IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/51699/2013
IA/51700/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 June 2015	**On 16 September 2015**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK
DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

ZAINAB MORO
MR MOHAMMMED MASAHUDU

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr L Rahman, Counsel, instructed by Zuriel Solicitors
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes back before the Upper Tribunal following an earlier hearing on 23 February 2015 which resulted in the decision of the First-tier Tribunal on the appellants' appeal being set aside for error of law.

2. We reproduce the error of law decision, described as a Decision and Directions, as follows.

> "1. The appellant in these proceedings is the Secretary of State. However, for convenience I refer to the parties as they were before the First-tier Tribunal.
>
> 2. Thus, the first appellant is a citizen of Ghana, born on 10 October 1981. The second appellant was born on 26 June 1966 and claims to be a national of Liberia, although this is doubted by the respondent.
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> 3. It seems that the first appellant made an application for leave to remain on human rights grounds, on 25 September 2010, the second appellant being a dependant on that application. After an initial refusal of the application, the matter was reconsidered and a subsequent decision made on 31 October 2013 maintained the original refusal.
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> 4. On 11 November 2013 decisions were made to remove the appellants under section 10 of the Immigration and Asylum Act 1999 and it is against those decisions that the appellants appealed to the First-tier Tribunal.
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> 5. The matter came before First-tier Tribunal Judge Boardman at a hearing on 4 August 2014. He dismissed the appeals under the Immigration Rules but allowed the appeals on human rights grounds with reference to Article 8 of the ECHR. Permission to appeal against his decision having been granted, the appeals came before me.
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> *The grounds and submissions*
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> 6. The grounds of appeal submitted by the respondent are detailed but can be summarised as follows. The grounds rely on the decision in MF (Nigeria) [2013] EWCA Civ 1192 and refer to Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC), in terms of the extent to which the First-tier Judge was entitled to consider Article 8 of the ECHR. Similarly, the decision in Nagre v Secretary of State for the Home Department [2013] EWHC 720 (Admin) is relied on. It is argued that the First-tier Judge failed to provide adequate reasons as to why the appellants' circumstances are either compelling or exceptional.
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> 7. Various criticisms are made of Judge Boardman's findings of fact in terms of the conclusion that the second appellant is from Liberia despite the inconsistencies in the evidence between the first and second appellants, and other evidence indicative of the second appellant in fact being from Ghana.
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> 8. It is further contended in the grounds that although reference was made by Judge Boardman to Section 117B of the Immigration Act 2014 ("the 2014 Act") in terms of little weight being given to private life or a relationship formed when a person is in the UK unlawfully or has precarious status, this had not been factored into the judge's reasons.
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> 9. So far as the best interests of the children are concerned, it is argued in the grounds that there was an inadequate assessment of the extent to which their needs could be met in Ghana or Liberia, or Spain, where the second appellant was apparently granted refugee status some years ago. Reliance is placed on the decision in EV (Philippines) v Secretary of State for the Home Department [2014] EWCA Civ 874.
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> 10. It is further argued in the grounds that there was no reason why the appellants could not continue their family life together either in Ghana or Spain and any

reluctance on the part of the second appellant to go to either country was merely a question of choice rather than necessity. As Ghanaian citizens it would be in the children's best interests to relocate to Ghana where they could enjoy the benefits of being Ghanaian citizens.

11. Even if the second appellant is not from Ghana, it would be reasonable for him to relocate there as he and his wife were fully aware throughout their time in the UK that their stay was precarious and their family life was established in that knowledge. The evidence suggested that the first appellant does have ties to Ghana including the fact that they entered into a proxy Ghanaian marriage in 2008.

12. The second appellant had not provided any evidence to establish that he had made enquiries with the Spanish authorities about his entitlement to return there and in terms of his and his family's ability to settle there.

13. In oral submissions Mr Avery relied on the grounds of appeal, reiterating that the evidence strongly suggested that the second appellant was in fact Ghanaian. Although in the determination the First-tier judge had identified discrepancies in the evidence which he described as "odd", he did not consider the evidence in the round.

14. Furthermore, it was submitted that it was not clear why, even if the second appellant did leave Liberia as a refugee, he could not return there now, given that it is 15 years since he made his refugee claim.

