



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/26045/2012
IA/26046/2012
IA/26048/2012
IA/24953/2012

THE IMMIGRATION ACTS

Heard at Field House
on 18th September 2013

Determination Promulgated
on 7th October 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JOHNSON OCRAN KUMU
KINGSLEY ERIC OCRAN
GODFRED OTOO
GRACE OTOO

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Akther instructed by Maliks & Khan Solicitors for Johnson, Kingsley and Godfred and by BWF Solicitors for Grace.
For the Respondent: Ms Martin – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. On 3rd July 2013 the Upper Tribunal found that First-tier Tribunal Judge Miles had made errors of law in relation to certain of these Appellants in the determination promulgated on 20th March 2013, in which he dismissed the appeals against the refusal of the Secretary of State to issue them with a Residence Card in recognition of their right of permanent residence in the United Kingdom under the provisions of Regulation 7 of the Immigration

(European Economic Area) Regulations 2006 (as amended) and under Article 8 ECHR.

2. The issues before this Tribunal are whether Johnson and Grace are able to succeed under Regulation 7, if the error in relation to Grace is found to be material, and whether for those Appellants unable to succeed under the Regulations, they can under Article 8 ECHR based upon their family and/or private life.

Background

3. All four Appellants are members of the same family unit. They are all nationals of Ghana. Johnson was born on 4th June 1987, Kingsley on 10th December 1988, Godfred on 27th January 1986, and Grace on 27th January 1986 too.
4. Their father, Alfred Kwaru Ocran, was born on 28th March 1954 in Ghana although he left that country permanently in 1991 and moved to the Netherlands. He lived in the Netherlands between 1991 and 2005 and attained Dutch citizenship. When he was made redundant in 2005 he came to the United Kingdom to seek work. He has worked in this country since.
5. Alfred's evidence in his witness statement dated 17th October 2011, is that he supported his family who remained in Ghana as he would send money with people who he knew were travelling there, cash in hand. After living in Holland for some time he wanted his family to join him so he made arrangements for them to come to Europe. Shortly after arrival in the United Kingdom his family regularised their stay.
6. The family lived with him sometime after arrival at an address in Northampton. Since that time the family have made efforts to work and form their own relationships in the United Kingdom although they see each other regularly. Alfred states that he sees the family at weekends and often during weekdays and that they are a family orientated group who cook meals and hosts dinners for each other sometimes, go out for meals as a family as well as on day trips, and maintain telephone contact. They also regularly attend church.
7. Alfred refers to the family regularising their stay in 2005 when they were allowed to work or enter education but he told them to study and work to make something of their lives. He states his children are, however, still under his direction. He claims the decision to refuse the application is a breach of human rights for him and the children as they have nowhere to return to in Ghana, they are of the same immediate family, and all are in the United Kingdom. Their friends are here, they have no home in Ghana, and there is nobody who could maintain and accommodate them in Ghana. They have an established life in the United Kingdom.

8. In his statement dated 4th February 2013 [A's appeal bundle B, pages 22 to 25] he repeats his claim the family are all dependent upon him financially and emotionally to varying but significant degrees.
9. In his recent witness statement dated 18 September 2013 [A's bundle, p 123 -127] he repeats the claim that the children are dependent upon him. He refers to the fact the children were issued with Residence Cards valid from June 2006 to July 2011. He further claims to continually support his children in the United Kingdom financially, mentally, and emotionally. He claims that all the children now live with him at his current address in Luton [8].
10. Alfred confirms that Godfred and Kingsley are working and that Johnson is carrying out voluntary work for WRVS but does not received any money. His daughter Grace is not working and has not worked since 2011.
11. In his oral evidence he stated that when he left Ghana the children went to live with his big sister who is still in Ghana. His sister and an aunt remain in the country although the aunt is 98 years of age. His sister has no children of her own and lives in her own property which is the same house the children lived in when his sister cared for them.
12. Alfred was asked how he supported the children emotionally when he was in Holland and they were in Ghana and his answers related to seeing them on return for holidays and occasional telephone contact. He confirmed there is a telephone service run by Vodafone and Internet access now available in Ghana.
13. Other relevant elements of his oral evidence are referred to below. Alfred also claimed he will not be able to support his children if returned, there will be no jobs for them in Ghana and that the cost of living there is high.
14. I formed the clear impression that Alfred wants his children, all of whom are adults, to remain in the UK with him and that his evidence was directed toward achieving that aim.

