Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/03845/2014
OA/03847/2014
& OA/03848/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 2 February 2016	**On 24 February 2016**

Before

Deputy Upper Tribunal Judge Pickup

Between

Cedric N
A N
F C
[No anonymity direction made]

Appellants

and

The Entry Clearance Officer ACCRA

Respondent

Representation:
For the appellants: Ms S Panaagiotopoulov, instructed by Montague Solicitors LLP
For the respondent: Ms A Brocklesby, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Cote d'Ivoire, with dates of birth as given in the decision of the First-tier Tribunal.

2. These are their linked appeals against the decision of First-tier Tribunal Judge Fox promulgated 1.7.15, allowing the appeal of a fourth appellant at the First-tier Tribunal but dismissing the appeals of these three appellants. All four appealed against the decision of the Secretary of State, dated 8.2.13, to refuse him entry clearance to the United Kingdom as ZZ. The Judge heard the appeal on 22.6.15.

3. First-tier Tribunal Judge McDade refused permission to appeal on 15.10.15. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Grubb granted permission to appeal on 12.11.15.

4. Thus the matter came before me on 2.2.16 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Fox should be set aside.

6. The relevant background can be summarised briefly as follows.

7. The appellants had applied for entry clearance for family reunion to settle with [MB], who has refugee status in the UK, pursuant to paragraph 352D of the Immigration Rules. This requires the applicant to have been part of the family unit of the person granted asylum at the time the person granted asylum left the country of habitual residence in order to seek asylum.

8. The first appellant is the son of [MB]. At the date of application he was over the age of 18. By the date of the refusal decision in 2013 he was 20 years of age, and is now 23. The second and third appellants are grandchildren of the [sponsor] and were 5 and 6 years old, respectively, at the date of the refusal decision. As they are not the children of [MB], they cannot qualify under paragraph 352D, or any other provision of the Immigration Rules. As an adult, the first appellant cannot qualify under paragraph 352D.

9. The fourth appellant is the daughter of [MB] and was 17 at the date of the refusal decision. At §28 the judge concluded that the fourth appellant formed part of the sponsor's family unit prior to the sponsor's departure from Cote d'Ivoire, met the requirements of paragraph 352D, and thus allowed her appeal. She is now in the UK and was present with [MB] at the error of law hearing before me.

10. There may have been some confusion about the family circumstances of [MB] and the other three appellants prior to her departure from Cote d'Ivoire. She did not leave to seek asylum, but came to the UK in about 2010 as a family visitor to tend to her sick daughter [F], and was obliged to make her asylum claim when the circumstances in her home country changed with the commencement of the war in 2011. The Secretary of State granted her refugee status. At §44 the judge concluded

that all the appellants formed part of [MB]'s family unit prior to her departure from Cote d'Ivoire.

11. The evidence summarised by the judge suggests that [MB] left the second and third appellants in the care of her adult son [C], the father of the second appellant. The second and third appellants must have been about 2 and 3 years of age when the sponsor left them with [C], and can in consequence have little recollection of life with the sponsor. It is said that [C] has disappeared and his whereabouts are unknown. At §32 the judge found that thereafter responsibility for the minor appellants was transferred to the first appellant, to whom [MB] sends money for their maintenance and they have fixed accommodation.

12. From §21 it appears the judge understood the evidence to be that the first appellant cannot care for the second and third appellants, as they live separately from him. This feature of separation is repeated at §33 of the decision. However, before me Ms Panadgiotopoulov submitted that this was factually inaccurate, in that it was and remains the appellants' case that they all resided together in the same household with [MB] before she left for the UK, and that the three remaining appellants continue to reside together. In any event, at §35 the judge found that the first appellant "continues to maintain meaningful contact with the other appellants," and at §36 that they are supported financially exclusively from the sponsor's resources derived from the UK, and there is no reliable evidence to demonstrate that arrangement cannot continue. They have accommodation, utilities, financial support, and the judge found there was no reliable evidence to demonstrate that their circumstances are materially different from other Cote d'Ivoire residents.