15. Mr Osadebe's submissions essentially relied on the fact that the First-tier Judge had heard evidence from the first and second appellant and had made his findings in the light of that evidence. It was submitted that he was entitled to make the findings that he did. The judge had balanced the interests of both parties and was entitled to conclude that the first appellant had lost ties to Ghana and that none of them would be able to go to Spain. It was the second appellant's evidence which indicated that he would not be readmitted to Spain and the judge was entitled to have regard to that evidence.

16. Judge Boardman had made an assessment of where the best interests of the children lay and that formed part of his assessment of proportionality.

My conclusions

17. The appellants have three children, born on 19 May 2009, 24 April 2010 and 9 January 2013. All those children were born in the UK. There was evidence which appears to have been undisputed that the eldest child suffers from autism. Evidence in relation to his condition, to which the judge referred, came from a letter from his school, dated 16 July 2014. The evidence was that he was on the school's register of special educational needs because of his difficulties in social situations, with language and with communication. To summarise, his needs were such that he required specialist support. At [39] the judge recorded that the child found change difficult, such as the beginning and end of activities, school visits and moving to a new class. Each had to be approached with care, with additional staff and visual resources to make sure he understood what was happening. At [40] it is recorded that he had a complex package of support at his school and had daily speech and language classes. Other aspects of his education and the support he receives were also referred to in the determination.

18. It was accepted on behalf of the appellants that they are not able to meet the requirements of the Immigration Rules in terms of Appendix FM or paragraph 276ADE.

19. As to the criticism of Judge Boardman for having undertaken a 'pure' Article 8 consideration, outside the Immigration Rules, it is important to note what is said at [68] of the determination. There it is evident that there was agreement between the parties that apart from not meeting the requirements of the Immigration Rules the appeal 'fell to be determined under Article 8 ECHR outside the immigration Rules'.

20. Even without it having been accepted on behalf of the respondent before the First-tier Tribunal that this was a case that called for consideration under Article 8 proper, I cannot see in any event that the judge erred in undertaking such an assessment, whether on the state of the authorities as they were at the time or subsequently. At the very least, having regard to the health condition of the appellants' eldest son, Judge Boardman was entitled, if not bound, to undertake an Article 8 assessment outside the Rules. It is evident that the judge had regard to all the relevant authorities as they stood at the date of the decision and incidentally, being unaffected by, for example, the decision in Singh and Khalid v Secretary of State for the Home Department [2015] EWCA Civ 74. It is as well to state also, that the respondent's reliance in the grounds on MF (Nigeria) is misconceived, insofar as the decision is relied on to suggest that the Immigration Rules are a "complete code". That applies to deportation cases but not otherwise.

21. At [71] Judge Boardman indicated that subject to any contrary submissions he was minded to find that, in summary, it was in the best interests of the eldest child to remain in the UK in order to continue with support for his special educational needs, that moving to Ghana would not be in his best interests, that it would also be in his best interests for both his parents to remain in the UK with him, because of his special needs and his young age; and finally, that his best interests and those of his two siblings were a primary consideration but not a paramount consideration in the balancing exercise under Article 8. At [72] it is stated that the Presenting Officer made no contrary submissions. It seems to me that this was the basis for the judge's conclusions at [76] which reflected his preliminary views put to the parties at [71]. In the circumstances, those conclusions were open to him.

22. There is a separate subheading in the determination headed 'The question whether the Appellant's husband has ever been to Ghana'. In the paragraphs that follow the judge expressed his conclusions on that issue. It is expressly stated that he had taken into account all the challenges on behalf of the respondent in the decision letter and in the oral submissions before him, the witness statements, birth certificates and the family questionnaire. It was noted that on two of the birth certificates it is stated that the second appellant was from Ghana, a matter which the judge found "odd". However, he went on to refer to the third birth certificate stating that the second appellant was from Liberia and, taking into account the evidence of the appellants, concluded that the information in the birth certificates did not undermine the credibility of the second appellant's claim to be from Liberia.

23. In the same paragraph he referred to the family questionnaire which states that the second appellant's fourth child was now living in Ghana, again a matter

which he found "odd". However, he noted subsequent evidence about the child's mother being a Ghanaian and taking into account the rest of the evidence concluded that this was not a matter that undermined the credibility of the second appellant's claim to be from Liberia. Similarly, in relation to the statement in the family questionnaire that the second appellant "fled Ghana on account of persecution in his country of origin" was also a matter that was considered to be "odd" but the judge noted other evidence from the second appellant to the effect that he fled Liberia in 1982 and was granted refugee status in Spain as a result.

