Asylum and Immigration Tribunal

YS and YY (Paragraph 352D - British national sponsor former refugee) Ethiopia [2008] UKAIT 00093

THE IMMIGRATION ACTS

Heard at Field House
On 16 September 2008

Before

SENIOR IMMIGRATION JUDGE NICHOLS
SENIOR IMMIGRATION JUDGE SOUTHERN

Between

YS
YY

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Chandran of Counsel
For the Respondent: Ms Karunatilake, Home Office Presenting Officer

An appellant may succeed under paragraph 352D notwithstanding the acquisition of British nationality by a sponsor to whom asylum has been granted.

DETERMINATION AND REASONS

1. This is a reconsideration on the respondent's application of a decision of Immigration Judge Markham David who, on 19 September 2006, allowed the appellants' appeals, who are citizens of Ethiopia, against the respondent's decision made on 16 August 2005 to refuse their application for entry clearance as the dependants of Etagegnehu Tsegaye Ayele, who is their mother, under paragraph 297 of HC 395. This deals with

the requirements to be met by a person seeking leave to enter the United Kingdom as the child of a person present and settled here. There is no dispute in this appeal that in fact neither child can meet the requirements of paragraph 297. The appeal concerns an entirely different point on which the Immigration Judge was persuaded in the appellants' favour.

2. The appellants' mother, Etagegnehu Ayele first came to the United Kingdom in 1993 and claimed asylum. She was granted refugee status and on 28 January 1998, according to the copy passport in the appellants' bundle, she was granted indefinite leave to remain. She had originally fled Ethiopia and has now been granted British citizenship. When she left Ethiopia she left behind her two children, the appellants. At the time she could not arrange for them to travel with her and they were left with her mother who agreed to take care of the children. They were very young at the time and the appellant said in her statement dated 13 June 2008 that she would telephone her mother from time to time and she also sent the children money.

3. In 1996 the sponsor began a new relationship in the United Kingdom with a national of Ethiopia. They subsequently had two children together. They intend to marry but have not married yet because the sponsor wants the appellants to join her first.

4. She travelled back to Ethiopia in August 2002 to see the appellants, after she had been granted British citizenship. She visited again in 2005 and has always remained in contact with the appellants. By the year 2004, the sponsor said that her mother had indicated that she was becoming too weak with illness to continue looking after the appellants. When the sponsor went back to Ethiopia in July 2005, her intention was to apply for the appellants to join her in the UK. She was by then settled in the United Kingdom and felt that her children would have a stable life if they joined her here. The appellants made an application to join her which was refused. This is the subject of the current appeal before the Tribunal.

5. When the matter came before the Immigration Judge, it was put to him that the respondent ECO had not decided the application under the correct Rule. It was submitted that because the sponsor had been granted refugee status in the United Kingdom, the application should have been considered under paragraph 352D of HC 395. The Immigration Judge, having been referred to the Tribunal's decision in CP [2006] UKIAT 00040, and following the "spirit" as he described it of that decision, decided that he could determine whether the appellants met the requirements of paragraph 352D and adjourned the hearing of the appeal so that the parties could be prepared.

6. At the adjourned hearing, he apparently received a document confirming that the sponsor had been granted refugee status, which we have not seen. He accepted she had been granted refugee status. A dispute then arose as to whether or not the children were in fact the children of the sponsor, however that was resolved and it was conceded by the Home Office Presenting Officer that the appellants are the children of the sponsor. The Immigration Judge then proceeded to consider the

application under paragraph 352D i.e. the requirements to be met by a child applying for entry clearance in order to join or remain with a parent who has been granted asylum in the UK. There was a separate issue as to whether or not the sponsor had left her country of habitual residence to come to the United Kingdom because she had temporarily been resident in Moscow en route here; however we do not need to deal with that. The Immigration Judge made the following finding in relation to paragraph 352D:-

> "11. In my view this paragraph of the Rules, the object of which is to facilitate family union, must be given a purposive construction. As the appellants were part of a family unit when their mother left her country of habitual residence [which he accepted was Ethiopia], I do not think that the fact that she had a brief sojourn in Moscow before coming to the UK to claim asylum should mean that the appellants do not qualify under paragraph 352D. In my view they do qualify and are therefore entitled to be granted entry clearance to join their mother in the UK.
>
> 12. I should perhaps mention that if I had been considering the appeal under paragraph 297 of the Rules, the appellant would also have qualified. As there is clear evidence that the father of each of the appellants is dead, the mother comes under paragraph 297(d) and therefore there is no question of having to prove serious and compelling family or other considerations which make the exclusion of the child undesirable.
>
> 13. The only additional issue would be maintenance and accommodation. Although this has not been explored in evidence before me, it seems likely that it would not be a problem at all, in view of the earnings of the sponsor's partner, who is the father of both the sponsor's other children who were born in the UK."

