



IAC-FH-AR-V2

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

Appeal Numbers: OA/04571/2014
OA/04574/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 October 2015**

**Decision & Reasons Promulgated
On 13 January 2016**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**CHRISTOPHER FRIMPONG
JOEL NYARKO
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - ACCRA

Respondent

Representation:

For the Appellant: Mr D Gibson-Lee, instructed by Nasim & Co Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Ghana. They appealed to a Judge of the First-tier Tribunal against the respondent's decision of 5 March 2014 refusing to grant entry clearance. The appellants applied for entry clearance to join their mother for the purpose of settlement in the United Kingdom. The appeals were dismissed by the judge, and that decision was challenged partly in respect of whether or not the appellants' sponsor had sole responsibility for them but largely because the judge did not consider Article 8 of the Human Rights Convention. The judge who granted

permission did so only in relation to the Article 8 point, and no other matters were pursued before me.

2. In his submissions Mr Gibson-Lee argued that the judge was obliged to address Article 8 even if the matter was not raised before him. It was a matter of the best interests of the children and it was a matter that should be addressed by a different judge because the opinion the judge had formed could cloud his view.
3. In his submissions Mr Melvin argues that Article 8 had not been put forward at the hearing and therefore the judge was obliged to address it, but if it was found that he had not dealt with it it should go back to the same judge on the basis of the findings he had made.

Discussion

4. It is clear that Article 8 was raised in the grounds of appeal to the judge but equally it is clear that it was a matter that was not argued before him, and his notes from the hearing make it clear that that was the situation. That might not matter, but issues going to the rights of children in the context of Article 8 and section 55 are of sufficient importance that even if they were not raised it is my view that the judge ought to have addressed the matter. There is no other error argued for or identified in his decision, and I can see no reason why the matter should not simply be returned to Judge Jones QC for him to complete his determination by considering the claim in respect of Article 8.

Notice of Decision

5. The appeal is allowed to the extent that the judge did not address Article 8, and it will be remitted back to him for him to complete his determination by considering Article 8 in the context of the findings which he made at the previous hearing.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Allen