24. The question of whether the second appellant met the mother of his fourth child in Algeria or in Spain, he concluded did not undermine what he considered to be other consistent evidence that he is from Liberia.

25. In the light of all those considerations the conclusion reached was that the second appellant was from Liberia and had never been to Ghana.

26. Although the grounds and submissions highlight the inconsistencies in the evidence in terms of whether the second appellant has ever been to Ghana and whether in fact he is Liberian as he claims, these it seems to me are mere disagreements with the judge's assessment of the evidence. It is true that the First-tier Judge did not refer to the evidence that the parties entered into a proxy Ghanaian marriage in 2008 but in terms of whether the second appellant had ever been to Ghana and whether he is in fact from Liberia, in the light of all the other evidence considered and evaluated by Judge Boardman, that is not an omission so significant as to undermine his findings. Although he noted the Ghanaian proxy marriage as a matter relied on by the respondent in his summary of the refusal letter (at [9]), it does not appear that either appellant was asked questions in cross-examination about the proxy marriage, and nor were submissions made on the point on behalf of the respondent.

27. Judge Boardman heard the evidence of the appellants which included cross-examination. He had the opportunity to evaluate their evidence at the hearing. Whether or not other conclusions were open to him on the evidence is not the point. In my judgement he was entitled to conclude as he did in terms of the second appellant's country of origin and whether or not he had ever been to Ghana.

28. As to whether the appellants, with their children, could live in Liberia or Spain, Judge Boardman accepted the second appellant's evidence that he fled persecution in Liberia and was granted refugee status in Spain as a result. Indeed, I cannot see that this is disputed on behalf of the respondent. The fact that it is suggested that the appellants could live in Spain together as a family tends to support the second appellant's evidence in this respect.

29. I note that the notice of decision itself, in respect of the first appellant, is predicated on the basis that the first appellant would be removed to Ghana, the stated country of removal in the decision. The notice of decision in respect of the second appellant is blank as to the country of removal. However, in the refusal letter on page 5 it states as follows: 'Even if we believed that [the second appellant] was from Liberia, which we do not, we are not asking him to return to Liberia.' There is then reference to their ability to live in Ghana.

30. All that aside, I do find that the First-tier Judge was entitled to conclude that the family could not live together in Liberia, he having found that the first appellant and her children have no connection with Liberia, and that the second appellant fled Liberia in 1982 and was granted refugee status in Spain as a result. It does not seem to me that there was information before the First-tier Judge which indicated that the situation in Liberia was such as to make possible a finding that the appellant would no longer be at risk there, or that it would in any event otherwise be reasonable for the family to relocate there in circumstances where the second appellant left that country when he was 16 years of age, in 1982.

31. In relation to Ghana, Judge Boardman accepted the first appellant's evidence that the only family member in Ghana with whom she has any contact is her brother in Takoradi, and that her other family members are against her because of her mother's opposition to her marriage. He also found that she had not lived in Ghana since 1999. He concluded that the first appellant's connection with Ghana is not strong. He went on to find that the second appellant had never been to Ghana and that he no longer has any connection with the mother of his fourth child. Further, he found that the second appellant has no direct connection with Ghana except through the first appellant. The children, similarly he concluded have no direct connection with Ghana except through the first appellant.

32. Those findings were all open to Judge Boardman on the evidence before him. He noted at [91] that the second appellant had indicated that he would not go to Ghana with the first appellant and their children if the appeals were dismissed. In the same paragraph he went on to conclude as follows: "it would be unreasonable to expect him to do so, in light of my finding that he has never been to Ghana."

33. At [115b.] (the numbering is repeated) he again referred to the second appellant as having no direct connection with Ghana except through the first appellant and stated that 'it would be unreasonable to expect him to go there, for reasons already given'. In relation to that conclusion however, I do consider that the First-tier Judge has not given legally sustainable reasons for concluding that it would be unreasonable for the second appellant to live in Ghana.

34. The ostensible reason referred to at [91b.] is that it would be unreasonable to expect him to do so in the light of the finding that he had never been to Ghana. However, such a conclusion it seems to me would mean that any partner would be entitled to resist removal simply on the basis that they had never been to the country to which their partner and children were to be removed. That in my judgement is an untenable proposition which would have the potential substantially to undermine the system of immigration control. Furthermore, it cannot be determinative of the question of whether it would be reasonable to expect a person to relocate to the country of origin of their partner the mere fact that they have indicated that they would not go there. In these respects I am satisfied that the First-tier Judge erred in law.

