



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/36003/2014  
IA/35997/2014  
IA/35993/2014  
IA/36002/2014

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 27 October 2015**

**Decision and Reasons  
Promulgated  
On 2 November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY**

**Between**

**ROBERT ADARKWA (1)  
GRACE ADARKWA (2)  
E V (3)  
A V (4)  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Heller, instructed by appellants (direct access)  
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are a family group. The first two appellants are the parents of the other two appellants. The appellants are all nationals of Ghana, born respectively on 14 May 1972, 20 February 1972, 19 October 2007 and 11 May 2009. The children were both born in the UK.
2. The appellants applied on 16 October 2012 for further leave to remain on the basis of their private life rights in the UK. Their applications were

refused on 21 November 2013 without rights of appeal but a judicial review challenge was settled by consent resulting in fresh appealable decisions being made on 24 August 2014. These were the appeals determined by First-tier Tribunal Judge Fox in his decision and reasons statement that was promulgated on 12 January 2015.

3. On 18 March 2015 the appellants were granted permission to appeal to the Upper Tribunal against the decision of Judge Fox. The main reason why permission was granted was that it was arguable that Judge Fox did not have proper regard to the wellbeing of the child appellants when making his decision.
4. After discussing the appeals with Mr Avery and Ms Heller, it was agreed that Judge Fox's decision and reasons statement was affected by legal error that required his decision to be set aside. There are two main reasons for my decision.
5. First, the judge failed to recognise that there were separate grounds of appeal for each appellant. This is evident at paragraphs 10 to 12 of the decision and reasons statement wherein the judge found that the first appellant had conceded that the appellants could not meet the requirements of appendix FM to the immigration rules and that the only provision of paragraph 276ADE that could be met were those in paragraph 276ADE(1)(vi).
6. The grounds of appeal submitted in respect of the fourth appellant, who is the elder of the two children, included the following comment, "*... the pertinent date is that of the Judge's decision, by which time there is every likelihood that the [third] Appellant will have reached the age of seven.*" This was prescient because by the date the appeal was decided the fourth appellant was seven. This was a material factor that should have been considered either in relation to paragraph 276ADE(1)(iv) or when considering the statutory public interest considerations under s.117B(6) of the Nationality, Immigration and Asylum Act 2002.
7. The judge did not have regard to this ground of appeal or the material factor which arose and this undermines his findings regarding the best interests of the children as set out in paragraphs, 18, 22 and 23 because he made no finding as to whether it was reasonable to expect the fourth child to leave the UK.
8. Secondly, during the discussions I had with Mr Avery and Ms Heller a further issue arose which was not in the original grounds but which may have affected the determination of the appeals. At paragraphs 8 to 10 the judge refers to the evidence he had when determining the appeals. There is some confusion regarding his comment in paragraph 8, "*I have had particular regard to tall the Appellants submitted to the Appellant's Officers ...*", which I accept is unintelligible. What is clear from these paragraphs, however, is that the judge had no further evidence from the appellants.
9. Unfortunately, what is clear from the appeal files is that the Home Office did not supply the documents required by rule 13 of the Asylum and

Immigration Tribunal (Procedure) Rules 2005, which applied to these appeals given the date of decision. In fact, after I made enquiries, Mr Avery discovered that he did not have the relevant documents on the Home Office file and suspected this explained the failure to disclose the relevant application documents. He could not advise me as to where the relevant documents were but suspected there may be other Home Office files relating to the appellants because of the judicial review claims previously made.

10. Mr Avery conceded that it would have been reasonable for the appellants to have assumed that the Home Office had provided the relevant documents to the Tribunal and that the judge would have had regard to them when determining the appeals. The fact the Home Office did not comply would not have been known to them and, if they had known, they would have been able to furnish the missing evidence to the Tribunal before the appeals were allocated. These failings raised concerns about procedural fairness and thereby identified further legal error.
11. The extent of the errors means that it is appropriate to remit the appeals to the First-tier Tribunal to be determined afresh. I do so with the following directions.

#### **Directions for fresh decision**

12. The appeals are remitted to the First-tier Tribunal to be decided without a hearing unless the additional appeal fees are paid.
13. The remitted appeals are not to be allocated to First-tier Tribunal Judge Fox.
14. The principle issue to be decided will be whether it is reasonable to expect the fourth appellant to leave the UK and if so how that might affect the other appellants. This may be decided in relation to paragraph 276ADE(1) (iv) and/or article 8, bearing in mind s.117B(6) of the 2002 Act.
15. The parties must provide all documents on which they seek to rely within 28 calendar days from the date this decision is promulgated by the Upper Tribunal.
16. In relation to the provision of evidence, the appellants may assume that the Home Office are unable to comply with the provisions of rule 13.

#### **Decision**

The decision and reasons statement of First-tier Tribunal Judge Fox contains an error on a point of law and is set aside.

The appeals are remitted to the First-tier Tribunal as per the directions given above.

Signed

Date

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Judge McCarthy  
Deputy Judge of the Upper Tribunal