



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: HU/07045/2018 +2

THE IMMIGRATION ACTS

**Heard at North Shields
On 26 July 2019**

**Decision & Reasons Promulgated
On 09 August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**M M I M
(ANONYMITY DIRECTION MADE)**

First Appellant

and

**M M B M
(ANONYMITY DIRECTION MADE)**

Second Appellant

and

**M K I T M
(ANONYMITY DIRECTION MADE)**

Third Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms S Rogers, Legal Representative.

For the Respondent: Mr D Mills, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellants are citizens of Nigeria who made an application for entry clearance to the United Kingdom as the children of their sponsor. Those applications were refused by the Respondent on 22 January 2018 because he was not satisfied that their mother had sole responsibility for them, or that there were any serious and compelling family or other considerations which made their exclusion undesirable. The Appellants appealed that decision and following a hearing at North Shields, and in a decision promulgated on 27 March 2019, Judge of the First-tier Tribunal Fisher dismissed their appeals.
2. The Appellants sought permission to appeal which was granted by Judge of the First-tier Tribunal Landes on 9 May 2019. Her reasons for so granting were: -

“1. These are in-time applications by the appellants, citizens of Nigeria (dates of birth 14 January 2001, 24 January 2003 and 16 May 2004 respectively) seeking permission to appeal the decision of Judge of the First-Tier Tribunal Fisher promulgated on 27 March 2019 who dismissed their appeals against the entry clearance officer’s refusal of their human rights claims as the children of the sponsor their mother.

2. It is arguable that the judge erred as set out at grounds 3 and 4. The judge does not appear to have considered the evidence of the children which was generally relevant, but specifically so when considering whether there were serious and compelling family or other considerations following the case of Mundeba. Whilst the judge found that he was not satisfied that he had been given a truthful account of the appellants’ circumstances in Nigeria he did not explain why he rejected the evidence of the appellants and/or the evidence of the sponsor’s husband as to their circumstances.

3. The first part of ground 1 is concerned with the argument that the tribunal should have disregarded the respondent’s contention about the appellants’ relationship with their father. I do not consider this to be arguable. This was an appeal against a new decision and in that decision the respondent had put the appellants’ relationship with their father dearly in issue. So far as the second part of ground 1 is concerned, whilst it is right that where the children were living/who they had contact with in the past is not directly relevant, that the sponsor has been inconsistent about where her children lived in the past and who they had contact with in the past seriously damages the sponsor’s credibility as to her contention that she is solely responsible for the appellants now.

4. However I consider ground 2 is also arguable. The photographs of course cannot prove sole responsibility but not only are they consistent with the circumstances claimed by the sponsor they are consistent with the evidence of the sponsor’s husband and the appellants. The judge did not explain why he

rejected the evidence of the sponsor's husband and the appellants themselves.

5. Despite my comments, I do not restrict the grounds which may be argued."

- 3.** Thus, the appeal came before me today.
- 4.** Ms Rogers relied upon the grounds seeking permission to appeal emphasising that the Judge did not appear to have considered the evidence of the children and in particular when considering whether there was serious and compelling family or other considerations following the authority of **Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 00088(IAC)**. Further the failure of the Judge to explain the rejection of the evidence of the Sponsor's husband and the Appellants themselves. The former having provided photographs which albeit unable to prove sole responsibility were at least consistent with the circumstances claimed by the Sponsor and the evidence of both the Sponsor's husband and the Appellants. The Sponsor's husband's evidence had not been subject to cross examination therefore it was asserted had not been challenged.
- 5.** Mr Mills accepted that there had been no specific reference within the Judge's decision, or indeed consideration of, the Appellant's evidence (which was in letter form) but even if this were an error on the Judge's behalf it was not a material one. Further he accepted that there was no cross-examination of the evidence provided orally by the Appellant's Sponsor's husband and that the way in which the Judge went on to deal with his evidence did not take account of the absence of any challenge to it. However, he submitted that set within the context of the totality of the evidence any error of the Judge was not a material one.
- 6.** I do not accept Mr Mills' submission. I find that the Judge failed to consider the evidence of the children which was relevant and particularly so when considering whether there were serious and compelling family or other considerations following the above-mentioned case of **Mundeba**. The Judge failed to explain why he rejected the evidence of the Appellants and indeed the evidence of the Sponsor's husband as to their circumstances. The latter provided photographs which albeit are unable to prove sole responsibility they do indicate consistent evidence with the circumstances claimed by the Sponsor, her husband and the Appellants themselves. The Judge has failed to explain why this evidence, unchallenged in cross-examination, was rejected.
- 7.** These errors are material and infect the totality of the Judge's decision.

Notice of 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 the decision.

The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Fisher and Judge M Davies.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
2019

Date: 1 August

Deputy Upper Tribunal Judge Appleyard