35. Similarly, although it was concluded that the first appellant's connections with Ghana are not strong, she does nevertheless, even on the judge's findings, have a connection with Ghana, having been born there and spent the majority of her life there. It does also seem to me to be significant that the appellants underwent a proxy Ghanaian marriage in 2008 which is indicative of a more recent connection than found by the First-tier Judge, and a matter not taken into account by him on

the question of return. There is no inconsistency in my conclusion here with regard to the proxy marriage, which in this respect relates to a different issue from that arising in relation to where the second appellant is from and whether he had ever been to Ghana.

36. I do not accept that there is any error of law in the judge's assessment of the extent to which the eldest child would be able to receive treatment for his condition in Ghana. At [50] there is reference to the first appellant's evidence in terms of the available treatment for her eldest son in Ghana. The first appellant accepted that background evidence indicated that there was a medical centre in Kumasi which could provide treatment for him but there would be no education for him there she asserted. She gave other evidence about the extent to which he could be educated. Furthermore, the letter from the child's school dated 16 July 2014 also contained information about the extent to which their son could receive treatment for his autism in Ghana and the extent to which he would be accepted in the community or in his local school because of the views of society towards children with autism.

37. Whilst, as is set out in the grounds, there was information in the refusal letter about the availability of treatment, in terms of speech therapy and special needs schools, it does seem to me that there was a basis for the judge's conclusions in terms of the inability of the appellants' eldest child to be provided in Ghana with the intensive support and treatment that he is receiving in the UK. Criticisms could have been made of the judge's reliance on the information in the letter from the school dated 16 July 2014 in terms of the expertise of the writer as to conditions in Ghana, although such a point was not taken on behalf of the respondent before me or in the grounds.

38. Furthermore, the judge's provisional indication of where the best interests of that child lay was not contradicted in submissions, as I have already observed.

39. Nevertheless, I am satisfied that Judge Boardman did err in law in his conclusion to the effect that it would be unreasonable to expect the second appellant to move to Ghana with the first appellant if she were removed there. I am similarly satisfied that the assessment of the strength of the first appellant's ties to Ghana was inadequate, taking into account the proxy marriage in 2008.

40. Whilst Judge Boardman did refer to the public interest as expressed in Section 117B of the Nationality, Immigration and Asylum Act 2002 as regards the limited weight to be given to private or their family life as partners established whilst the appellants were in the UK unlawfully, I cannot see that that statutory indication of where the public interest lies has been given appropriate recognition in the balancing exercise.

41. One of the factors in the balancing exercise taken into account by Judge Boardman is that it would be unreasonable to expect the second appellant to go to Ghana but, as I have found, that conclusion is not a sustainable one on the basis of the reasons he gave. Similarly, the assessment of the first appellant's connections with Ghana I consider to be flawed for the reasons I have given. Although account was taken of the children's best interests, those best interests are but one factor to be taken into account and cannot be determinative.

42. In terms of whether the family could live in Spain, it appears to be accepted on both sides that the second appellant had lawful residence there having been

granted refugee status. The only evidence of his no longer being able to enter and live in Spain was the second appellant's own evidence. Whilst the assessment of that evidence was a matter for the First-tier Judge, in circumstances where there is no evidence that the second appellant had ever made any enquiries with the Spanish authorities about his entitlement to return and his family's ability to settle there, I do not consider that his conclusions in this respect are sustainable. Where, as here, it is asserted in the refusal letter that the family would be able to reside in Spain, it is reasonable to expect the second appellant to have provided evidence in relation to his inability to reside in Spain with his family. In these circumstances, Judge Boardman's conclusion that they would not be entitled to reside there is, on the evidence before him, unsustainable.

43. There is no contradiction in that conclusion when considered with my conclusions as to the adequacy of the judge's findings concerning Liberia. The circumstances of his having left Liberia, in fear of persecution, and of his having been granted refugee status in Spain, are plainly different.

44. Having concluded that in the respects to which I have referred the First-tier Judge erred in law, I am satisfied that those errors of law are such as to require the decision to be set aside. The decision will be re-made in the Upper Tribunal at a further hearing.

45. The findings of fact to which I have referred are preserved, except insofar as they are infected by the errors of law. I will hear submissions from the parties at the further hearing in terms of what other findings of fact should be preserved.

DIRECTIONS

(a) Any further evidence relied on by either party is to be filed and served no later than 14 days before the next date of hearing.