As we have stated, in fact it is now accepted that the appellants could not meet the requirements of paragraph 297 because, as can be seen from the Immigration Judge's finding, they would have been reliant on third party support in relation to maintenance and accommodation.

7. Reconsideration was ordered on the respondent's application by a Senior Immigration Judge. The respondent's grounds submit that the Immigration Judge materially misdirected himself in law in reaching his decision. It was submitted that because the sponsor was a British citizen at the date of the application, she could not apply for her children to join her in the UK as dependants of a refugee. Someone who is naturalised as a British citizen could not benefit from the provisions of paragraph 352, even if at some point in the past they had been a refugee. The correct paragraph was paragraph 297 as the Entry Clearance Officer had applied. The second part of the first ground deals with the application of paragraph 297 which we can ignore for the purposes of this appeal.

8. The second ground is that the Immigration Judge had failed to take into account that the appellant had been dishonest in her application for asylum in the first place. This is a reference to the fact that when the appellant made her application for asylum she

had claimed that her parents had been dead since she was aged 5, and that she had been cared for by the uncle who brought her into the UK as a dependant via Moscow. She denied having any children at all at that time. However, when she made her application for the children to join her she stated that they were living with her mother in Ethiopia. It was submitted that this damaged the sponsor's credibility and that she had apparently obtained refugee status through what appeared now to be deception. Reliance was also placed on the fact that the sponsor had made visits to Ethiopia and therefore she had voluntarily returned and evidently had no problems in doing so.

9. The Immigration Judge gave a direction that the appellants be given entry clearance at the end of his determination and it was submitted, and no issue was taken with this, that he was wrong to do that following EB (Ghana) [2005] UKAIT 00131.

10. We set out the provisions of paragraph 352D of HC 395 as follows:-

> "**352D** The requirements to be met by a person seeking leave to enter or remain in the United Kingdom [in order to join or remain with the parent who has been granted asylum in the United Kingdom] are that the appellant:
>
> (i) is the child of a parent who has been granted asylum in the United Kingdom; and
>
> (ii) is under the age of 18, and
>
> (iii) is not leading an independent life, is unmarried (and is not a civil partner), and has not formed an independent family unit; and
>
> (iv) was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of his habitual residence in order to seek asylum; and
>
> (v) would not be excluded from protection by virtue of Article 1F of the United Nations Convention and Protocol relating to the Status of Refugees if he were to seek asylum in his own right; and
>
> (vi) is seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity."

11. Ms Karunatilake submitted that the purpose of paragraph 352D is to give effect to the concept of family reunion for refugees and to enable family members to join those who have been granted refugee status in the UK. Here, however, the sponsor acquired British citizenship and she had not retained her refugee status in law. She submitted that by definition under Article 1A(2) of the 1951 Geneva Convention, a person is a refugee who has a well-founded fear of persecution for a Convention reason and who is outside their country of nationality and inter alia unable to avail himself of the protection of that country. A person who had been naturalised in the

host state ceased to be a refugee by virtue of the operation of Article 1(C)(3) of the Geneva Convention.

12. The relevant provision of Article 1C of the 1951 Convention provides that:-

> "This Convention shall cease to apply to any person falling under the terms of Section A if:
> …
>
> …
> (3) he has acquired a new nationality, and enjoys the protection of the country of his new nationality;"

Ms Karunatilake said that the UNHCR Handbook was a particularly helpful guide as to the international understanding of the Convention obligations. The handbook gives guidance on Article 1C(3) and at paragraph 129 it states:-

> "129. As in the case of the reacquisition of nationality, this third cessation clause derives from the principle that a person who enjoys national protection is not in need of international protection.
>
> 130. The nationality that the refugee acquires is usually that of the country of his residence. A refugee living in one country may, however, in certain cases, acquire the nationality of another country. If he does so, his refugee status will also cease, provided that the new nationality also carries the protection of the country concerned. This requirement results from the phrase 'and enjoys the protection of the country of his new nationality'.
>
> 131. If a person has ceased to be a refugee, having acquired a new nationality, and then claims a well-founded fear in relation to the country of his new nationality, this creates a completely new situation and his status must be determined in relation to the country of his new nationality.
>
> 132. Where refugee status has terminated through the acquisition of a new nationality, and such new nationality has been lost, depending on the circumstances of such loss, refugee status may be revived."

