Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/ 01753/2020
HU/ 01748/2020

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre (remotely via Teams)	**Decision & Reasons Promulgated**
On 14 July 2021	**On 2 August 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

JACOB ADEJEI DIXON and CESAR NANA DIXON Appellant
(ANONYMITY DIRECTION NOT MADE)

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:
For the Appellant: Ms Smith
For the Respondent: Mr Tan, Senior Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Ghana who were born on 6 December 2001 and 24 November 2003 respectively. They appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer made on 3 January 2020 refusing their claims for settlement as relatives of United Kingdom sponsors, Mr and Mrs Yarney (hereafter the sponsors). The First-tier Tribunal, in a decision promulgated on 18 December 2020, dismissed

his appeals. The appellants now appeal, with permission, to the Upper Tribunal. Following the initial hearing, I reserved my decision.

2. I find that the First-tier Tribunal erred in law such that its decision should be set aside. My reasons for reaching that conclusion are as follows.

3. I find that the First-tier Tribunal has not taken account of material evidence or has misunderstood the evidence adduced by the appellants. The refusal turned on paragraph 297 of HC 395 (as amended):

> (f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care;

The threshold criterion of 'serious and compelling family or other considerations' is a potentially difficult one to surmount. I stress that, even on a legally sound assessment of the evidence, there would have be no certainty that these appeals should succeed. However, whilst the outcome reached by the judge may ultimately prove to be a correct one, his decision is unsound and cannot stand because it is founded on an inaccurate and incomplete analysis of the evidence. At several points in the decision, the complains of the 'extraordinary' absence of evidence from the appellants themselves concerning their wishes, their current circumstances and their emotional response to the deaths of their parents. Although the judge does refer (briefly) to a letter written by the appellants, he does not refer at all to an email from them which was in the appellants' bundle of documents [appellants' bundle: 26]. I am aware that a Tribunal does not need to refer to each and every item of a party's evidence, but where, as here, a judge emphasises the absence of evidence as a factor in the outcome of the appeal, it is important that he/she explains why such evidence as has been provided was insufficient or inadequate. The email does give details of the appellants' state of mind, their emotional attachments to the sponsors, their problematic relationship with their half-brother Louis, and the limited support they receive from the individual who currently looks after them on a day to day basis (Mr Opong). These are all aspects of the appeal which feature in the judge's analysis, only to be dismissed as of no importance, are addressed in the email (viz. the effect of their parents' deaths on the appellants, whether the appellants have been abused by Louis and the stability of the current care arrangements with Mr Opong (a paid carer, inaccurately described by the judge as a 'family friend'). Had the judge directly addressed all the evidence of the appellants, including the email, and given reasons for rejecting it, he may not have fallen into error. However, I am not satisfied that the judge's understanding and consideration of the evidence in this instance has provided a sound basis for his findings and conclusions.

4. The appeal was brought on Article 8 ECHR grounds. The judge found that the appellants do not enjoy family life with the sponsors [26]. It is unclear

why an absence of evidence of any relationship prior to July 2019 (the death of the father) should be relevant to determining the existence of family life now [25]. I also agree with Ms Smith, who appeared before both Tribunals for the appellants, that the judge's findings on family life at [25-26] fail to engage properly with the evidence which was before him, including the written and oral evidence of the sponsors. Again, I stress that the judge was not bound, even had he carried out a thorough examination of all the relevant evidence, to conclude that family life does exist. However, his findings cannot stand because I am not satisfied that the judge has adequately assessed all the relevant evidence.

5. Both representatives agreed that, if the First-tier Tribunal's decision were to be set aside, then there would need to be a further fact-finding hearing which is better conducted in the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 18 December 2020 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo.*

LISTING DIRECTIONS: list at appropriate London First-tier Tribunal centre; first available date; not Judge Russell; no interpreter; may be suitable for remote hearing.

Signed Date 14 July 2021

Upper Tribunal Judge Lane