Discussion

15. Regulation 7 sets out the definition of a "Family member": (1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as the family members of another person - (a) his spouse or his civil partner; (b) direct descendants of his, his spouse or his civil partner who are - (i) under 21; or (ii) dependants of his, his spouse or his civil partner; (c) dependent direct relatives in his ascending line or that of his spouse or his civil partner; (d) a person who is to be treated as the family member of that other person under paragraph (3).

16. The claim in this appeal is that the Appellants are all dependant upon their EU national father. In relation to what constitutes dependency, in Jia Migrationsverket Case C -1/05 the European Court considered “dependence” under Article 1(1)(d) of Directive 73/148/EEC and said this was to be interpreted to the effect that “dependent on them” meant that members of the family of an EU national established in another member state within the meaning of Article 43 of the EC Treaty, needed the material support of that EU national, or his or her spouse, in order to meet their essential needs in the state of origin of those family members or the state from which they had come at the time when they applied to join the EU national. The Court said that Article 6(b) of the Directive was to be interpreted as meaning that proof of the need for material support might be adduced by any appropriate means, while a mere undertaking by the EU national or his or her spouse to support the family members concerned need not be regarded as establishing the existence of the family member’s situation of real dependence.
17. In Bigia & Others [2009] EWCA Civ 79, at paragraph 24, Maurice Kay LJ said that where the question of whether someone is a “family member” depends on a test of dependency, that test is as per paragraph 43 of the ECJ’s judgement in Jia. In essence members of the family of a Union citizen needed the material support of that Union citizen or his or her spouse in order to meet their essential needs.
18. A further issue arises, especially in relation to Grace; of the effect of the fact her dependency is one of choice. In the recent decision in Lim (EEA -dependency) [2013] UKUT 437 (IAC) it was held that subject to there being no abuse of rights, the jurisprudence of the Court of Justice allows for dependency of choice. Whilst the jurisprudence has not to date dealt with dependency of choice in the form of choosing not to live off savings, it has expressly approved dependency of choice in the form of choosing not take up employment (see Centre Publique d’Aide Social de Courcelles v Lebon [1987] ECR 2811 (“Lebon”) at [22]) and it may be very difficult to discern any principled basis for differentiating between the two different forms of dependency of choice when the test is a question of fact and the reasons why there is dependency are irrelevant.
19. Lim is the not first case to set out such a principle for in Maria Pedro v SSWP [2009] EWCA Civ 1358 the Court of Appeal confirmed that dependency could be of choice and did not have to be of necessity.
20. The test which I have applied in assessing this question is whether the Appellants have discharged the burden of proof upon them to the required standard to prove they require the ‘material’ support of their father Alfred in order to meet their ‘essential’ needs. The question of whether they are able to support themselves rather than by having to rely on the EU citizen is irrelevant.
21. In relation to Johnson I do not find that he has discharged the burden of proof upon him to show that he is able to satisfy the legal tests set out above relating

to dependency and he has therefore failed to show he is entitled to the relief he seeks under the Regulations. I make this finding as a number of material discrepancies arose in the evidence which, despite Miss Akther's best efforts in submissions, cannot be overlooked.

22. I accept Johnson has undertaken voluntary work as his evidence is corroborated by his father and letters from the WRVS to be found at pages 85 to 87 of appeal bundle A. Johnson's case has always been that as a result of the fact he is unable to work he only undertakes voluntary work for no reward. He is therefore dependent upon his father for all his basic needs. When he gave his oral evidence, however, the first question asked of him in evidence in chief was whether the content of his witness statement [A's bundle A, pages 6 to 10] is true. He replied it was.
23. The WRVS letters indicates that he commenced his voluntary work with them in late spring 2011. I have also had the opportunity to read the determination written by First-tier Tribunal Judge Thanki promulgated on 7th November 2011 in relation to an earlier appeal against a similar application and refusal by the Secretary of State by these Appellants. Judge Thanki noted Johnson's evidence [24] that he relied upon his father and was dependent on him because he spoke to his father regularly and went to see him frequently. Each time he went his father gave him something like £20 to cover his travel costs otherwise his father gave him money as and when it was needed. He did the same for the other children and gave him regular advice about life in general. His father once gave him £250 when his car required repairs. Johnson also stated that he had two jobs earning between £16,000 and £17,000 per annum. Judge Thanki found, notwithstanding the claim to be dependent upon his father, Johnson was in employment, receiving help with travel costs and a substantial gift on one occasion, with there being no evidence that he was reliant upon his father to get by in life. It was not found that Johnson had established that he was dependent upon his father as claimed.
24. It therefore appears that in October 2011 Johnson was undertaking both voluntary work and in employment. He now claims in his oral evidence not to be employment, to only undertake voluntary work, and to be dependent upon his father for all his needs as a result. This account is contradicted however by paragraph 11 of his witness statement the contents of which he confirmed were true. In this paragraph he states:

