



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-002615  
UI-2022-002616

First-tier Tribunal No: HU/55729/2021  
HU/55730/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 10 August 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**TUNMISE MOSES BADRU  
OYINDAMOLA ABIKE BADRU  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - Sheffield**

Respondent

**Representation:**

For the Appellant: Mr A I Corban, of Corban Solicitors

For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

**Heard at Field House on 25 July 2023**

**DECISION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of the Appellants. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Farrelly, promulgated on 30/05/2022, which dismissed the Appellants' appeals on all grounds.

### Background

3. The Appellants are brother and sister. They are both under 18 years of age. They are Nigerian citizens who applied for entry clearance to join their mother in the UK. The appellants' mother has limited leave to remain in the UK. The appellants' father died in 2021.

4. On 11/06/2021 the Respondent refused the Appellants' applications.

### The Judge's Decision

5. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge Farrelly ("the Judge") dismissed the appeals against the Respondent's decisions.

6. Grounds of appeal were lodged and on 07/11/2022 Upper Tribunal Judge Norton-Taylor gave permission to appeal stating, inter alia

5. As regards the Judge's consideration of the financial requirements under Appendix FM, it is arguable that (a) she has failed to explain how the shortfall figure of £89.90 was arrived at (paragraph 17) and/or (b) she has failed to reach findings on whether the sponsor's partner was able to provide any material financial support (paragraph 19).

6. As regards GEN.3.2 of Appendix FM, it is arguable that the Judge erred in failing to address whether exceptional circumstances had been shown: paragraph 30. It is arguable that this point was not rendered immaterial by the fact that the applications did not concern a partner.

7. As regards the wider Article 8 assessment, it is clear that the Judge did find there to be family life, contrary to what is said in the grounds. Having said that, it is just arguable, having regard to the Judge's decision as a whole, that the assessment of proportionality is inadequate.

### The Hearing

7. For the appellant, Mr Corban moved the grounds of appeal. He said that the decision contains errors which fall into two categories. He argued that the first category of errors related to the way the Judge handled the requirements of appendix FM of the immigration rules. The second category of errors related to an inadequacy in the article 8 proportionality balancing exercise.

8. Mr Corban took me to [15] to [17] of the decision, and told me that there the Judge found that all of the requirements of the immigration rules apart from the financial requirements were satisfied. In addressing the financial requirements, Mr Corban argued that the Judge made to material errors of law. The first material error of law related to an inadequacy of reasoning for his finding a

shortfall of £89.19 in the appellants' mother's income. The second material error was a failure to take account of the third-party support offered by the appellants' second witness.

9. Mr Corban moved on to the Judge's assessment of article 8 ECHR grounds of appeal. He said that the Judge failed to carry his findings drawn from his assessment of the immigration rules into his article 8 proportionality assessment. He said that the Judge's balancing exercise was inadequately carried out, and the Judge failed to consider exceptional circumstances and balance those exceptional circumstances against the requirements of GEN 3.2.2 of the immigration rules.

10. Mr Corban then turned to E-ECC.1.6.(c) of the Immigration Rules. He said that the Judge failed to consider serious and compelling family or other considerations which might render the exclusion of the appellants from the UK undesirable. He told me that consideration should be factored into the Judge's overall article 8 ECHR assessment.

11. Mr Corban took me to [24] of the Judge's decision, where the Judge finds that family life within the meaning of article 8 ECHR exists, but in the next sentence sought to qualify that finding. Mr Corban said that the Judge's findings were riddled with contradictions. He asked me to find weaknesses in the Judge's findings which cumulatively amount to a material error of law.

12. For the respondent Mr Wain said the decision does not contain material errors of law and should stand. Mr Wain said that arguments in relation to the financial requirements of the immigration rules and the ability of the second witness to provide third-party support are not mentioned in the grounds of appeal and cannot competently be raised. He said that arguments in relation to financial requirements were not raised before the First-tier Tribunal, and relied on the fourth head note of Latta 2023 UKUT 00163.

13. Mr Wain told me that the Judge's article 8 proportionality exercise does not contain a material error of law. He told me that the article 8 assessment is found between [23] and [25], and although GEN3.2 is not specifically referred to, it clearly forms part of the Judge's overall article 8 proportionality assessment. Mr Wain said that there is no need for the Judge to consider E-ECC.1.6.(c) because the subparagraphs of ECC.1.6 are framed in the alternative & the Judge found that the sponsor has sole parental responsibility for the appellants. After making that finding, there is no need for the Judge to consider ECC.1.6 any further.

14. Mr Wain asked me to dismiss the appeal.

## **Analysis**

15. One of the reasons the respondent gave for refusing the appellants' applications is that they do not meet the eligibility financial requirements of the immigration rules.

16. An appeal skeleton argument was relied on by the appellants before the First-tier Tribunal. Paragraph 15 of the appeal skeleton argument deals with the financial requirements found in E-EEC.2.1 of appendix FM to the immigration rules. What was argued for the appellant before the First-tier Tribunal is that they do not need to meet the financial requirements of the immigration rules.

