



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/19211/2018
HU/19213/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 28 November 2016**

**Decision & Reasons Promulgated
On 18th December 2019**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

**AG AND GG (KENYA)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms R Schon, Counsel instructed by J M Wilson Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Kenya born on 31 August 1981 and 19 September 2005. On 11 April 2019, Judge Lawrence of the First-tier Tribunal dismissed their appeals against a decision of the Secretary of State dated 7 September 2018 to refuse their applications for leave to remain and their human rights claims submitted on 18 May 2018. In a decision and reasons promulgated on 5 August 2019, Deputy Upper Tribunal Judge Davidge found that the decision of Lawrence had involved the making of an error of law and directed that the matter be reheard in this Tribunal. The substantive rehearing was transferred to me. The

central issue was to be whether it would be reasonable to expect the second appellant, a child who has resided in this country for more than seven years (see below), to leave the United Kingdom.

Factual background

2. The appellants came to the United Kingdom in 2010 as the dependants of the first appellant's then husband. They have not held leave to remain since 30 October 2014. In that time, the appellants have integrated into their communities and the second appellant and his younger sister have begun to put down roots in this country.
3. The deputy judge gave directions enabling the appellants to adduce further evidence in advance of the rehearing. This they did in the form of witness statements and an independent social worker's report from a Ms Jenna Hayes dated 17 November 2019.

Discussion

4. At the outset of the hearing, Mr Avery conceded that in light of the contents of Ms Hayes' report, he no longer resisted the appeal. He accepted that in light of the second appellant's near ten years of residence in this country, the fact that he is now approaching the age of 14, and the other matters which are considered in the report of Ms Hayes, that it would not be reasonable for the purposes of paragraph EX.1 of Appendix FM to the Immigration Rules for the appellant to be removed to Kenya.
5. Paragraph EX.1 states as follows:
"EX.1. This paragraph applies if
 - (a)
 - (i) the applicant has a genuine and subsisting parental relationship with a child who -
 - (aa) is under the age of 18 years, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;
 - (bb) is in the UK;
 - (cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application; and
 - (ii) taking into account their best interests as a primary consideration, it would not be reasonable to expect the child to leave the UK; ..."

I am satisfied that the concession made by Mr Avery was appropriately made and was within the range of reasonable concessions that were open to the Secretary of State on the facts of this case, in particular the contents of the report of Ms Hayes.

6. Although some of the contents of the Hayes report appeared to stray beyond her competence as a social worker and into the territory of a country expert focusing on Kenya, much of the report's analysis is of merit and supports the concession made by Mr Avery. In particular, the extent to which the second appellant is integrated in his school life here, his linguistic skills in English and the life he enjoys with friends here as well as that of his sister, are all factors considered by Ms Hayes that were clearly within her competence. Those factors all combine to support Mr Avery's concession that it would not be reasonable for the purposes of paragraph EX.1 to expect the second appellant to leave the United Kingdom.
7. The Immigration Rules set out the Secretary of State's views as to where the public interest in the maintenance of effective immigration controls lies. Where the rules are satisfied, there can be no public interest in removal, thus rendering removal disproportionate for the purposes of Article 8. The first appellant (the mother) now satisfies EX.1(a) by virtue of Mr Avery's concession, which, as I have said, I am satisfied was appropriately made.
8. Turning to the second appellant in his personal capacity, it follows that he satisfies the corresponding provision in paragraph 276ADE(1)(iv) of the Immigration Rules, which contains a substantially similar criterion. It would not be reasonable to expect him to return to Kenya, for the reasons which lay behind Mr Avery's concession.
9. Although the younger sister of the second appellant appeared to have been one of the appellants before the First-tier Tribunal, and was named on Judge Lawrence's decision, it does not appear that she has been included as party to these proceedings. Be that as it may, I simply observe that everything that I have accepted in relation to her elder brother would apply in relation to her as well. There can be absolutely no suggestion that, because she is not included formally within the confines of this appeal, it would be somehow reasonable to expect her to leave the United Kingdom.
10. These appeals are allowed on human rights grounds.
11. In view of the age of the second appellant, I make an order for anonymity.

NOTICE OF DECISION

These appeals are allowed on human rights grounds.

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 *Stephen H Smith*
Upper Tribunal Judge Stephen Smith

Date 12 December 2019

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed *Stephen H Smith*
Upper Tribunal Judge Stephen Smith

Date 12 December 2019