11. The second reason my application was refused was on the basis that the Home Office has stated that sufficient evidence has not been provided to show that my father financially supports me in the UK. My siblings and I all live with our father at 21 at Weatherby Road, Luton. My father has two jobs and from his earnings he supports us. He pays for the rent of the house we live in, food and all our bills. We live with him on a rent free

basis. My brothers and I work in the UK and we have now only been working since the SSHD gave us permission when acknowledging our application. The money we earn is used to buy some things in addition but not for our basic needs which is met by our father. He has always supported us financially and this has previously been accepted by the SSHD. I will always be grateful to my father for all of the support which he has shown to me from a young age.

25. Johnson clearly claims to be working and a claim by any witness at the hearing they were not working as they did not have permission to work I do not find have been substantiated on the evidence. Two of the brothers, whose Regulation 7 appeals failed before the First-tier Tribunal, were clearly aware they are able to work.
26. I accept that bank statements provided by Johnson show little income and outgoings, regularly reflect £20 per month being paid into that account and not a great deal going out. I accept what those documents say on the face of them and the claim by Alfred that he pays the rent. This evidence in isolation does not prove dependency to the required degree, however, as it is only if a clear picture of Johnson's circumstances has been provided that the context of those statements can be fully understood. I do not find I am able to put the weight on this evidence and find it determinative as I was invited to do by Ms Akther.
27. In addition to the contradiction in the evidence regarding whether he was working or not, further discrepancies arose when comparing Johnson's oral evidence to that of his father. Key examples of such material discrepancies are as follows:
 - i. Alfred stated Johnson only undertakes voluntary work for which he received £10 or thereabouts and was not looking for a job. He worked three to four hours a week on average, three days a week, mostly on Monday, Thursday, and Friday. Johnson's evidence was that he undertook voluntary work helping in a shop on Saturday. His only source of income was from his father and that he only worked on Saturdays for a period of two hours.
 - ii. Johnson also claimed that he undertook no other work, did not earn money, but I have referred to paragraph 11 of his witness statement above.
 - iii. When it was put to Johnson in cross-examination that there was a material difference between his account and that of his father he changed his evidence. He then claimed that the hours he works depended upon when he was required. Such a material change of evidence with the sole intent of ensuring his evidence accorded with that of his father, without plausible explanation, further damages his credibility. The evidence raises the

question if Alfred is correct and Johnson does work three days during the week but Johnson claims to only help at the WRVS on Saturdays, where is he working on the other days?

- iv. Alfred's evidence was that he gives Johnson £20 to put in his bank account every month to help him. This is paid in cash and the last time such payment was made was the week before the hearing. I have noted the copy bank statements provided by Johnson show a regular monthly cash deposit of £20 which corroborates this aspect of the evidence. Johnson's oral evidence, when asked what he receives from his father, was that he receives £10 - £20 - £5, not a regular amount. He confirmed the £20 referred to above but again there is a discrepancy between the claim that only £20 is paid regularly and the evidence that sums of different amounts are paid. I note the claim by Alfred that he helps the children out by giving them additional sums if they are shopping or whenever required, but this explanation was not given in answer to the question specifically put in cross-examination to Johnson at the time.
 - v. I have referred above to the claim made by Johnson in oral evidence that he could not work as he has no permission to work which is contradicted by paragraph 11 of his witness statement.
28. I find there is no clear picture of exactly what Johnson's position is and in light of the failure to provide the Tribunal with all relevant evidence there remains considerable doubt regarding his claim to be dependent upon his father.
29. In relation to Grace the finding was that Judge Miles had erred for the reasons stated but that the Upper Tribunal would consider whether any such error was material once it had had an opportunity to consider all the evidence. This Tribunal has now had the opportunity of hearing from Alfred. Before Judge Thanki Grace's evidence was that she worked as a senior healthcare worker with an income of approximately £27,000 per annum. She lived away from her father in Oxfordshire although she visited him on a weekly basis and was assisted with travel and received additional help from him when required.
30. Grace's evidence in relation to this appeal is that she ceased working shortly after the previous appeal had been dismissed by Judge Thanki. The evidence suggests this was in November 2011. She remained in Oxford from November 2011 to February 2012 after which she returned to live with her father in Luton. On 8th May 2012 the application giving rise to this appeal was made alleging dependency upon her father.
31. Grace continued studying and obtained her NVQ level III qualification in Health and Social Care in December 2011. She is clearly employable but has not sought employment or to return to work since and it is clear from the evidence that the reason she has not done so is as a result of the need to prove that she is