17. The sponsor relied on her witness statement as her evidence in chief before the First-tier Tribunal. The witness statement says nothing about her income and outgoings. The witness who offers third-party support relies on his bank statements, which show that his income is matched by his outgoings each month. The third-party supporters bank statements demonstrate that he is not in a position to offer financial maintenance for the appellants.

18. The appellant's grounds of appeal to the Upper Tribunal are

A. That the Judge did not consider serious and compelling family or other considerations set out in E-ECC.1.6 of appendix FM.

B. That the Judge did not apply section 3.2 of appendix FM of the immigration rules.

C. That the Judge reached the wrong conclusion about article 8 family life.

19. It was only when permission to appeal was granted on 7 November 2022 that the financial requirements of the immigration rules and exceptional circumstances mentioned in GEN 3.2 of the rules became live issues in these appeals.

20. At [15] of his decision, the Judge sets out his central findings of fact. In the first sentence of [17] The Judge identifies the main issue to be the financial requirements. In [18] he notes that the argument placed before him is that the financial requirements do not need to be met, and correctly finds that there is no merit in that submission. The appellants must meet the financial requirements of the immigration rules, but inadequate evidence of an ability to do so was placed before the Judge because the appellants' appeals had been prepared on the misconceived basis that the financial requirements did not require to be met.

21. Between [18] and [21] the Judge sets out careful reasoning for finding that the appellants cannot meet the financial requirements of the immigration rules. The Judge clearly takes account of evidence of third-party financial support offered at [19] of the decision. The Judge records the third-party supporter's income, and that his bank statements show a modest balance. Although Mr Corban argued that the evidence of the third-party financial support was ignored, it is clear from the terms of [19] that the Judge took account of the third-party support offered. His findings at [19] must be considered in line with his findings about the sponsors income at [17].

22. The appellant's bundle for the First-tier Tribunal is reproduced before me. The third-party financial supporters bank statements are produced. The bank

statements cover a 12 month period and demonstrate that the third-party supporter's income is matched by his outgoings. The financial information summarised by the Judge at [17] of the decision (and available in the appellant's bundle) demonstrates that the finances of the sponsor and the third-party financial supporter are already stretched. The Judge's conclusion that the third-party supporter cannot afford to provide the financial support offered is well within the range of reasonable conclusions available to the Judge.

23. The Judge's conclusion that the financial requirements of the immigration rules cannot be met is adequately reasoned and is clearly a conclusion available to the Judge on the basis of the evidence presented and submissions made.

24. The Judge did not make an error of law in respect of the financial requirements. Paragraph Four of the grant of permission to appeal correctly states an argument about consideration of E-ECC.1.6(c) is only available if the Judge made an error of law in relation to the financial requirements. As I find that the Judge did not make an error of law in relation to the financial requirements, arguments about serious and compelling family or other considerations under appendix FM are not available to the appellants.

25. The finding that the appellants cannot meet the financial requirements in E-ECC2.1 of appendix FM is a finding that the appellants do not meet the requirements of E-ECC, so that any failure to consider E-ECC1.6 (c) is not material. In any event, the Judge specifically found that the appellants meet the requirements of E-ECC 1.6 (b). The subsections of E-ECC1.6 are framed in the alternative, so having found that one subsection was met there was no requirement to consider any other part of E-ECC1.6.

26. At [21] of his decision, the Judge makes it clear that the appellants cannot meet the immigration rules because they do not meet the eligibility financial requirements. Having made that finding the Judge does not need to consider the immigration rules any further.

27. At [28] the Judge turns to article 8 ECHR within the rules. At [25] the Judge finds that article 8 family life exists. That finding leads the Judge to address the five questions set out in Razgar. The proportionality balancing exercise is set out in [23] to [25] of the decision. At [25] the Judge addresses the evidence of the appellants' current circumstances and finds that there is no evidence that they are neglected, there is evidence that they are cared for by their grandmother, and there is evidence that they attend schools, and that their needs are adequately met.

28. At [24] the Judge considers section 55 of the s.55 of the Borders, Citizenship and Immigration Act 2009.

29. GEN 3.2 of the Immigration rules says

(2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.

30. A fair reading of [23] to [25] shows that the Judge asked himself whether or not there are exceptional circumstances which might result in unjustifiably harsh consequences for the appellants or their mother, and found that there was no evidence of either exceptional circumstances or unjustifiably harsh consequences.

31. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

32. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is no challenge to the Judge's fact-finding exercise. The appellants might not like the conclusion that the Judge arrived at, but the correct test in law has been applied. The decision does not contain a material error of law.

33. The decision does not contain a material error of law. The Judge's decision stands.

## **DECISION**

34. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 30 May 2022, stands.

Signed  
Date 31 July 2023  
Deputy Upper Tribunal Judge Doyle

Paul Doyle

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. **The date when the decision is “sent” is that appearing on the covering letter or covering email.**