



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/21204/2016  
HU/21209/2016

**THE IMMIGRATION ACTS**

Heard at Cardiff Civil Justice Centre  
8 February 2018

Decision & Reasons Promulgated  
16 May 2018

Before

MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE GRUBB

Between

SALLIMATOU [J]  
[E S]

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: The first appellant appeared in person.

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. The appellants are mother and son. The first appellant is a national of Gambia; the second appellant is a national of the United States of America, with a right to Gambian nationality. They appeal, with permission, against the decision of the First-tier Tribunal (Judge Gurung-Thapa) dismissing their appeals on human rights grounds

against the decisions of the respondent on 22 August 2016 refusing them leave to remain in the United Kingdom.

2. The first appellant entered the United Kingdom as a student in December 2006. Her most recent grant of leave expired in the summer of 2008, since when she has remained without leave. The application leading to the refusal under appeal was made on 11 May 2016. The first appellant has opted to offer very little evidence about her life in the United Kingdom: these appeals were determined in the First-tier Tribunal without a hearing, at her request. She told us that she is working 30 hours a week and that she has known since 2009 that she is not allowed to work.
3. The second appellant was born in the United States of America; his father has not been in touch with the family for many years. After his birth, the appellants travelled together to Gambia. The first appellant left the second appellant in Gambia when she came to the United Kingdom. He came to the United Kingdom, as a visitor on 5 July 2008 and has had no leave to remain following the expiry of his visitor's leave. He is at school in Bristol and apparently doing well.
4. Although the first appellant has formally been unrepresented throughout, it is clear from the documentation accompanying her appeal that she has had legal advice. The appeal to the First-tier Tribunal was based firmly on article 8 of the European Convention on Human Rights, paragraph 276 ADE and paragraph EX.1 of Appendix FM in the Statement of Changes in Immigration Rules, HC 395 (as amended). We shall in due course also refer to s 117B(6) of the Nationality, Immigration and Asylum Act 2002 (as amended). The case of the appellants is put firmly on the basis that the second appellant's presence in the United Kingdom for a period of more than seven years gives the appellants a right to remain in the United Kingdom. It is not suggested that the first appellant's circumstances, looked at independently, gave her any prospect of success in her application or in an appeal against the refusal of it: it is solely the second appellant's circumstances that are relied upon.
5. So far as concerns the various provisions in the Rules, in the circumstances applying to the present case, the second appellant is entitled to succeed under paragraph 276ADE if it would not be reasonable to expect him to leave the United Kingdom; and under the provisions of Appendix FM the first appellant may be entitled to succeed if that is demonstrated in relation to the second appellant. Section 117B(6) is as follows:
  - “(6) in the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
    - (a) the person has a genuine and subsisting parental relationship with a qualified child, and
    - (b) it would not be reasonable to expect the child to leave the United Kingdom”.

The “public interest” for these purposes is the public interest for the purposes of assessing the proportionality of an interference with a right protected by article 8 of the European Convention on Human Rights; and, for the purposes of the present

provision, the second appellant is a “qualifying child”, having lived in the United Kingdom for a continuous period of seven years or more. We should say that there is no dispute that the first appellant has a genuine and subsisting parental relationship with the second appellant.

6. It thus follows that, in relation to all these provisions, the question is whether it is reasonable to expect the second appellant to leave the United Kingdom. In assessing that question, it is clear, whether by reference to s 55 of the Borders, Citizenship & Immigration Act 2009 or otherwise, the best interests of the second appellant are a primary consideration.
7. The judge was required to determine any relevant matters on the basis of the evidence before her. She considered and specifically noted the documents from the second appellant’s school, and the first appellant’s assertion that making him leave the United Kingdom would “affect his social, emotional and physical well being”. There appears to be no other evidence supporting that assertion. The judge noted that the second appellant is familiar with the four main languages spoken in Gambia, and has uncles, aunts and cousins, as well as grandparents (the first appellant’s parents) in Gambia. The judge noted that there was no other relative with whom the second appellant could remain in the United Kingdom, if the first appellant left. Her conclusions were as follows:
  - “24. It is reasonable to accept that [the second appellant] will have put down roots and integrated into life in the UK as he has been here over 7 years and has recently started secondary school. However, given the facts as set out [above] it would appear to be the case that the appellants have existing family and social ties to Gambia. They are also familiar with the languages of that country and English is spoken there. There is no evidence before me to suggest that [the second appellant] is suffering from any health conditions requiring treatment in the UK. Given his age and with the support of his mother and other family members it is reasonable to include that he will be able to re-adapt to life in Gambia.”
  25. After taking into consideration the evidence in the round, I find that it would not be unreasonable to expect [the second appellant] to leave the UK with his mother.”
8. The judge therefore concluded that it had not been shown that either of the appellants had any right to remain under the Immigration Rules. She did not cite s 117D(6), but that would have raised no distinguishable question. The judge also decided that the evidence did not disclose any circumstances making it necessary to consider whether there was some reason why the appellant should be entitled to stay in the United Kingdom despite not meeting the requirements of the Immigration Rules.
9. The grounds of appeal, and the appellant’s case as put to us, was on the basis of exhortation: that the second appellant should be allowed to stay in the United Kingdom for his education. We are, however, wholly unable to discover any error of law in the judge’s approach to the evidence. It cannot be said as a general matter that

it is not in a child's best interests to live in various different countries. There is no evidence that the education system in Gambia will not serve him well. He will have the advantage of exposure to two different cultures in the course of his upbringing and development. Of course there will be a measure of disruption, but there can be no suggestion that he will not retain some contacts and make others. Further, as the judge indicated, there is no evidence that the second appellant has any need to be in the United Kingdom. If we were considering the matter afresh on the evidence available we should, we think, necessarily find that it had not been shown that it would not be reasonable to expect the second appellant to leave the United Kingdom. Certainly, the judge was wholly entitled to reach the conclusion she did.

10. The appeal to this Tribunal is accordingly dismissed.

C. M. G. OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 8 May 2018.