dependent upon her father, with whom she now lives, for her basic needs. It is clearly a dependency of choice.

32. There were some elements of contradiction in her evidence such as:

- i. Alfred's claims that after ceasing work and between moving in to live with him in February 2012 she paid her rent in Oxford using her credit card and Grace's evidence that she used the one-month deposit she had paid on the accommodation to cover the rent for this period. It must be understood that Alfred's claim is that his children are so dependent upon him that he knows everything there is to know with regard to their finances. This evidence must be considered in this context.
- ii. Grace claimed she had not resumed work as she did not have permission but no evidence was adduced to show that she had been denied permission to work and it was put to her that, in fact, she had been granted such permission. She also confirmed later in her evidence that she had not worked as she wanted to be found to be dependent upon her father.
- iii. Grace claimed in evidence that she had no money other than that which her father gives her but during the hearing an issue arose relating to an entry on her bank statements. Notwithstanding clear directions and an allegation her solicitors told her to obtain such evidence from her bank, Grace failed to provide up-to-date disclosure of her current account. During the course of the hearing it emerged that she had printouts of her Lloyds Bank account on her which she was ordered to disclose. These record a number of payments and references to other accounts, including her credit card, and contained two entries in the following terms:

10/05/2013	FPI	NYARUGWE J	100.00
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17//05/2013	FPI	NYARUGWE J	100.00
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These are credit entries regarding payments into her account. The claim she receive no source of income other than that from her father is, on the face of it, contradicted by this evidence. Grace's explanation is noted but was not persuasive. Another difficulty is that the disclosure of the statements, even those produced the hearing, is incomplete. The documents provided cover the period 1st May 2013 to 17th May 2013 and from 1st August 2013 to 30th August 2013. Although the closing balance goes from £89.77 over drawn to £184.04 overdrawn the failure to disclose the statements from mid-May to the end of July makes it difficult to ascertain what her financial situation was during this period.

- iv. Alfred's evidence was that he gave Grace £50 for her credit card which he paid into her bank, the last payment being in August 2013. Grace's evidence was that father pays £50 into her credit card account with the last payment in August 2013. Although the credit card statements record a payment of £50 per month, corroborating this claim, issues rose in relation to the claim it had been paid in August 2013 and Grace also suggested her father gave her £75 a month which is not what he said.
33. Notwithstanding these anomalies it is not claimed by Grace or any other family member that she is in employment. Grace in fact has been direct in her evidence in stating she gave up work and has not sought work as she wants to be dependent upon her father which is relevant for the purposes of this application. The statements before and after May 2013 contained no mention of additional payments of £100 and this is not a case similar to that of Johnson as Grace has made contradictory statements in her evidence regarding whether she works or not.
34. I find that the error made in relation to Grace is material and set that aspect of the decision of Judge Miles aside too. I am satisfied that as a result of the action Grace has taken that she is dependent upon her father for all her needs. It was not submitted before me that those actions are as a result of any deceitful conduct that may be contrary to the principles of European law, even though she is clearly able to work and support herself in the United Kingdom. In light of the case of Lim holding that motive is irrelevant I find Grace has established that she is dependent on her father which is a dependency of choice but which is required to meet her essential needs. I find Grace has established that she is a direct descendant of her father who is dependent upon him. Her appeal under Regulation 7 must therefore be allowed.
35. The second element of the appeal relates to the Article 8 ECHR claim for Johnson, Kingsley and Godfred. I do not need to consider this in respect of Grace as her entitlement to remain in the United Kingdom arises under European law.
36. It has not been proved that the remaining Appellants are entitled to remain in the United Kingdom by virtue of the Immigration Rules or any other provision.
37. When considering Article 8 issues it is necessary to considered the questions set out by Lord Bingham in paragraph 17 of the judgement in the case of Razgar [2004] UKHL 27 are which are:
- (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
 - (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
 - (3) If so, is such interference in accordance with the law?

