Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers IA/26720/2014
IA/29452/2014
IA/26728/2014
and IA/29453/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 3rd June 2015	**On 22nd June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES
and
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

J G
M G K
D K G A
R A G A
(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Mr E Tufan (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants, citizens of Ghana, applied to the Secretary of State for leave to remain in the UK outside the Immigration Rules. The First and Second Appellants entered the UK as visitors on different dates but then overstayed, the Third and Fourth Appellants were born in the UK in 2003 and 2009. The applications were refused and the appeals dismissed for the reasons given in the decision promulgated on the 30th of December 2014.

2. In summary it was found that the Appellants could not meet the requirements of the Immigration Rules. The applications had been made in 2010 and appealable decisions made against the Appellants in 2014. The Judge considered the Appellants' case under article 8 of the ECHR and found that it would not be disproportionate to remove them to Ghana.

3. The Appellants sought permission to appeal to the Upper Tribunal in grounds of the 10th of January 2015. It was argued that the Judge was wrong to find that removal was proportionate even though he had expressed regret at the length of time it had taken for the Respondent to consider the Appellants' applications. It was argued, particularly with reference to the Third Appellant, that given the length of time he had been in the UK, and the life that they had established in the UK it would not be reasonable to remove them and the Judge erred in finding that it would be.

4. Permission to appeal was granted by First-tier Tribunal Judge Levin on the 15th of April 2015. He did so and rejected the suggestion that the Judge erred in not considering the applications by reference to the new rules. It was arguable that the Judge erred in relation to section 55 of the 2009 Act and failed to have regard to the guidance of the Court of Appeal in EV (Philippines) EWCA Civ 874.

5. The Appellants did not attend the hearing and requested that the hearing before the Upper Tribunal be conducted on the basis of the submissions that had been made. We have had regard to the grounds of application submitted by the Appellants and to the Upper Tribunal papers. Brief submissions were made by Mr Tufan in which he observed that the original applications had been refused in 2010, the delay was with regard to the removal directions, the Third Appellant made his application on the 28th of July 2012 and the decision was after the rules had been amended. We indicated at the hearing that we found that there was no material error in the decision and that the appeals would be dismissed for reasons that would be given later.

6. The Third Appellant's application was made on the 27th of July 2012 and so came under the new rules and paragraph 276ADE in particular. However the rules to be applied are those at the date of the decision being made, Odelola [2009] UKHL 25, and by then the requirement of reasonableness had been added to the consideration of a removal of a child who had been in the UK for 7 years or more.

7. The grounds do not make any reference to the cases of either EV (Philippines) or Zoumbas [2013]UKSC 74. Both cases involved families with poor immigration histories and children who had lived in the UK for over 7 years. In both it was found that the children could be removed, it was not for the UK to educate them or to provide them with healthcare even though objectively their best interests could be said to entail remaining in the UK. Neither assists the Appellants in this case.

8. Paragraph 276ADE is predicated on the basis that whilst in the UK a child will form a family life with the parents and any siblings and will probably form a private life centred around their school and any clubs or societies they join and any religious activities that they follow. The added requirement of unreasonableness must mean that a private and family life that is within the bounds of what would be expected is insufficient to justify a finding a child should not be removed, if not all children would succeed after 7 years residence come what may.

9. The decision of Judge Cooper does not show any factors that could be said to be unusual in the circumstances of the Appellants and there is nothing about the situation which they have created which would make their removal unreasonable. Albeit not a material error the Judge was wrong to find that there had been a delay in the consideration of the First and Second Appellant's case, the first refusal of their applications was in May 2010, the delay came in giving them an in-country right of appeal. In that time they chose to remain in the UK illegally, there may have been no attempt to remove them but that did not alter their obligations to comply with the rules that apply to them and they chose not to. In that time they continued to receive benefits such as their children's education to which they were not entitled.

10. The Judge had explicitly considered the position of the Third Appellant in paragraph 41 of the decision. He noted that he was approaching a natural break in his education and that his integration to Ghana would be with the assistance of his parents. There was nothing in these circumstances that warranted his being permitted to remain and none of the others had an independent right to remain in the UK.

11. Whilst there might have been a reference to other case law we find that there is no error in the decision of the First-tier Tribunal. Accordingly the decision of Judge Cooper stands as the disposal of the Appellants' appeals.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

We do not set aside the decision.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

In dismissing the appeals we make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 18th June 2015