



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/13236/2014**

Appeal Numbers:

OA/13238/2014

OA/13241/2014

THE IMMIGRATION ACTS

Heard at Birmingham

**Decision &
Promulgated
On 29 April 2016**

Reasons

On 15 April 2016

Prepared on 15 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

ENTRY CLEARANCE OFFICER - ACCRA

Appellant

and

**A S
K S
J G**

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr D Mills, Senior Presenting Officer

For the Respondents: Mr A Barnfield, Counsel instructed by D & A Solicitors

DECISION AND REASONS

1. In this decision the Appellant is referred to as the ECO and the Respondents are referred to as the Claimants. The first Claimant, date of

birth 10 May 1999, the second Claimant, date of birth 17 October 2001, and the third Claimant, date of birth 6 August 1998, are nationals of Sierra Leone who appealed against the ECO's decisions dated 21 August 2014. Their sponsors were Mr B S and Mrs H S. The first claimant is the child of the Sponsors. The second claimant is the child of Mr B S and another. The third Claimant is the child of Mrs H S. Their ages in August 2014 were 15, 12 and 16 years respectively.

2. Their appeals came before First-tier Tribunal Judge Stott, (the judge), and were appeals allowed on 16 February 2015. On 25 February the ECO challenged the judge's decisions and permission was granted by First-tier Tribunal Judge Shimmin on 7 April 2015.
3. On 20 August 2015 I heard and decided, giving an oral judgment in the matter, the Original Tribunal's decision could not stand because of material errors of law. The matter was to be relisted as soon as possible for a resumed hearing in the Upper Tribunal before me. Unfortunately, the file and my typed decision were mislocated until the decision was finally promulgated on 8 January 2016.
4. The ECO's decisions fully identified shortcomings in the evidence provided at the date of the decisions on 21 May 2014. There was no challenge to the ECO's findings on the applications under the immigration rules. A point further conceded before the judge. Mr Barnfield argued, the sole issue was whether or not the Claimants could engage with Article 8 of the ECHR on the basis that the Respondent's decision was not ECHR compliant and in particular that it was disproportionate to exclude them from the United Kingdom and prevent them re-establishing contact with their parents (the Sponsors) resident in the United Kingdom with four additional children latterly born in the United Kingdom.
5. The relevant date for consideration of the Article 8 ECHR claim was the date of the ECO's decisions; 1 August 2014. I note the judge considered

whether the Claimants were in 'dire and compelling' circumstances [D 12] having referred to the case of Nagre. [D7]. No point was taken in the ECO's grounds that the judge had failed to consider the provisions of the rules but rather the failure to provide adequate reasons for finding the ECO's decisions disproportionate. I find the ECO's approach consistent with *SS (Congo)*[2015] EWCA Civ 387 [39-42] and with reference LTE claims being established where individuals interests are such that a good claim for LTE may be established outside the Rules [40]. At the resumed hearing the Article 8 claim and proportionality were all that were argued.

Background

6. At the date of decision, the background evidence showed that between c2001-2011 the Claimants had been accommodated by an aunt who had died on 10 January 2011. They were subsequently taken care of by Mr S, a teacher and family friend. He has, since the date of the ECO's decision, moved on to a new school, in a different area of Sierra Leone, in October 2014. He had made arrangements for the children to be left living with a neighbour, Mr I who had a wife and two children but would be moving away leading to further disruption in the children's lives with no certainty as to where they might live. Mr I and his family moved elsewhere in about early December 2014 Mr B S said that since about 25 January 2015 the Claimants had been homeless, living on the streets, destitute and the Sponsors had lost telephone contact with them about the end of March 2016. Nevertheless, at the material time, the date of the ECO's decision, the Claimants were being accommodated and had shelter and reasonable living conditions.

7. The three statements of Mr B S (16 January 2015, 9 December 2015 and 5 April 2016) give very limited information about the Appellants circumstances and living conditions, post date the decisions or were not contemplated at the date of the ECO's decisions. Mr B S, in his statement of 9 December 2015, refers to the Claimants being destitute, living in squalid conditions, the second Claimant almost being the victim of multiple rape and the third Claimant being injured whilst defending her; An

attempt to complain to the police did not achieve anything. Other information refers to the Claimants being ill and badly affected by flooding in September 2015 (AB2 E1.-E12) (AB1 pp534-543).

