Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/21964/2012

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 13 December 2013	**On 22 January 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

RAHAMUTH RAGOONANAN

Appellant

and

ENTRY CLEARANCE OFFICER – PORT OF SPAIN

Respondent

Representation:

For the Appellant: Mr T Royston, instructed by Sheffield Law Centre
For the Respondent: Mr S Archibald, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Rahamuth Ragoonanan, was born on 11 September 1964 and is a male citizen of Trinidad and Tobago. The appellant is married to Ms Hameshah Green (hereafter referred to as the sponsor) and the couple have three children: Micky [date of birth 2 January 1994]; Tamara [date of birth 11 October 1996] and Rodney [date of

birth 29 April 2002]. The sponsor and the children are British citizens. The appellant applied for entry clearance to the United Kingdom as a spouse, his application was refused on 9 October 2012. The appellant appealed to the First-tier Tribunal (Judge Mensah) which, in a determination promulgated on 25 June 2013 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal. The first ground asserts that the judge failed to treat the best interests of the children affected by the appeal as a primary consideration. That obligation arises under Section 55 of the 2009 Act.

3. I reject that ground of appeal. I find that the judge had proper regard to the evidence given by the children. At [14] the judge recorded that,

> the sponsor explained how [she and the appellant] had decided to give their relationship another go and as they already had children together this was supported by the children. The sponsor explained the appellant had never stopped playing a part in the lives of the children but their relationship began to redevelop and lead to their marriage in 2011.

Again, at [18], the judge recorded that she had

> taken into account the interests of the British children who are clearly settled in the UK at various stages of their education. They have lived in the UK with their mother and have clearly settled here. I have taken into account the settled life the sponsor has here and her work and family connections.

Those factors were taken into consideration by the judge in her determination of the appeal on Article 8 ECHR grounds; both parties acknowledged that the appellant could not meet the financial requirements of the Immigration Rules, as the judge records at [9]. It is clear from the judge's observations which I have quoted above that she considered it in the best interests of these children to remain living with their mother in the United Kingdom and that it would not be reasonable to expect them to relocate to Trinidad and Tobago or elsewhere abroad. The grounds of appeal at [11] complained that the judge had failed to consider how the children might be adversely affected by their continued separation from their father; how they might benefit in the presence of their father; or what the children's views might be. It would, perhaps, have been helpful if the judge had stated in greater detail what she considered the children's best interests to be but I have to say that the matters raised in the grounds (together with Mr Royston's oral submission that the judge had erred by failing to acknowledge that the children's best interests would include being brought up by both of their parents) are, frankly, self-evident. The judge has not suggested the children would actually benefit by being separated from their father; she has recorded the evidence of the sponsor that the appellant plays a continuing role in the children's lives and recorded also that the children supported their parents' reconciliation. I do not accept that, had the judge expressly reminded herself and expressly recorded in the determination that the children may benefit by being brought up by both parents, this would have led her to a different outcome in the Article 8 ECHR appeal. I find that the judge had been aware of the interests of

the children and the outcome of this appeal and has fulfilled her obligations under Section 55 of the 2009 Act thereby.

4. The second ground records that the sponsor [a dental nurse] earns less than £12,000 per annum. The sponsor had claimed she would be able to increase her hours if the appellant joined the family and helped to look after the children. Grounds also note that the sponsor "gave evidence that the appellant has a history of international employment and will be able to work as a construction worker in the UK." Further, the appellant relies on **R (on the application of MM & Others) v Secretary of State for the Home Department [2013] EWHC 1900 (Admin)** (5 July 2013). Mr Royson acknowledged that the First-tier Tribunal's determination was promulgated before the judgment of Blake J in **MM** but he submitted that the principles enunciated by the Administrative Court were clearly relevant in the present case.

5. I accept that the principles enunciated in **MM** may be of general application. The problem for the appellant is that, even had those principles been applied in his case, it is difficult to see why he should have succeeded. At [16] the grounds of appeal say this:

> Features (1) and (5) from paragraph 124 of **MM** apply to the appellant's case because given:
>
> (a) the sponsor's employment record;
>
> (b) the sponsor's ability to increase her hours if joined by the appellant; and
>
> (c) the appellant's earning capacity.
>
> The appellant might have satisfied the FtT that the combined resources of the appellant and sponsor would amount to at least £13,400 per year.

6. Paragraph 124 of **MM** reads as follows:

> The five features [of the case] are:
>
> i. The setting of the minimum income level to be provided by the sponsor at above the £13,400 level identified by the Migration Advisory Committee as the lowest maintenance threshold under the benefits and net fiscal approach (Conclusion 5.3). Such a level would be close to the adult minimum wage for a 40 hour week. Further the claimants have shown through by their experts that of the 422 occupations listed in the 2011 UK Earnings Index, only 301 were above the £18,600 threshold[16].
>
> ii. The requirement of £16,000 before savings can be said to contribute to rectify an income shortfall.
>
> iii. The use of a 30 month period for forward income projection, as opposed to a twelve month period that could be applied in a borderline case of ability to maintain.
>
> iv. The disregard of even credible and reliable evidence of undertakings of third party support effected by deed and supported by evidence of ability to fund.

v. The disregard of the spouse's own earning capacity during the thirty month period of initial entry.

7. What is significant here is that the figure of £13,400 is that "identified by the Migration Advisory Committee [as] the lowest maintenance threshold under the benefits and net fiscal approach". There was no suggestion in **MM** that individuals who did not clear that income threshold would be likely to be succeed under Article 8 ECHR. In the present appeal, the income level of the sponsor falls below even that threshold. Even if the judge had anticipated and applied the principles of MM, the appeal under Article 8 would have failed.

8. Consequently, although the Tribunal has much sympathy with the situation in which this family finds itself, the determination of the First-tier Tribunal is legally sound and will not be disturbed. If the financial position of the sponsor improves, then a further application can no doubt be submitted to the ECO.

Decision

9. This appeal is dismissed.

Signed Date 16 January 2014

Upper Tribunal Judge Clive Lane