



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

Appeal Numbers: EA/00743/2016  
EA/00744/2016

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 26 October 2018**

**Decision & Reasons Promulgated  
On 5 November 2018**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**FTS  
GAS  
ANONYMITY DIRECTION MADE**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr Sackey

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants.*

**Introduction**

1. The appellants are citizens of Ghana born in 1999 and 2006 respectively. They were minors when they made their applications for EEA family permits on 4 December 2015. The second appellant remains a minor and this decision refers to his circumstances. I have therefore maintained the anonymity orders.
2. The first appellant claims to be the nephew of Mr Sackey. The second appellant claims to be the adopted brother of Mr Sackey and that his adopted mother Mary Okusu is the mother of Mr Sackey. The appellants also claim that Mr Sackey is married to Aiga Lorence ('the sponsor'). The sponsor is a Latvian and therefore EEA citizen.
3. The appellants' family permit applications were refused in decisions dated 4 January 2016. Further decisions were issued dated 11 February 2016. The entry clearance officer ('ECO') accepted that the second appellant was adopted by Ms Okusu, and is therefore the adopted brother of Mr Sackey and that the first appellant is the nephew of Mr Sackey. The ECO found that this meant that the appellants are not direct family members and as such the requirements of regulation 8 of the Immigration (EEA) Regulations 2006 ('the 2006 Regs') needed to be met. This relates to extended family members ('EFM's). The ECO therefore refused the family permits having reached the following conclusions:
  - (i) There were doubts as to the appellants' claimed relationship with the sponsor, as the ECO was unable to contact her.
  - (ii) There was insufficient evidence of the appellants' dependency upon the sponsor.
  - (iii) In any event it was not credible that the sponsor had the financial means to support both appellants, in addition to Ms Okusu and Mr Sackey.

### **Appeal proceedings**

4. These appeals have a lengthy procedural history. It is only necessary to summarise this here. The appellants appealed to the First-tier Tribunal ('FTT') against the 4 January 2016 decisions to the FTT. The further decisions dated 11 February 2016 have not been the subject of any separate appeal. In a decision dated 19 August 2016, the FTT concluded that the 4 January 2016 decisions had been effectively withdrawn and replaced by the 11 February 2016 decisions, and therefore no appeals had been lodged regarding the latter decisions. The FTT therefore concluded that it did not have jurisdiction.
5. The matter came before Upper Tribunal ('UT') Judge Harris, who decided in a decision dated 21 April 2017 that any error in treating the decisions under appeal as withdrawn was not material because there was no jurisdiction to consider the appeals in any event pursuant to Sala [2016] UKUT 411.

6. In a consent order dated 3 August 2018, the Court of Appeal granted permission to appeal and remitted the appeal to the UT. In the accompanying statement of reasons, it was accepted that following SM (Algeria) v ECO (UKSC 2015/0243) the appellants were entitled to appeal under the 2006 Regs, and that Sala was wrongly decided.

### **Hearing**

7. At the hearing before me, there was substantial agreement between the parties as follows:
- (i) The 11 February 2016 decisions sought to clarify the ECO's position and the 4 January 2015 decisions, which were the subject of appeal grounds must be read with that clarification in mind.
  - (ii) In short, the ECO continued to accept the claimed relationship between the appellants and their uncle / adopted brother but disputed (a) sponsor and (b) that there was satisfactory evidence of dependency upon the sponsor.
  - (iii) As such, Mr McVeety made it clear that there was never any application to withdraw the 4 January 2015 decisions.
  - (iv) As such the appeal against those decisions remains extant and valid, and the FTT erred in law in finding otherwise.
  - (v) Thus far there have been no findings of fact on the disputed issues.
  - (vi) These disputed issues require extensive fact-finding, and it is appropriate and proportionate for this to be carried out in the FTT.

### **Discussion**

8. I have no hesitation in concluding that the parties were correct to reach the agreement set out above. The FTT erred in law in finding that the 4 January 2016 decisions were withdrawn. The appeal against those decisions remains extant. The further decisions dated 11 February 2016 did no more than clarify the outstanding areas of dispute.

### **Disposal**

9. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement*, and I have decided that this is an appropriate case to remit to the FTT given the absence of any factual findings thus far.
10. There has already been substantial delay in the determination of these appeals, arising as they do from decisions dated as far back as January 2016, and it would be helpful if the appeals could be listed as soon as possible in the FTT.

### **Decision**

11. The decision of the FTT involved the making of a material error of law and I set it aside.
12. I allow the appeal against the FTT's decision. The decision shall be remade by the FTT.

Signed

Dated

*M. Plimmer*

26 October 2018

Melanie Plimmer  
Judge of the Upper Tribunal