8. Mr B S, date of birth 22 May 1976, claims to be a British National by naturalisation as does Mrs H S, date of birth 22 May 1976. Their children, said to be British nationals, names are Z (dob. 2003), A (dob. 2004), H (dob. 2006) and J (dob. 2011) possible ages 12,11,9 and 5 years. They live with the Sponsors in Birmingham and attend local schools.
9. It was the Sponsors' option to stay in the United Kingdom or to return to care for their children in Sierra Leone in 2014 or 2015 given the difficulties it is claimed the Claimants faced; Remaining in the United Kingdom with their four children was their choice. Their decision was not explained by reference to the UK based children's best interests or well being nor a lack of help to care for them nor the children's age nor was there evidence of those children's lives in the UK adduced to support such a claim. It was not said they could not return because of the seriousness of difficulties likely to be met e.g. Ebola. Mr Barnfield did not refer me to any statements from any of the Claimants or letters seeking to join the Sponsors in the UK or even about their personal circumstances in 2014 or 2015 when the Sponsors claim to have been in touch with them by telephone.
10. I fully take into account the cases of SS (Congo) 2015 EWCA Civ 387 and Azimi-Moyad [2013] UKUT 197. Even though these remain out of country appeals I have given substantial weight to apply the spirit of Section 55 BCIA 2009. I applied the cases of Razgar [2004] UKHL 27, Huang [2007] UKHL 11 and ZH (Tanzania). I have concluded that at that time the Claimants seeking to re-establish family life with their parents was an objective within Article 8(1) ECHR.
11. I find the ECO's decisions were a significant interference in seeking to establish a new family life in the UK. I find Article 8(1) rights were

engaged. On the face of it, that was also resolvable by the Sponsor and his wife reuniting with the Claimants and their siblings as a family in Sierra Leone. The best interests of the UK or Sierra Leone based children was not an issue raised before me but I have on the extremely limited evidence adduced taken them into account in so far as common sense suggests they must be some impacts which will be interruptive or adverse. It is unfortunate that such a primary and important issue was scarcely referred to particularly given the time spent in the UK by the older children and the ages of the Claimants and the time to prepare these appeals: let alone the costs incurred.

12. I was not provided with any information about the Sponsors' financial circumstances. Mr Barnfield made no submissions nor took me to documentary evidence of the Sponsors' income, outgoings or obligations. The bundles (AB1, 2&3) may contain some information but it was not for me to try to select and assemble the evidence. I have no information on the impact of or estimated costs of clothing, feeding, living expenses, daily travel, education/college costs of the Claimants. I highlighted the deficiencies in August 2015 and by my written decision of 8 January 2016 In these circumstances it would be complete speculation on my part about the burden on the taxpayers and/or the Sponsor's ability to maintain and accommodate them when considering the public interest or proportionality. No submissions were made to me on the points or Mr B S's status which might have affected the matter.
13. It was also not argued the ECO's decisions were unlawful or did not fall within the objects of Article 8(2) ECHR
14. In the light of the very limited evidence about the Claimants circumstances at the date of the ECO's decision I find that the evidence did not show that the refusal of entry clearance for settlement purposes was disproportionate. In reaching that finding I have given significant weight to the public interest as required by Sections 117A(1), (2)(a), (3)

and 117B (1), (2) and (3) NIAA 2002 for I have no information about the Claimants English language skills or financial circumstances. I have not taken into account after arising matters referred to in the evidence of the Claimants' father concerning the claimed uncertain circumstances which the children now face in relation to both in general terms or the outbreak of Ebola and whether or not they were likely to be accommodated or have a roof over their heads. Those are after arising matters that were not in contemplation at the date of the ECO's decision.

15. It remains my view that the judge erred in law in taking those matters into account when considering the matter as at February 2015, about a year after the ECO's decision. Plainly, those changes in circumstances could have been a basis for a further application to be pursued in the light of evidence of the destitution claimed and the circumstances in which the three children were living. I do not therefore find that material thereafter, however much it may generate sympathy and present concern for the wellbeing of the Appellants.

- 16 Rather, I concluded that if, as now being described, the destitution the Claimants face is as grave as it is claimed for about one year, there is a current loss of contact with the Claimants from early April 2016, and uncertainly as to their accommodation and arrangements with near destitution since about January 2015, it is a matter of some concern of that no meaningful steps or at all have been taken about the care of the Claimants by anyone acting for the Sponsors or by them. Over nearly the whole of 2015 and 2016, if Mr B S is correct, there has been no contact with the UNHCR or NGOs dealing with children in Sierra Leone or with the Red Cross or Red Crescent. I find very surprising the absence of contact by the Sponsors with the Sierra Leonean authorities either based in the United Kingdom or in Sierra Leone in the light of what on their view is a seriously deteriorating set of circumstances over many months. I can see no reason, when they had legal representatives, why they did not seek

help. Mr B S did not give any sensible explanation for the Sponsors inaction.

17. However there is at least one explanation for the lack of steps that the Sponsors have taken and that is they actually know where the Claimants are and the circumstances in which they are living. Thus the Sponsors are not worried, as currently claimed, as to the Claimants whereabouts. It is not for me to investigate these matters or to make any findings upon the evidence. For the avoidance of doubt I do not regard the unresolved point as significant in remaking the decisions.

17. Thus, I find that the Article 8 claim fails for the reasons given above. It may well be a different case could be presented to make an Article 8 ECHR claim but on the brief evidence not essentially directed at critical issues I do not find the ECO's decisions were disproportionate.

NOTICE OF DECISION

The Original Tribunal's decisions can not stand. The following decisions are substituted.

The appeals of the Claimants on Article 8 ECHR grounds are dismissed

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

An anonymity order has previously been made and should be continued.

Signed

Date 24 April 2016

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeals of the Claimants have failed and accordingly no awards of costs are made.

Signed

Date 24 April 2016

Deputy Upper Tribunal Judge Davey