Ms Karunatilake said that the August 2007 introduction to the Geneva Convention by the UNHCR was also instructive on the point as it stated:-

> "The Convention does not apply to those refugees who are the concern of the United Nations Agencies other than UNHCR, such as refugees from Palestine who receive protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), nor to those refugees who have a status equivalent to nationals in their country of refuge."

She submitted that Article 11 of the EU Qualification Directive was in the same terms as Article 1C(3). This is implemented by paragraph 339A(iii) of the Immigration Rules which provides:-

> "339A A person's grant of asylum under paragraph 334 will be revoked or not renewed if the Secretary of State is satisfied that:
>
> …
>
> (iii) he has acquired a new nationality, and enjoys the protection of the country of his new nationality;"

She submitted that therefore a British citizen could not at the same time be a refugee as refugee status ceased as a matter of law when a person became a British citizen.

13. She submitted that the wording of paragraph 352D:-

> "A parent who has been granted asylum in the United Kingdom"

does not specify that those who have become British citizens could rely on this paragraph of the Immigration Rules. Paragraph 352D arose out of asylum related family reunion policy. There was nothing in the policy which suggested that a British citizen who had previously been a refugee could benefit from the family reunion policy. Particularly since the child of a British citizen who was formerly recognised as a refugee can apply for entry clearance pursuant to paragraph 297 of the Immigration Rules as the parent would then be settled. Different rights and privileges were conferred on refugees and British citizens and a clear distinction existed between the two. A British sponsor should not be able to alternate between the two to their advantage.

14. Ms Karunatilake submitted that allowing a British citizen who had previously been recognised as a refugee to take advantage of paragraph 352D while denying that right to a British citizen in the UK, created two different types of British citizenship which was inherently undesirable. If this was Parliament's intention it would have expressly said so in the Rules. If the Immigration Judge's interpretation was correct, it would create a category of British citizens who enjoyed rights greater than other British citizens as they would reserve the ability to be reunited with family members without fully meeting the Immigration Rules and having to satisfy, for example, the maintenance and accommodation requirement.

15. She submitted that the reason that the Rule was strictly limited to facilitate family reunion for refugees was that they would obviously come to the United Kingdom, quite often, with no financial resources and hence the requirement for maintenance and accommodation was waived. An individual who had been in the United Kingdom long enough to acquire British citizenship had been here long enough to make a new economic life for themselves and therefore should be subject to the normal requirements in the Immigration Rules. Timescales would generally mean

that reunion would have taken place before the possibility of naturalisation and, or the sponsor should have integrated to the extent that he or she would be able to meet the maintenance and accommodation requirement in respect of relatives that were to join him or her in this country.

16. Ms Karunatilake submitted that the Rules should be subject to a purposive construction and in this regard she relied on the Tribunal's decision in MO Nigeria [2007] UKAIT 00057. This had been reinforced by the Court of Appeal in MB [2008] EWCA Civ 102.

17. After hearing representations from both parties, we gave permission to Ms Chandran to rely on an unreported decision of the Tribunal: Abdikarim v ECO (Nairobi) OA32396/2005, heard at Field House on 1 May 2008 by Senior Immigration Judges Chalkley and Southern. This appeal dealt with exactly the same submission in relation to paragraph 352D, and the Tribunal held in that appeal that the wording of paragraph 352D was to be given its ordinary meaning and that the words "has been granted asylum" were to be construed as a status that had been granted that remained unchanged by the subsequent acquisition by the sponsor, in that case, of British citizenship. In reaching this conclusion the Tribunal took into account an amendment to the Rules made by Cm4851 on 18 September 2000, which we deal with below.

18. The Home Office representative in Abdikarim conceded that the Immigration Judge had been wrong to find that once a sponsor who had been granted asylum acquired British nationality, a relative could not apply under paragraph 352D to join the sponsor in the United Kingdom. Ms Karunatilake said that she did not believe the respondent was bound by what she described as "a concession" made in that appeal, and that the position of the Secretary of State was as she had set out.

