IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-005438
UI-2024-005440
UI-2024-005441
First-tier Tribunal Nos: HU/54084/2023
HU/54087/2023
HU/54085/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 February 2025

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY TRIBUNAL JUDGE ALIS

Between

BS
BM
BN
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr D Eteko, Solicitor, instructed by IRAs & Co
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 29 January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court.

We make this order because the appellants are children and we see little or no legitimate public interest in their identities rather than in their circumstances.

DECISION AND REASONS

1. The appellants in this case are citizens of the Democratic Republic of Congo. They are children. The first and second appellants are twin boys born in 2018 so they are now nearly 7 years old, and the third appellant is female; she is older, she was born in 2016 and is now 8 years old.

2. They appeal with the permission of the First-tier Tribunal the decision of the First-tier Tribunal to dismiss their appeals on human rights grounds against a decision of the respondent on 21 April 2023 to refuse them entry clearance to the United Kingdom to join their parents in the United Kingdom. They presently live with their maternal grandparents. Their father is a British citizen of Congolese descent. He married their mother in July 2016 in the DRC. He returned to the United Kingdom and his wife joined him in March 2022. They want their children to join them. That is very natural and very understandable.

3. The applications were unsuccessful for three reasons. The Entry Clearance Officer was not satisfied that they met the vaccination requirements or that they would be maintained properly or that they would be accommodated. By the time the case got to the First-tier Tribunal the Secretary of State was satisfied about the vaccination requirements and about maintenance but accommodation was very much in issue. The problem with the accommodation is that, far from there being evidence that suitable accommodation was available there was clear evidence that suitable accommodation was *not* available. There was a letter from a housing association known as Simba dated 2 August 2024, ~~so~~ this was a post-decision intervention from a Jefferson Williams, who says the following:

> "We realise that adding to the household, bringing it to the 3.5 persons threshold, will ultimately result in overcrowding but we are prepared to allow this for a short period of time. During this period, we will expect [Mr N] to work with us to prepare his family for rehousing".

This is not evidence that suitable accommodation would be available on arrival or soon afterwards. It is evidence from the housing association that they would expect the children's father to help prepare for that eventuality. The fact that the housing association would appear to tolerate overcrowding for a short period of time is not at all the same as a finding that there is sufficient room for the children. The evidence was that there was not sufficient room and that was the evidence on which the First-tier Tribunal Judge relied. It follows therefore that there was an entirely sustainable finding that suitable accommodation was not available and that is an important requirement of the Rules.

4. It will only be in unusual circumstances that any case will succeed on human rights grounds that cannot succeed under the Rules and perhaps especially in the case of the Rules relating to bringing in children because the Rules themselves are wide and provide for admission where there are "serious and compelling" circumstances that make exclusion undesirable but always subject to adequate accommodation and maintenance being provided.

5. There are no "serious and compelling" circumstances here. That is not how the case was argued, nor should it have been. There was perfectly clear evidence that the children were looked after properly by their grandparents and there was

an express finding by the judge that there was sufficient and appropriate care for them where they were.

6. There was also an entirely proper concession before the First-tier Tribunal that the Rules could not be met. The rules illuminate the public interest in an article 8 balancing exercise and it is hard to see how the appeal could have succeeded. We are not entirely unsympathetic because we appreciate these appeals concern three children whose parents want them to live with them in a single family unit and living together is a nuclear family is something that public policy supports. The problem is that the appellants, through their parents, did not show that they would be accommodated properly and the judge was entitled, and quite possibly obliged, on the facts of this case to conclude not only that the Rules had not been satisfied but that this was not one of those rare and exceptional cases that should have been allowed on human rights grounds even when the Rules had not been satisfied.

7. We do comment that the judge might have been unwise to have given any weight at all in his balancing exercise to the fact that the children did not speak English. The judge acknowledged that it was not a requirement of the Rules that they did and it might have been better to have seen this as an entirely neutral, rather than very slightly negative, point but that is irrelevant. The primary reason was that accommodation was not available and that finding was, we find, unimpeachable.

8. For all these reasons we find there is no material error of law and we dismiss these appeals.

9. We just want to add as a rider that we are, obviously, aware that this is a case concerning the welfare of three children. Judge Alis and I had the opportunity of discussing the case both yesterday and today. It should not be thought that, by reason of giving an extempore judgement, we have not considered the appeals carefully; we gave considerable thought before we heard the submissions today and accept that Mr Eteko did all that could be expected of him but the Rules and the law is against him.

10. For all these reasons we dismiss these appeals. That is our decision.

Notice of Decision

11. These appeals are dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 January 2025