13. At §37, the judge considered that the article 8 claim is in effect an asylum claim, it having been asserted that the minor appellants live in desperate circumstances in transient accommodation (see §27). As the judge pointed out, if their circumstances have materially changed since the date of application or decision, it is open to them to make a fresh application for entry clearance and to substantiate their claims with reliable evidence. At §47 the judge found the evidence demonstrated that the appellants have resided in Cote d'Ivoire for a significant period of time without adverse incident. The judge could find nothing more than socio-economic advantage to the application. At §41 the judge found no reliable evidence to demonstrate why the children's best interests would be served by leaving their current environment above or beyond the obvious socio-economic convenience.

14. The grounds of application for permission to appeal assert that the judge failed to have regard to section 55 regarding the best interests of the children and failed to properly assess proportionality under article 8 ECHR. In refusing permission to appeal, Judge McDade considered the decision to be carefully reasoned. However, the assertion in the decision that section 55 was neither raised nor argued is disputed, it being pointed out that the appellants' representative relied on MK (s55 – Tribunal options) Sierra Leone [2015] UKUT 00223, and §27 of the decision notes the section 55 arguments.

15. In granting permission to appeal, Judge Grubb pointed out that the success of the fourth appellant may be a post-decision fact and so not relevant in an entry clearance case where the circumstances must be confined to those prevailing at the date of decision. "Nevertheless, on the basis of the matters raised in the grounds (para 4), it is arguable that the Judge failed properly to consider the appellants' circumstances in the DRC (sic), in particular in relation to the second and third appellants in assessing their 'best interests' and the impact upon the sponsor of separation. For these reasons, permission to appeal is granted."

16. However, it appears to me from §31 of the decision that the judge has carefully considered the impact of the second and third appellants remaining in Cote d'Ivoire whilst the fourth appellant's appeal would be allowed, i.e. remaining in the absence of the fourth appellant. Further, on the basis that it is asserted that the first appellant lives with the second and third appellants, they have an adult looking after them, supported by their grandmother in the UK.

17. The Rule 24 reply, dated 3.12.15, submits that the grounds have no merit and merely disagree with the adverse outcome of the appeal. The judge considered all the evidence then available to him and reached conclusions open to him on that evidence.

18. From the decision it is clear that at §7 the appellants' representative conceded that the above-named appellants could not succeed under the Rules and could only pursue article 8 ECHR. At §9 the judge set out the correct standard and burden of proof. Even though the judge suggested it was not raised in the appeal hearing, at §13 the judge correctly directed himself on the section 55 duty to take account of the best interests of the minor appellants as a primary consideration. This was again reviewed at §31 and particularly considered in respect of the second and third appellants.

19. It is clear that the three remaining appellants could not meet the requirements for family reunion. The first because of his age, and the other two because they are not the children of the sponsor. Although the judge considered that the circumstances were sufficiently compelling to justify consideration of family life under article 8 ECHR, outside the Rules the Secretary of State has set the family relationship perimeters within which family reunion is to be facilitated and this is highly relevant to any article 8 family life proportionality assessment. Whilst the judge accepted that there had been family life between the sponsor and all three appellants, the judge considered that the interference with that family life occasioned by the refusal to permit entry clearance, in the legitimate interests of maintaining immigration control to protect the economic well-being of the UK, was entirely proportionate on the facts of this case, for the reasons set out between §47 and §53 of the decision. That was a conclusion open to the judge and for which cogent reasons have been provided. I am satisfied that the judge did take proper account of the best interests of the child appellants as a primary consideration, but as has been said, it is not a trump card over all other considerations. I am not satisfied that the appellants demonstrated

such inevitable hardship as is asserted at §4 of the grounds arising from the impact of the departure of the fourth appellant or from continuing separation from the sponsor. There was in reality here insufficient cogent evidence to demonstrate that refusing entry clearance to either her adult son, or young grandchildren, was disproportionate.

20. In the circumstances, I find no material error of law in the decision of the First-tier Tribunal, even if the section 55 best interests assessment might have been more explicitly laid out in the decision of the First-tier Tribunal.

Conclusions:

21. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal of each appellant remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup

Dated