(b) Any further oral evidence to be relied on must be contained within a comprehensive further witness statement such that there is no need for any examination-in-chief of the witness.

(c) All further evidence relied on by either party must be contained in an indexed and paginated bundle.

(d) The appellants are to note what is said at [42] above about the present lack of evidence from the appellants of their inability to live in Spain."

3. Thus, the appeal comes back before us for the re-making of the decision.

4. Further evidence was submitted on behalf of the appellant consisting of witness statements from the appellant and information from a Spanish immigration lawyer in relation to the ability of the second appellant to obtain residence in Spain. We heard further oral evidence.

The oral evidence

5. The first appellant, Zainab Moro, explained in examination-in-chief the circumstances in which the Ghanaian proxy marriage in 2008 between her and her husband took place. In summary, she said that because her husband is not Ghanaian

and no one knows him they decided that they should undertake that marriage in the community where she grew up so that the community would recognise her marriage to him for the sake of her children. The rest of the ceremony was done in the UK with friends and family. Her mother was one of those present at the reception in the UK. During the Ghanaian ceremony the appellant was present on the phone. Her husband was not. It was just her and her mother. During that ceremony in Ghana members of her family were there. This consisted of her father's extended family and family on her mother's side. It was conducted by a Muslim 'priest'.

6. Referring to her previous evidence before the First-tier Tribunal about the difficulties between her and her mother, those difficulties occurred after the marriage ceremony.

7. In cross-examination she said that her mother visits Ghana now and again with her mother's other children. She has a place there.

8. In re-examination she said that she is still estranged from her mother. Although her mother wants to see the children, she finds it too difficult for her to see her son because of her son's condition. She is protecting her son from the rest of the family.

9. In answer to our questions she explained the last answer by stating that he has special needs and they would see her son as "something else". Her mother already thinks that she is a failure because of her choice of husband and seeing her son (in her mind) would prove the point to her. She is not comfortable for her to meet her son, although her husband wants her to meet him. She knows how other members of her family relate to their son. Her mother does not know that he has special needs. Some of the family who have seen him do know that there is something wrong with him and they call him all sorts of names.

10. In relation to the proxy marriage certificate, it is hers and her husband's signatures at the bottom of the page. When she needed to register her son's birth in the UK, she asked the imam to provide her with a certificate so that she could register her son's birth. She obtained the certificate without her signatures on in 2010 which is when they then signed the document in the UK.

Submissions

11. Ms Brocklesby-Weller said that the contents of the documents in relation to the second appellant obtaining residence in Spain were not disputed.

12. So far as the Immigration Rules are concerned, it was accepted before the First-tier Tribunal on behalf of the appellants that they are not able to meet the requirements of those Rules. The test now however, is whether there would be very significant obstacles to the appellants' integration into Ghana.

13. It would not be unreasonable for the second appellant to join his wife in Ghana. The evidence before the First-tier Tribunal was that the second appellant's parents were from Ghana. The first appellant arrived in 1999. She was educated in Ghana and her formative years were spent there. She gave evidence before the First-tier Tribunal

recorded at [42] that she has a younger brother there. English is the national language.

14. In an interview on 30 October 2013 the second appellant said that he speaks Hausa and English as well as a little bit of Ashanti. There would be no linguistic barrier to his continuing family life in Ghana. The fact that he expressed a wish not to go to Ghana does not make it unreasonable to expect him to do so.

15. The First-tier Judge had concluded that it was in the best interests of the appellants' eldest child, Z, to remain in the UK. However, that is not the end of the matter. We were referred to the decision in *EV (Philippines) and others v Secretary of State for the Home Department* [2014] EWCA Civ 874. All three of the children could go back to Ghana with the appellants.

16. The fact that the eldest child is receiving professional treatment in the UK does not mean it would be unreasonable for him to relocate to Ghana. There was limited medical evidence in relation to his condition. Even though treatment in Ghana may not be the same as the UK, that is not determinative. There is no Article 3 case here. We were also referred to the decision in *GS (India) v Secretary of State for the Home Department* [2015] EWCA Civ 40 in terms of the inter-relationship between Article 3 and Article 8. A claim that did not succeed under Article 3 would need something extra in order to be able to succeed under Article 8. There was no obligation to medically treat a person in the UK. The expense to the public purse has to be taken into account.

17. Section 117 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") is relevant. Its provisions apply in the circumstances of these appeals. We were referred in detail to those provisions.