(4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(5) If so, is such interference proportionate to the legitimate public end sought to be achieved?

38. A lot of evidence was given relating to the arrangements when Alfred came to Europe and the children, as they then were, remained in Ghana with his sister. I am satisfied that he maintained contact with them and that he would visit them and there were telephone calls, but the evidence does not support the claim he met all their physical and emotional needs during the time he was in Europe until they joined him in the United Kingdom. The evidence was simply insufficient to establish this claim notwithstanding that each Appellant was cross-examined at length regarding what had occurred whilst they were in Ghana and given ample opportunity to provide such evidence.
39. In CO and NO (Nigeria) UKIAT 00232 (Ockelton) the Tribunal noted that there was a distinction to be drawn between family life in the colloquial sense and family life within the meaning of Article 8(1).
40. I accept that family life exists between the remaining Appellants and their father and Grace but that is not the issue. The question is whether family life recognised by Article 8 exists. The remaining Appellants have had their appeals under Regulation 7 based upon allegations of dependency dismissed although it is accepted they live in the same household as their father and sister at this point in time. In relation to the provision of some material assistance, in JB (India) and Others v ECO [2009] EWCA Civ 234 the Court of Appeal said that financial dependence “to some extent” on a parent did not demonstrate the existence of strong family ties between adult children and the parent nor did weekly telephone calls evidence anything more than the normal ties of affection between a parent and her adult children.
41. In Kugathas v SSHD [2003] INLR 170 the Court of Appeal said that, in order to establish family life, it is necessary to show that there is a real committed or effective support or relationship between the family members and the normal emotional ties between a mother and an adult son would not, without more, be enough.
42. In AA v United Kingdom (Application no. 8000/08) ECtHR (Fourth Section) the ECtHR held that Strasbourg jurisprudence tended to suggest that the Applicant, a young adult who resided with his mother and had not yet founded a family of his own, could be regarded as having “family life” for the purposes of Article 8(1). However, it was not necessary to decide this. As Article 8 protected the right to establish and develop relationships with other human beings and could embrace aspects of an individual’s social identity, it had to be accepted that the

totality of social ties between settled migrants and the community in which they were living constituted part of the concept of private life within the meaning of Article 8. In practice the factors to be examined when assessing proportionality of the deportation measure were the same regardless of whether family or private life was engaged (paras 46 - 49).

43. I find the remaining Appellants have not discharged the burden of proof upon them to the required standard to show that the relationship they have with their father is one in which the degree of dependency, social identity, and personal elements of the relationship go beyond on that of normal adult siblings and their parent. I accept Alfred's evidence regarding the feelings he has for his children and that he wants to be able to come home from work and for them to be there but that is an expression of normal parental love, perhaps tinged with a wish not to be alone at the end of the day and as he grows older.
44. In any event, as made clear in AA, focusing too hard on whether family life recognised by Article 8 exists or not may not be necessary as it is clear that the test to be applied is exactly the same whether it is family or private life. It is clear on the evidence that the interaction between these family members means they form an important element of their respective private lives. In addition to that private life it is clear there are other aspects of their private lives outside the family including church, voluntary service, work, and friendships as evidenced by the letters of support.
45. The legitimate aim relied on by the Secretary of State is that of immigration control based upon the economic needs of the United Kingdom, an aim recently recognised in FK and OK Botswana [2013] EWCA Civ 238 in which Sir Stanley Burnton said that "The maintenance of immigration control is not an aim that is implied for the purposes of article 8.2. Its maintenance is necessary in order to preserve or to foster the economic well-being of the country, in order to protect health and morals, and for the protection of the rights and freedoms of others. If there were no immigration control, enormous numbers of persons would be able to enter this country, and would be entitled to claim social security benefits, the benefits of the National Health Service, to be housed (or to compete for housing with those in this country) and to compete for employment with those already here. Their children would be entitled to be educated at the taxpayers' expense...All such matters (and I do not suggest that they are the only matters) go to the economic well-being of the country. That the individuals concerned in the present case are law-abiding (other than in respect of immigration controls) does not detract from the fact that the maintenance of a generally applicable immigration policy is, albeit indirectly, a legitimate aim for the purposes of article 8".
46. On behalf of the Appellants it was argued they have an established and settled life in the United Kingdom, nowhere to return to in Ghana, no prospects of employment in an economy that is more expensive than the United Kingdom

and in a situation where their father will be unable to provide any financial support for them.

