



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

Appeals: HU/06341/2016
HU/06345/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 3 October 2019

Decision and Reasons Promulgated
On 10 October 2019

Before

UT JUDGE MACLEMAN

Between

V N & I N
(anonymity direction not made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr R Gibb, of D Duheric & Co, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Cameroon, both children. Their father and mother are also citizens of Cameroon, who came to the UK as students, with the appellants as their dependants.
2. The appellant's father had leave as a student until 12 October 2015. On 12 October 2015 he and the children applied for leave based on family and private life. The mother of the children then had leave as a student (which appears to have remained valid at least until 28 September 2018).

3. The respondent declined to grant leave for reasons set out in a letter dated 22 February 2016, dealing with father and both appellants. None of the applications met the requirements of the immigration rules. The respondent did not consider that the circumstances, including consideration of the best interests of the children, disclosed anything exceptional, such that leave was warranted outside the rules.
4. All three appealed to the FtT, stating grounds under article 8 of the ECHR. (The appeal of the appellants' father had reference HU/06337/16.)
5. FtT Judge Debra Clapham dismissed all three appeals by a decision promulgated on 6 October 2017. The appellants' father did not appear and was not represented at the hearing before her. The position advanced through the appellants' mother was that he disappeared around December 2016. The Judge did not accept her evidence, or evidence from her sister; considered that the family knew where he was; and found it reasonable to expect the present appellants to return (with their mother) to Cameroon.
6. The two appellants sought permission to appeal from the FtT on grounds headed as "errors regarding long residence of children" and "errors regarding assessment of credibility". The FtT refused permission. The appellants sought permission from the UT, advancing the original grounds and four further grounds. The UT refused permission, on the view that the FtT had applied the correct test to whether it would be reasonable to expect the children to leave the UK, and was entitled to conclude as it did on credibility. The appellants petitioned the Court of Session for judicial review of the UT's refusal, factoring in reliance on *KO (Nigeria) v SSHD* [2018] 1 WLR 5273.
7. In a joint minute parties concurred that the UT "erred in law in the way averred in [20] of the petition".
8. That paragraph says:

"The UT's decision states, "*The family could therefore properly be expected to return to Cameroon as a unit*". That is an error of law. The Court is not engaged in what ought to happen in the future, having weighed up the parents' circumstances. The FtT should have judged what is reasonable for the children in isolation but against the real world fact that the mother was lawfully in the UK. The FtT therefore blended the reasonableness assessment against the family unit. That approach is contrary to *KO*."
9. On 12 August 2019 the Vice President of the UT granted permission:

"... in the light of the interlocutor of the Lord Ordinary and the agreed position set out in the joint minute ... parties are reminded that the UT's task is that set out in s.12 of the 2007 Act."
10. The case was accordingly listed before me on 3 October 2019.
11. In light of *KO*, decided after the FtT made its decision, and of change of circumstances since then, the respondent conceded that the UT should

find error of law, set aside the decision of the FtT, and allow the appeals. The children's mother has in the meantime been granted leave, based on the position of the children, so by one route or another, the same outcome would be reached.

12. The decision of the First-tier Tribunal is set aside, and the appeals, as brought to the FtT, are allowed.
13. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

Dated 4 October 2019
UT Judge Macleman