IAC-AH-KEW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: OA/13730/2014
OA/13731/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21st January 2016	**On 19th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

KMI (FIRST APPELLANT)
KOI (SECOND APPELLANT)
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellants

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:
For the Appellants: Unrepresented
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are both citizens of Nigeria. They are a brother and his sister. [KOI] was born on 16th August 2001, and [KMI] was born on 9th December 2005. They both applied for entry clearance in the UK as the dependant children of the Sponsor, their father, also named [KI]. Those applications were refused for the reasons given in Notices of Decision dated 26th September 2014. The Appellants appealed, and their appeals were heard by First-tier Tribunal Judge Majid (the Judge) sitting at Taylor

House on 24th June 2015. He decided to allow the appeals for the reasons given in his Decision promulgated on 2nd July 2015. The Respondent sought leave to appeal that decision, and on 6th November 2015 such permission was granted.

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

3. The applications for entry clearance were refused under the provisions of paragraph 297 of the Statement of Changes in Immigration Rules HC 395. This was because the Entry Clearance Officer concluded that the Appellants were still living with their mother in Nigeria and as she was not a party to the application, that the Appellants could not meet the requirements of paragraph 297(i). Further, the Entry Clearance Officer was not satisfied that the Sponsor had sole responsibility for the care and upbringing of the Appellants and that there were no serious and compelling family or other considerations which made the exclusion of the Appellants from the UK undesirable. Therefore the Appellants failed to satisfy the provisions of paragraph 297(i)(e) and (f).

4. The Judge allowed the appeal because the Judge found that the Appellants' mother had no interest in the welfare of the Appellants and had left Nigeria. The Appellants were living with an elderly and frail grandmother who was finding it difficult to support them. It was in the best interests of the children for them to join their father in the UK. He was the only person genuinely interested in their welfare.

5. At the hearing, Mr Whitwell argued that the Judge had erred in law in coming to that conclusion. He referred to the grounds of application and argued that the Judge had not engaged fully with the case and the evidence before him. He had failed to analyse the evidence, and had given inadequate reasons for his findings. There was no medical or other evidence before the Judge showing that the Appellants' grandmother could not look after them adequately. The Judge had not come to a finding as to whether the Sponsor had had sole responsibility for the Appellants at the date of decision. The Judge had taken into account post-decision evidence as to the circumstances of the Appellants in Nigeria.

6. The Sponsor appeared at the hearing on behalf of the Appellants. He indicated to me that he was happy for the hearing to proceed although the Appellants were not legally represented. I explained to the Sponsor the nature of the proceedings and the need for him to persuade me by way of argument that the Judge had not made an error of law in reaching his decision. This the Sponsor did not attempt to do, but instead explained the circumstances of the Appellants in Nigeria.

7. I do find an error of law in the decision of the Judge so that it should be set aside. As argued by Mr Whitwell, the Judge failed to engage with the evidence and made very few findings of fact. Those he did make were not explained. As it was not in dispute that the Appellants' mother was not

present and settled in the UK; was not accompanying her children to the UK; and was still alive, it was necessary for the Judge in order to allow the appeal to find that the Appellants' father had had the sole responsibility for their upbringing, or that there were serious and compelling family or other considerations which made the exclusion of the Appellants undesirable. The Judge did not deal with these issues and made no such findings. There were therefore errors of law requiring the decision of the Judge to be set aside.

8. I did not proceed to re-make the decision but instead I direct that the appeal is remitted to the First-tier Tribunal for the decision to be re-made there. This is in accordance with paragraph 7.2(b) of the Practice Statements.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision is to be re-made in the First-tier Tribunal.

Anonymity

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

Signed Date

Deputy Upper Tribunal Judge Renton