19. In response, Ms Chandran said that she relied on the Tribunal's decision in Abdikarim and, in particular on the submissions that had been made by Counsel in that appeal, which she adopted. She said it was clear from the Immigration Rules that a plain reading of the Rule meant that the appellants' application should have been considered under paragraph 352D because it would require a positive act of the Secretary of State to withdraw the sponsor's refugee status. She drew our attention to the Statement of Changes in the Immigration Rules of September 2006 (Cm6918) which took effect on 9 October 2006 and, in particular, to paragraph 4 which substituted a new paragraph 334 in HC 395, setting out the circumstances in which an asylum applicant will be granted asylum in the United Kingdom. At paragraph 6 of the Statement of Changes it states:-

> "6. After paragraph 339, insert:
>
> **'Revocation or refusal to renew a grant of asylum**
>
> 339A. A person's grant of asylum under paragraph 334 will be revoked or not renewed if the Secretary of State is satisfied that:

(i) he has voluntarily re-availed himself of the protection of the country of nationality;

(ii) having lost his nationality, he has voluntarily re-acquired it; or

(iii) he has acquired a new nationality, and enjoys the protection of the country of his new nationality; …"

She also drew our attention to the October 2006 Guidelines on Cessation, Cancellation and Revocation of Refugee Status, referred to as 'AP1 – October 2006'. At page 2 of that guidance which is issued to assist the respondent's case workers, it sets out the circumstances where it may be appropriate to take away a person's refugee status and states this should only be undertaken by the Senior Caseworkers' Unit in the Asylum Casework Directorate and that:-

> "Where a person's refugee status is cancelled, revoked or the cessation clauses applied, it is normally with a view to removing the person concerned."

At Section 2 of the guidance it deals with cessation clauses and at Section 3 gives further guidance to caseworkers on the general considerations of cessation. The Tribunal notes that nowhere is there any guidance given on the cessation clauses as they might apply to an individual who has been granted refugee status in the United Kingdom and subsequently is granted British citizenship. All of the example scenarios where the cessation clauses might apply arise because the individual has returned to his or her country of nationality, or is abroad for some other reason, and or is the subject of deportation from the United Kingdom where consideration has to be given to whether any of the cessation clauses might apply.

20. Ms Chandran submitted that just as much as a positive act was needed to grant asylum or humanitarian protection, the same was required to remove that status or protection as AP1/October 2006 demonstrated.

21. She submitted that the sponsor's acquisition of British nationality did not mean there would be automatic revocation of her refugee status. Although the acquisition of British nationality was a positive act, it was not for the purpose of paragraph 339A. It was a positive act to grant someone the protection of a member state, but it did not revoke refugee status, which it was clear from the AP1/October 2006, could only be taken away by the action of a senior caseworker.

22. Ms Chandran said that so far as the allegation that the sponsor was not entitled to refugee status was concerned i.e. because of her earlier alleged deception, she drew the Tribunal's attention to what had been conceded at the hearing before the Immigration Judge, i.e. that the appellants were the sponsor's children. At paragraph 8 of the Immigration Judge's determination, he had made it clear that he was not concerned with the issue of possible deception in the making of the asylum application by the sponsor because it had been agreed at the hearing that that

allegation was not relied on and it was conceded that the children were the sponsor's children. In any event, when the sponsor submitted her application it had not been completed or signed by her. She did not speak English and she had never said in her asylum application that she did not have any children. She was granted refugee status in April 1993 without interview. She had never had the SEF Statement read back to her. It was also important to note that the appellant had only been able to return to Ethiopia after she had obtained British citizenship when she would have the protection of this country to enable her to return.

23. Ms Chandran then addressed the Tribunal as to the apparent differential treatment between British nationals and those who acquired British nationality in these circumstances. She submitted that it had to be recognised that a person who came to the United Kingdom and who is granted refugee status, will have fled their country of origin and arrived in the United Kingdom requiring protection. This is the very reason why the requirements as to adequate maintenance and accommodation are not imposed in respect of persons who are granted refugee status and seek to have their family join them in the UK. If that is the background against which someone has come to the United Kingdom they are in a different position to people who have not come with that background and have not had that level of inequality applied to them. She submitted this was a strong reason to conclude that refugee status did not stop unless the Secretary of State made a formal decision to revoke that status.

