



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

Case no: UI-2024-000037  
UI-2024-000038  
UI-2024-000039

First-tier Tribunal No: HU/54228/2023  
HU/54243/2023  
HU/54248/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 8<sup>th</sup> of January 2025

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**PO & Others  
(ANONYMITY ORDER MADE)**

Appellants

**and**

**Entry Clearance Officer**

Respondent

**Representation:**

For the Appellant: Mr A Corban, Corban Solicitors  
For the Respondent: Ms S McKenzie, Home Office Presenting Officer

**Heard at Field House on 18 December 2024**

**DECISION AND REASONS**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

1. This decision should be read in conjunction with the decision issued on 22 February 2024 in which the Upper Tribunal found that the First-tier Tribunal had materially erred in law. On that occasion, the FTT decision was set aside in its entirety and the appellants' appeals were adjourned to be re-heard by the UT.

#### Anonymity

2. These appeals were not previously anonymised however I acceded to Mr Corban's request to do so given that two of the appellants (A2 and A3) are minors and the medical records of a third child (C3) who is not an appellant in these proceedings, will be referred to.

#### The remaking hearing

3. There were four witnesses who attended the appeal hearing and who were tendered for cross-examination. The first was Mr D, who is the father of C3. The second witness was Ms D who is the first appellant's adult daughter who resides in the United Kingdom as a skilled worker. The other two witnesses were Mr O and Ms O, family friends of the appellants. A fifth witness, Mr P, who had previously provided a supporting letter and documents, was unable to attend as he was working abroad. Both representatives made submissions and the conclusions below reflect the oral evidence, arguments and submissions where necessary.
4. At the end of the hearing, the decision was reserved.

#### Discussion and conclusions

5. The appellants applied for entry clearance to the United Kingdom in order that C3 who is a British citizen could enjoy his private life in the United Kingdom, continue his family life with the appellants and further develop his family life with his British father, Mr D. The first appellant's application was made in late 2021 and the remaining appellants in early 2023.
6. The application of the first appellant (PO), was refused on 15 January 2023 owing to her failure to provide a valid medical certificate confirming that she was free of tuberculosis; because C3 was not living in the United Kingdom and because the appellant was relying entirely on sponsors for financial support and accommodation. It was not accepted that there were any exceptional circumstances.
7. The applications of A2 and A3 were refused, on 16 March 2023, for the same reasons and because their mother's application had been refused and they had applied to accompany her to the United Kingdom.
8. A respondent's review dated 10 August 2023 was relied upon before the First-tier Tribunal. A further issue identified was that if the first appellant met the requirements of the Rules then she would need to show that she had sole responsibility for the upbringing of A2 and A3. The respondent further argued that the first appellant could not benefit from GEN 3.1 of the Rules which did not include parents.
9. The respondent's current position is set out in the amended outline submissions dated 17 December 2024. Reliance is placed on the decision letters and the review, albeit the point regarding the tuberculosis certificate is conceded given

that the appellants reside in Germany. Furthermore, the respondent accepts that third party support can be taken into account, provided the requirements of paragraphs 21A(1) and (2) of Appendix FM-SE are met. The respondent's view is that the offers of support are neither credible nor sustainable.

10. The appellants concede that not all the requirements of the Immigration Rules are met because C3 is not present in the United Kingdom owing to the fact that he continues to reside with the appellants in Germany, where they are permanently resident.
11. The applicable standard of proof is that of a balance of probabilities. The burden of proof is on the appellants to establish that the requirements of the Rules are met and/or that the decisions to refuse entry to the United Kingdom amount to a disproportionate interference with the private and family life of C3, in particular. As established in *Mostafa*[2015] UKUT 112, an inability to meet the Rules is a weighty factor to be considered in the proportionality balancing exercise.
12. Notwithstanding robust cross-examination which was focused on the offers of support, there was no criticism made on behalf of the respondent as to the credibility of the evidence provided by the witnesses. I observed that their evidence was consistent with their witness statements/letters of support and with the supporting financial evidence. Furthermore, all witnesses gave plausible explanations as to why they were willing to provide long term financial support to the appellants in the United Kingdom. It is understandable that Ms D would wish to support her mother and siblings and it is apparent that she has been adding to her not inconsiderable savings in anticipation of their arrival. Mr O has ample space in the home which he owns and Ms O explained the support given by the first appellant to her own family in the past. In addition, Mr D has been supporting C3 since birth and there is no reason to suspect that this support would cease. There is also the evidence from Mr P. Neither his inability to attend the hearing nor his supporting letter and documents were singled out for any criticism on behalf of the respondent.
13. I have carefully considered the points made in the respondent's outline submissions regarding the offers of support but conclude, having heard from four of the sponsors, that the offers of third party support are credible and sustainable. All sponsor are in employment and have provided evidence of this as well as the funds at their disposal. In the case of Mr O, he has provided satisfactory evidence of his ownership of his property. Putting all those resources together, I find that the appellants would have available to them adequate accommodation including utility bills provided free of charge as well as cash support of £2,450 per calendar month and that this support would continue until the first appellant was in a position to support herself and her children.
14. The additional matter raised in the respondent's review was whether the first appellant was solely responsible for the upbringing of A2 and A3. While it is suggested by the respondent that the father of A2 and A3 is in Germany, there is simply no evidence to support this. The evidence of the witnesses on this point was clear and consistent in that none believed that the father of A2 and A3 had ever played any role in their lives. The first appellant's written evidence on this point has also been consistent in that she says that their father does not reside in Germany, has never done so, that he has never had a relationship with A2 and A3 and that she does not know his whereabouts.

