Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: HU/00868/2016**

HU/00879/2016

HU/00884/2016

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham	**Decision & Reasons Promulgated**
On 2nd November 2017	**On 24th November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

FATOUMATTA DAMPHA
LAMIN DAMPHA
BUBACARR DAMPHA
(ANONYMITY DIRECTIONS NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - GAMBIA

Respondent

Representation:

For the Appellants: Mr N Ahmed, Counsel instructed by Royal Solicitors
For the Respondent: Mrs M Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellants are all citizens of Gambia. They are siblings born respectively on 19th December 2000, 29th December 2002, and 2nd March 2005. They applied for entry clearance to come to the UK as the children of the Sponsor, their father, Lang Dampha. Those applications were refused for the reasons given in Notices of Decision dated 11th December

2015. The Appellants appealed, and their appeals were heard by First-tier Tribunal Judge Grimmett (the Judge) sitting at Birmingham on 12th June 2017. She decided to dismiss all the appeals for the reasons given in her Decision dated 14th June 2017. The Appellants sought leave to appeal that decision, and on 8th September 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained a material error on a point of law so that it should be set aside.

3. The issue in the appeal initially was whether the Appellants satisfied the requirements of paragraph 297(i)(e) and (f) of HC 395. The Judge dismissed the appeal because she was not satisfied that the Sponsor had the sole responsibility for the upbringing of the Appellants. This was because owing to the inconsistencies in the evidence the Judge was not satisfied that the Appellants' mother lived far away from them in the Gambia. The Judge went on to consider the Appellants' Article 8 ECHR rights. The Judge dismissed the appeal under the Immigration Rules as she found the decision of the Respondent to be proportionate mainly because she found there was insufficient income to maintain the Appellants adequately. The Judge did not consider the Appellants' Article 8 ECHR rights outside of the Immigration Rules because she found no exceptional circumstances pertaining to the Appellants.

4. At the hearing before me, Mr Ahmed argued that the Judge had erred in law in coming to these conclusions. He referred to his Skeleton Argument and argued that the Judge had not considered all the relevant factors in deciding that the Sponsor had not had sole responsibility for the upbringing of the Appellants. According to the Decision, the Judge made only a brief analysis of the evidence relating to this subject. She had made no finding on the fundamental point as to who had made the important decisions concerning the upbringing of the Appellants. The Judge had not made any consideration of the alternative provision contained in paragraph 297(f) as to whether there were serious and compelling family or other considerations which made the exclusion of the Appellants undesirable. Mr Ahmed went on to say that the Judge should not have considered the Sponsor's ability to maintain the Appellants adequately in the UK as this had not been an issue in dispute at the hearing. In any event, the Judge had erred in law in her finding in this respect because she had used the net income of the Sponsor and had not considered his savings. Finally, Mr Ahmed submitted that there had been no proper consideration of the Appellants' Article 8 rights outside of the Immigration Rules.

5. In response, Mrs Aboni referred to the Rule 24 response and argued that there had been no such errors of law. The Judge directed herself appropriately and made findings open to her upon the evidence. She had dealt with the issue of sole responsibility. She had been right to consider the maintenance of the Appellants in the context of Article 8 ECHR rights

as this was required by the provisions of Section 117B Nationality, Immigration and Asylum Act 2002. The net income available to the Appellants was the correct test. The Judge correctly calculated that the income available for the maintenance of the Appellants was less than the relevant Income Support levels. Finally, as the Judge found that there were no exceptional circumstances pertaining to the Appellant, she was right not to consider the Appellants' Article 8 ECHR rights outside of the Immigration Rules.

6. I find no material error of law in the decision of the Judge which I therefore do not set aside. It is apparent from what the Judge wrote at paragraph 7 of the Decision that she did not find credible the Sponsor's evidence as to the issue of sole responsibility. This was a decision open to the Judge on the evidence before her and which she satisfactorily explained by referring to inconsistencies in the evidence. This being the case, it cannot be said that the Appellants had discharged the burden of proof of showing that the Sponsor had had sole responsibility for their upbringing. It is true that the Judge did not specifically refer to the alternative provision set out in paragraph 297(i)(f) of HC 395, but this does not amount to a material error of law because the Judge found that there was no adequate maintenance for the Appellants in the UK and that therefore paragraph 297(v) was not satisfied. The Judge correctly calculated the ability of the Sponsor to adequately maintain the Appellants by using his net income. The Judge took into account the Sponsor's savings at paragraph 11 of the Decision.

7. There was no error of law in the Judge taking into account the inability of the Sponsor to adequately maintain the Appellants in the Article 8 ECHR proportionality assessment. As Mrs Aboni said, this is a requirement of Section 117B of the 2002 Act. Finally, as the Judge found no exceptional circumstances and therefore it was not an error of law for her to fail to deal with the Appellant's Article 8 ECHR human rights outside the Immigration Rules in accordance with the decision in **MF (Nigeria) v SSHD [2013] EWCA Civ 1192**.

8. For these reasons I find no material error of law in the decision of the Judge.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

No anonymity direction is made.

Signed Date 23rd November 2017
Deputy Upper Tribunal Judge Renton