



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: HU/16002/2016

HU/26701/2016

HU/26699/2016

THE IMMIGRATION ACTS

Heard at: Field House

On: 31 July 2018

Decision and Reasons Promulgated

On: 29 August 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

MS GRACE OPEYEMI DUROJAIYE
MR EMMANUEL IBUKUN ADEFISAYO ADEDEJI
MRS FAVOUR ADEKEME ADEFISAYO
(NO ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: Mr D Coleman, counsel (instructed by Paul John & Co)

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

DECISION AND REASONS

1. The appellants appeal with permission against the decision of the First-tier Tribunal Judge dismissing their appeal under the Immigration Rules and on human rights grounds. The decision was promulgated on 11 January 2018.
2. The appellants are related. They are the mother (third appellant), her daughter (first appellant) and the second appellant, (the husband of the third appellant and the stepfather of the first appellant).
3. The Judge found with regard to the first appellant daughter, that at most it was sometime in 2007 that she entered the UK. He stated that there was no evidence to satisfy him on

the balance of probabilities that she had entered before late 2007. He was unable to find that any of the dates were reliable enough 'on which to settle' [20–21].

4. He concluded that the appellants failed to persuade him on the balance of probabilities that the respondent's decision was in breach of either paragraph 276ADE(v) or (vi) of the Immigration Rules. He accepted that the first appellant was aged 18 years or above but was under 25. However, he did not find that she had spent at least half of her life living continuously in the UK.
5. He found at [25] that the witnesses were engaging and well meaning. He noted at [19] that there was precious little credible evidence that the first appellant entered the UK before 12 September 2006.
6. On 2 June 2018 First-tier Tribunal Judge P J M Hollingworth granted the appellants permission to appeal to the Upper Tribunal, stating that the scope for the interpretation of certain parts of the evidence, is arguably wider than attributed by the Judge, for example, in relation to the TV licence evidence and attendance at school.
7. At the outset of the hearing, I was informed that both parties agreed that the decision of the First-tier Tribunal Judge could not stand. It is agreed that the Judge had failed to engage properly with the significance of evidence in the appellants' first bundle which demonstrated at page 13 that the second appellant was present in the UK and had set up a TV licence plan that could be dated back to 13 September 2006. That plainly meant that he must have been in the UK before that date and it is submitted that it was a reasonable inference to assume that the other appellants, including Grace, were here before that date too.
8. That meant that Grace would have been in the UK for more than half her life at the date of the application and that she therefore stood to succeed under the Immigration Rules.

Assessment

9. I accept the joint submission that the Judge mentioned the TV licence evidence at paragraph [15] of his decision, but was only considering the 2007 licence at E1 of the respondent's bundle. He did not however engage with the date given, namely 13 September 2006 at page 13 of the appellant's bundle. That evidence was "objectively credible". There are also other examples of failure to engage with relevant evidence including the certificate's evidence at page 15–21 which was also pre-2017.
10. It was also contended that the Judge approached paragraph 276ADE(1)(vi) on the basis that the test was one of "insurmountable obstacles". However, the correct test is whether there were "very significant obstacles to re-integration" for the appellants. The test adopted was accordingly much higher.

11. I accordingly find that there has been an error of law for the reasons given. I accordingly set aside the decision.
12. I find that the Judge has not had regard to all the relevant evidence, including documentary evidence, that was presented. I am accordingly satisfied that the effect of the error has been to deprive the appellants of the opportunity for their case to be properly considered by the First-tier Tribunal.
13. I accordingly remit the appeal to the First-tier Tribunal for a fresh decision to be made.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is accordingly set aside. The appeal is remitted to the First-tier Tribunal at Hatton Cross for a fresh decision to be made before another Judge.

Anonymity direction not made.

Signed

Date 19 August 2018

Deputy Upper Tribunal Judge C R Mailer