47. I accept that the Appellants have been in the United Kingdom lawfully in the past as recognised by the previous grant referred to above. There is no suggestion they have been anything other than law-abiding citizens which I have taken into account. There is no suggestion in the evidence they have become a burden upon the social assistance scheme within the United Kingdom and, with the assistance and support of their father, appear to have a good work ethic. There is the fact some are prepared to manipulate their situation to try and ensure they remain in the United Kingdom but that may be understandable in all the circumstances.
48. On behalf of the Secretary of State it was accepted the Appellant's form a family unit but it was submitted by Ms Martin that they are all adults with no evidence of any special needs or dependency who have lived most of their lives in Ghana. The remaining Appellants were educated in Ghana and it has not been proved that any transferable skills they have acquired in the United Kingdom will not be of benefit to them in their home state.
49. It was also submitted that it is relevant that they will not be returned individually but collectively. I also note that although they claim to have no support there are relatives living in Ghana including the aunt with whom they lived prior to coming to the United Kingdom. I do not accept the claim their father will abandon them economically if they are returned and find some support will be available at least until they are able to become economically independent. Alfred is a man whose evidence relating to the support he has given to his children and all he has done to try meet their needs is commendable but does not make it plausible he would effectively abandon them at what may be a time of need for them.
50. I accept that returning to Ghana after time in the United Kingdom and separation from their father and sister and the need to re-adjust to life in another country may cause hardship, but that is not the required test. It has not been proved that the cost of living in Ghana is greater than that in the United Kingdom and I do not accept that it has been proved that any hardship they may suffer is sufficient to engage Article 3 or to make the decision disproportionate.
51. The submission that obtaining employment may be an issue in Ghana is supported by the Respondent's own Country of Origin Information Report for Ghana which speaks of increased unemployment for young people in that country, although these Appellant's speak English and received an education Alfred paid for in Ghana and it has not been shown that, notwithstanding the general economic situation in their home state, they will be unable to obtain work or will become destitute.

52. I have considered, as invited, the impact upon the family members remaining in the United Kingdom in accordance with the case of *Beoku-Betts*. I accept Alfred in particular, who clearly wants his family to remain together, will be distressed at the thought they will be separated as Grace may be too, especially as Alfred has clearly worked hard for them to be reunited as a family unit, but it has not been shown that any impact upon him is such that it will have such grave consequences so as to make the decision disproportionate. It is not the case that Alfred will be abandoned and alone as Grace has succeeded under the Regulations and so will remain in the United Kingdom with him.
53. Contacts with the church and friendship groups have not been shown to be issues that cannot be replicated or continued in Ghana and so any loss of these does not necessarily engage Article 8. Alfred was asked at length in cross-examination about mobile and Internet connections in Ghana and confirmed that such services have increased recently and are readily available.
54. In *Konstatinov v The Netherlands* (Applic. 16351/03), reported in June 2007 and which post dated *Huang and Kashmiri v SSHD* [2007] UKHL 11, the European Court of Human rights said that the State enjoyed a margin of appreciation under Article 8.
55. It is also settled law that Article 8 does not allow individuals to choose the country in which they wish to reside.
56. The remaining Appellants had a right to remain in the United Kingdom in the past as their circumstances met the requirements laid down in the laws of the European Union which granted such a right. They no longer have a proven right recognised in law to remain under the Regulations and so are reliant upon arguments relating to their family and private life. I accept that the remaining Appellants have adapted to life in the United Kingdom during the time they have been here and that they want to remain. They have however only been here for eight years having spent the majority of their life in Ghana.
57. I have spent some time considering the Article 8 appeal with care as its dismissal will, at a family level, cause distress. Having done so and having weighed up the evidence with the degree of care required in an appeal of this nature, that of anxious scrutiny, I am satisfied the Secretary of State has discharged the burden of proof upon her to the required standard to prove that the decision is proportionate to the legitimate aim relied upon. The appeals of the remaining Appellants under Article 8 ECHR must therefore be dismissed.

Decision

58. **I remake the decision as follows. This appeal is allowed under Regulation 7 in relation to Grace but dismissed under Article 8 ECHR with regard to the remaining Appellants.**

Anonymity.

59. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) as no application was made for anonymity and the facts do not warrant such an order being made.

Signed.....
Upper Tribunal Judge Hanson

Dated the 4th October 2013