24. Ms Chandran said that in Abdikarim, the Tribunal had been persuaded that the change in the wording of paragraph 352 that had taken place in 2000 was decisive. No assistance had been given by the respondent today as to why that particular finding should not be followed.

25. On this latter point, Ms Karunatilake said that she had sought the advice of a senior person in the Presenting Officers' Unit, however the official position as to why the wording of the Rule had been changed was not known.

The Tribunal's Decision in Abdikarim

26. The circumstances of the sponsor in this appeal were very similar in that the sponsor had become a British citizen by the time the appellant, her son, applied to join her in the United Kingdom pursuant to paragraph 352D. This application had also been considered under paragraph 297 and rejected. The appellant also could not meet the requirements of paragraph 297 and the only issue before the Tribunal was whether or not the Immigration Judge was right to have considered the appeal under paragraph 352D. It was argued before the Tribunal that the sponsor's grant of British citizenship did not disqualify this appellant from benefiting from less onerous requirements of paragraph 352D.

27. In this appeal it was conceded by the Home Office representative that the Immigration Judge, who had dismissed the appeal before him, had been wrong to find that as the sponsor had been granted asylum and acquired British nationality, a

relative could not bring him or herself within paragraph 352D in seeking to join that sponsor in the United Kingdom under the Family Reunion Provision.

28. The Tribunal considered the ordinary meaning of the words in paragraph 352D(i) and concluded that the words:-

> "is the child of a parent who has been granted asylum in the United Kingdom;"

meant that once a person had been granted asylum they would always be able to show that as a fact regardless of what may happen subsequently, e.g. the grant of British citizenship. The grant of asylum was a fact that remained unchanged by any new status.

29. However, the Tribunal went on to explain that the changes to the wording of paragraph 352D supported this interpretation. It stated as follows:-

> "16. Any doubt about that being the correct construction is dispelled by an amendment made to the opening sentence of paragraph 352D. Initially, this was set out in Cm4851 (with emphasis added):
>
> > 'the requirements to be met by a person seeking leave to enter or remain in the United Kingdom *as the child of a refugee* are that the appellant …'
>
> But the current version of the Rules, amended as a consequence of Cm4851 on 18 September 2000, is:
>
> > 'The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in *order to join or remain with the parent who has been granted asylum in the United Kingdom are that the applicant …*'
>
> 17. The Immigration Judge found as a fact that the appellant's mother was a person who had been granted asylum in the United Kingdom. That finding goes unchallenged before us. As this is an appeal against refusal to grant entry clearance we are concerned, as a result of Section 85(5) of the Nationality, Immigration and Asylum Act 2002, with the circumstances appertaining at the date of the decision under appeal."

30. The Tribunal considered the particular facts in the case before it and decided that the appellant in that case had indeed satisfied the requirements of paragraph 352D at the date of the decision.

<u>Our findings in this appeal</u>

31. This appeal concerns the same wording of paragraph 352D. The ordinary meaning of the words at 352D(i) does in our view clearly lead to the conclusion that it applies in to a parent who has been granted asylum and makes no qualification as to any need for that status to be current at the date of the application of the child seeking to join the parent in the United Kingdom. We agree with the interpretation that the words

can only mean that this is a status that has been granted to the individual concerned, at whatever stage.

32. We are not persuaded that the operation of Article 1C (3) has any application to the provisions of paragraph 352D. We accept that Article 1C (3) will operate so that the provisions of the Convention will cease to apply to any individual who acquires a new nationality and has the protection of the country of his new nationality, as the Article states. In other words, such an individual will no longer be in need of international protection in those circumstances. This deals with the cessation of the need for protection for that individual where he is now protected by the country of his new nationality. However, it does not in our view affect the interpretation of paragraph 352D and its application. Even in circumstances where an individual has acquired new nationality and the protection of that new nationality, as is the case here, the sponsor remains a person who, as a fact, has been granted asylum in the United Kingdom.

33. Paragraph 339A of the Immigration Rules, which we have set out earlier, implements Article 1C(3) however this clearly envisages that the Secretary of State has to take a positive action to terminate the refugee status of an individual in this situation i.e. either revoking it or not renewing it, where that individual does have the protection of a country of his or her new nationality. In addition it is clear that such action will only be taken in certain circumstances as we have already set out at paragraph 19 where we have referred to the respondent's guidance to senior caseworkers. The outcome of this appeal does not depend upon the sponsor being able to demonstrate a continuation of her status as a refugee. What she needs to demonstrate, and which the Immigration Judge has found she has done, is that she is a person who has, in the past, been granted asylum in the United Kingdom.