15. It is difficult to see what evidence the appellants can produce to confirm this state of affairs. I am satisfied that the first appellant's account of events can be relied upon and I accept that she is solely responsible for the upbringing of A2 and A3.
16. Owing to the appellants' inability to meet the Rules in their entirety, this appeal comes down to a consideration under Article 8 ECHR. It is not in dispute that this Article is engaged. C3 as a British citizen has a right to enjoy his private life in the United Kingdom. In addition, he has a family life with his father which was established during the first few years of his life when his father also resided in Germany (until 2020 or 2021) and which has continued by way of daily telephone calls and occasional visits. The appellants' family life with C3 is also engaged and to expect him to travel alone to the United Kingdom leaving the appellants in Germany would amount to an interference with that family life.
17. The real question in this appeal is whether the decision to refuse entry to the appellants is a proportionate outcome or whether it is unjustifiably harsh, on C3 in particular. There is the matter of C3's best interests, which is a primary and not paramount consideration, applying *ZH (Tanzania)* [2011] UKSC 4. It is noted that citizenship is not a trump card however in *ZH* this point was made in relation to criminality and there are no such concerns in this case.
18. Also relevant is what was said by the Supreme Court at [32] of *ZH*:  
  
Nor should the intrinsic importance of citizenship be played down. As citizens these children have rights which they will not be able to exercise if they move to another country. They will lose the advantages of growing up and being educated in their own country, their own culture and their own language. They will have lost all this when they come back as adults.
19. It was argued on behalf of the respondent that C3's best interests were in remaining in Germany where he is receiving speech therapy. The evidence of Mr D was that C3's main issue was that in addition to having a stammer, C3 was struggling with the German language because the family were all English speakers. His evidence is supported by the content of the brief medical report from his treating physician which refers to 'grammatical deficits as well as improving the still deficient understanding of grammar.' It is proposed in that report that C3 have a further speech therapy check up in a year's time, that is in February 2025. The content of the medical evidence does not lead me to the conclusion that it would be against C3's best interests for him to travel to the United Kingdom. There appears to be no reason why speech therapy would not be available for C3 in the United Kingdom should he still require it. I find that C3's best interests would be served by being in the United Kingdom with his mother and siblings and where he could spend time with his father and his younger sibling on his father's side.
20. While attaching significant weight to the public interest considerations as well as the fact that the requirements of the Rules are not met, the difficulty for C3 is that his private life cannot be exercised in the United Kingdom without the presence of his mother. It is not envisaged that C3's father and new partner would look after the appellant and even if they did, this would lead to the separation of C3 from the appellants which is the opposite of the present scenario. Remaining in Germany with the appellants would continue to lead to the loss of enjoyment of the benefits of British citizenship including education and the English language.

21. Ms McKenzie suggested that there had been a delay in seeking entry clearance, given that C3 was born in 2015. While this is not a relevant consideration, it is worth noting that Mr D was in the armed forces and living in Germany until shortly before the application for entry clearance was made by the first appellant in 2021.
22. As set out above, this is not a case where there is likely to be reliance on public funds given the generous third party support available to the appellants and C3. In terms of ability to speak English, I note that this was accepted by the respondent in the written submissions.
23. Considering all relevant factors in the round, I consider that unjustifiably harsh consequences to C3 in particular would result from the inability of the appellants to accompany him to the United Kingdom. Those include detrimental effects on the development of the relationship between C3 and Mr D, that C3 will be prevented from getting to know his new sibling who he has yet to meet, that the new sibling will be prevented from getting to know C3, that Mr D will be prevented from having regular in person contact with C3 and that C3 will be prevented from enjoying the benefits of his British citizenship.
24. In the alternative, as I have found that not all of the requirements in Section EC-PT.1.1 of the Rules are satisfied by the first appellant solely because C3 as the sponsoring child was not in the UK at the time of the application, for the same reasons as given above, I find that there are exceptional circumstances, in accordance with GEN 3.1 and 3.2 of the Rules.

### **Notice of Decision**

The appeals are allowed.

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**24 December 2024**

### **NOTIFICATION OF APPEAL RIGHTS**

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**