as calculated by the Secretary of State.

10. The accommodation consists of a one bedroom flat purchase by the sponsor where his wife and two children live. The sponsor also has a one bedroomed serviced flat as part of his job. There does not appear to be any restriction of his family living there. Although it is concluded that there are two separate accommodations, there would appear to be four rooms to accommodate 6 people (in accordance with the Housing Act 1985), and there was a surveyor's report on file confirming that there was adequate accommodation for the appellants and their two siblings and parents, albeit that they would have to organise separate accommodation. The sponsor's evidence was that he would live with one child and the wife and 3 children would live in their privately owned flat. There was no legal authority as Miss Everett indicated in relation to the separateness of the accommodation but I take into account **S (Pakistan) (2004) UKIAT 00006** which confirms that the adequacy of accommodation must be assessed in the light of the facts of each individual case and the accommodation will not necessarily be adequate, in terms of the Immigration Rules, simply because it will not be statutorily overcrowded in terms of the Housing Act 1985.

11. I have considered both the physical aspects of accommodation and the promotion of family life. I am satisfied on the basis of the surveyor's report that the accommodation would be sufficient in terms of physical space. The tenancy of the work flat has been held for the sponsor for 16 years (at the date of the Entry Clearance Officer's decision) and I was not persuaded that it was precarious. There was no challenge that this was indeed in existence. I note that the appellants at the date of decision were 14 and 16. There could be an adult in either accommodation and therefore the consideration of supervision was not relevant. That said, there is no specific age at which a child may be left alone and these are teenage girls. It is clear that family life cannot be promoted whilst the appellants remain in Ghana. There was no suggestion raised that the arrangement would affect the best interests

of the children who are already in the United Kingdom and I would consider that it would be promote the family life of all the siblings to be together.

12. It was accepted by Judge Butler that the sponsor Mr Gwaro had sole responsibility for the appellants. The outstanding issues in respect of the Immigration Rules had been maintenance and accommodation and Miss Everett confirmed that it was clear that she could not maintain an objection on the basis of the evidence before her.

13. Having previously set the decision of Judge Butler aside, further to Section 12(2) (b) of the Tribunals Courts and Enforcement Act 2007 I remake the decision and find that the appellants have fulfilled the requirements of the Immigration Rules and I allow the appeal.

**Notice of Decision**

14. Appeals allowed under the Immigration Rules.

**Direction regarding anonymity – rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

**Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. An anonymity order is made because the matter involves minors.**

Signed Date 6th October 2014

Deputy Upper Tribunal Judge Rimington

**TO THE RESPONDENT**
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award further to The Tribunal Procedure (Upper Tribunal) Rules 2008 and Section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007) but decided to make no fee award because of the complexity of the decision process.

Signed Date 6th October 2014

Deputy Upper Tribunal Judge Rimington