



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

Appeal Numbers: HU/19327/2016
HU/19329/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 7 February 2019**

**Decision & Reasons
Promulgated
On 27 February 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**MASTER VALENTINE ONYEKACHUKWU MOZIE
MISS OLUCHUKWU VIVIAN MOZIE
(ANONYMITY DIRECTIONS NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Mupara of Counsel, instructed by Matthew James Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appeal of these two appellants comes back before me today for the remaking of their appeal against the respondent's refusal of their applications for entry clearance to join their mother in the United Kingdom. An error of law was found in the decision of First-tier Tribunal Judge Hussain's decision promulgated on 14 December 2017 in a decision from

Upper Tribunal Judge Finch, which was itself promulgated on 24 July 2018. Judge Finch found a number of errors of law in the decision of the First-tier Tribunal who failed almost entirely to engage at all with the fact that this was a human rights appeal and did not make any assessment under Article 8 of the European Convention on Human Rights. There were also errors of law found for the reasons set out in that decision further to the assessment as to whether the appellants met the requirements of the Immigration Rules at the relevant date of application or even at date of hearing, with errors of law found in almost every material respect.

2. It is accepted by both parties that the error of law decision essentially found that the appellants both met the requirements of the Immigration Rules for entry clearance to join their mother, the date of application and the date of hearing, primarily on the basis that their mother had sole responsibility for them and that there was adequate accommodation and maintenance available for them in the United Kingdom. No other issues have been taken by the respondent in the original refusal decision or in the course of the appeal proceedings. On that basis, the appellants' appeals were allowed, the decision of the First-tier Tribunal set aside and directions were given for the a further hearing to remake the appeal on Article 8 grounds. The directions given by UTJ Finch included provision for a possible reconsideration of the decision by an Entry Clearance Officer and also consideration by the parties if no further action or decision was taken as to the situation under Article 8 given that both appellants have now passed the age of 18 and are no longer minors. The only relevance to this is that they would not be able to make a fresh application for entry clearance because of their age.
3. The parties are essentially agreed before me today that the passage of time since the application meaning that the appellants are now over the age of 18 has no material bearing on whether the appeal should be allowed on Article 8 grounds. There is no dispute that family life continues to exist between the parties and in circumstances as set out by the Court of Appeal in TZ (Pakistan) and PG (India) v Secretary of State for the Home Department [2018] EWCA Civ 1109, a finding that a person meets the requirements of the Immigration Rules would normally lead to the positive determination of a claim under Article 8, essentially because there is no public interest in refusing the claim in circumstances where the Immigration Rules are met. In this case, the passage of time is solely down to the duration of proceedings within the Tribunal system. There is no finding that there has been any change of circumstances since the date of application other than the appellants getting older, but to the contrary, a finding has been made that the requirements of the Immigration Rules were met by the appellants when they were minors at the date of application and as at the date of both previous hearings.
4. For these reasons Article 8 is clearly engaged. The requirements of the Immigration Rules are met such that there is no public interest in the refusal and the interference with family life would be disproportionate in this case. The appeals are therefore both allowed on Article 8 grounds.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remake the appeals as follows:

The appeals are allowed on human rights grounds.

No anonymity direction is made.

Signed
2019



Date

22nd

February

Upper Tribunal Judge Jackson