34. Whilst we note Ms Karunatilake's submission that the wording of paragraph 352D does not specify that those who have become British citizens can rely on this paragraph in the Rules, neither does it exclude that category of persons. We are not persuaded that Ms Karunatilake's "purposive" approach to the interpretation of the Rule is correct. She submitted that if that approach is applied to the Rule it should exclude persons who now have the capacity to earn an income and support any family members and who should be in exactly the same position as any other British citizen. The difficulty with that submission is that individuals such as this sponsor and those like her are not in the same position as any other British citizen. They are individuals who have fled their country of origin in need of international protection and this Rule is drafted in our view to facilitate the admission of their family members to join them in those circumstances. A British citizen (who has never been granted refugee status) will not have faced that kind of hardship. A person who has been granted refugee status has been separated from family members through necessity not through choice, by the very fact of the finding that he or she is entitled to refugee status. An applicant under paragraph 352D will still have to show that he or she meets the requirements of the rule in all other respects. However we do not see why the policy underlying the rule, which is family reunion in the most difficult

circumstances, should be subject to this kind of qualification which could ultimately defeat the clear object of the rule, especially where it is a child who is seeking to join a parent.

35. In AM (Ethiopia) & Ors v Entry Clearance Officer [2008] EWCA Civ 1082, Laws LJ firmly rejected a submission that the Rules should be constructed purposively. He referred to the decision of the Court of Appeal in MB (Somalia) [2008] EWCA Civ 102, and to his own judgement at paragraph 59 of the decision where he said:

> "..the purpose of the Rules generally is to state the Secretary of State's policy with regard to immigration. The Secretary of State is thus concerned to articulate the balance to be struck, as a matter of policy, between the requirements of immigration control on the one hand and on the other the claims of aliens, or classes of aliens, to enter the United Kingdom on this or that particular basis. Subject to the public law imperatives of reason and fair procedure, and the statutory imperatives of the Human rights Act 1998, there can be no *a priori* bias which tilts the policy in a liberal, or a restrictive direction. The policy's direction is entirely for the secretary of State, subject to Parliament's approval by the negative procedure provided for by the legislation. It follows that the purpose of the Rule (barring a verbal mistake or an eccentric use of language) is necessarily satisfied by the ordinary meaning of the words. Any other conclusion must constitute a qualification by the court, on merits grounds, of the secretary of state's policy; and that would be unprincipled."

We follow this approach and for the reasons we have stated the ordinary meaning of the words in paragraph 352D is clear.

36. We have also considered the amendment to the opening sentence of paragraph 352D, which the Tribunal in Abdikarim also considered. Ms Karunatilake was unable to give us any information as to why that amendment had been made. Had it been the intention to only allow a family reunion during the period when an individual enjoys refugee status in the United Kingdom as protection, as opposed to the acquisition of nationality and the protection that flows from that, it would have been very easy for Parliament to have made that clear in the Rule by, for example, clear reference to the parent currently having refugee status. Instead the words *"who has been"* must in our view refer to the grant of asylum at any time in the past. We cannot think there can be any other proper interpretation of those words because there is no qualification to that phrase, which there could have been had Parliament intended that it should only apply where the individual in the United Kingdom has extant refugee status.

37. We find therefore that the Immigration Judge did not err in concluding that the appellants appeal fell to be considered under paragraph 352D. It was conceded at the hearing before the Immigration Judge that the appellants are the children of the sponsor and no issue is taken that they were a part of her family unit before she left Ethiopia or that Ethiopia was the country of her habitual residence prior to coming to the United Kingdom to seek protection. We conclude therefore that the Immigration Judge did not materially err in law by allowing both these appeals under this paragraph of the Rules. He gave a direction to the ECO at the end of his determination. A direction should only be given for the purpose of giving effect to a

decision under appeal – see section 87(1) of the 2002 Act. In this case it was unnecessary to give any further direction. To this extent only we reverse his decision.

Decision

38. The Tribunal did not materially err in law and its decision to allow the appeal will therefore stand, save for the direction to issue entry clearance.

Signed

Senior Immigration Judge Nichols