18. There would be no interference with family life so far as the appellants or their children are concerned. There would be an interference with private life but that interference would be proportionate.

19. Mr Rahman referred us to [50] of the First-tier Tribunal's determination in which the evidence of the first appellant is recorded to the effect that the first appellant could not go to live with her brother in Ghana and that she did not know his financial status but that he was "barely surviving" and living in one room. The appellants' eldest child needs to be in Accra because of his condition. The first appellant's brother does not live in Accra.

20. We were referred to the employment history of the appellants, the second appellant having worked as an ambulance driver for ten years, having arrived in the UK in 2000. The first appellant had worked in the health care industry. If they are given leave to remain, they are healthy adults who could cater for themselves. It is true that they worked without permission and therefore could not be said to be financially independent. Similarly, their son 'Z' is to receive treatment so in that respect s.117 of the 2002 Act is against them.

21. We were referred to the letter from Buxton School dated 16 July 2014 in relation to Z's autism. The best interests of Z are to remain in the UK.

22. It was conceded that the appellants are not able to meet the requirements of the Immigration Rules.

23. It was submitted that the second appellant would not be allowed legally to reside in Spain, although he previously had a residence permit. He has sought an extension of his visa and sent his travel document to the Home Office but he did not receive it back until two years later, by which time it had expired. He would not be in possession of any travel document which would allow him to be removed to Ghana, and he has no passport. The only way for him to get a travel document would be through the Liberian Embassy but he is a refugee from Liberia. It would be impossible for him to be returned to Ghana.

24. As was recorded by the First-tier Tribunal, the school in Accra that Z could go to is a private school and only goes up to the age of 11. This is set out at [50] of the First-tier Tribunal's determination.

25. It was also submitted that because the second appellant is a refugee he would not be able to receive any protection in Ghana, there being no suggestion that Ghana could protect him.

26. Z's condition made him reliant on the very specialist and intense care that he is receiving on a daily basis in the UK, and weekly from a psychiatrist.

27. The middle child Z, has just started school. None of the children have been to Ghana. The decision in *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41 was relied on in terms of the best interests of the appellants' children, the submission being that there needed to be serious countervailing factors to outweigh the best interests of a child. The only such fact in this case is that the appellants have been here unlawfully. However, they have been here for 14 and 15 years, respectively.

28. The second appellant cannot be removed in any event and thus if the first appellant and the children were removed together, there would be a separation of the family members.

Conclusions

29. It was conceded in submissions on behalf of the appellants that they are not able to meet the requirements of the Immigration Rules. The appeal proceeded on the basis of Article 8 only. It is as well nevertheless, notwithstanding that concession, to make reference and give consideration to what appears to us to be the only potentially relevant aspect of the Rules. This is paragraph 276ADE(1). This provides as follows:

> "276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

(i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and

(ii) has made a valid application for leave to remain on the grounds of private life in the UK; and

(iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or

(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

(v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

30. It seems to us that more specifically, the only potentially relevant aspect of 276ADE which could apply is subparagraph (vi). To summarise, the appellants have to establish that they are 18 years of age or above, have lived continuously in the UK for less than 20 years and there would be "very significant obstacles" to their integration into Ghana. In that respect it is relevant to take into account that the first appellant was born and brought up in Ghana and lived there until the age of 18. She has a brother there. Neither of the appellants would have any language difficulty in Ghana, where English is spoken. The second appellant's parents are from Ghana. It is not suggested however that he has family there now.

31. Furthermore, the appellants undertook a proxy marriage in Ghana in 2008, they being in the UK but the marriage ceremony in Ghana being attended by the first appellant's extended family on her father's side and family on her mother's side.

32. Those facts are sufficient to lead to a conclusion that it could not be said that there are "very significant obstacles" to the appellants' integration into Ghana.

33. Although the appellants are not able to meet the requirements of the Immigration Rules, and indeed on behalf of the appellants our attention was not drawn to any particular paragraph of the Immigration Rules, we do consider that there are good grounds for considering the appeal under Article 8 proper. It was not suggested otherwise on behalf of the respondent. We adopt the structured approach set out in *R. v Secretary of State for the Home Department ex parte Razgar* [2004] UKHL 27.

34. It is as well also to set out ss.117A-B of the 2002 Act as follows:

"117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article8: public interest considerations applicable in all cases:

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and (b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom"

35. It is uncontroversial that the appellants have family life together and with their children. There would be no interference with that family life if the appellants were removed together, and of course with their children. The second appellant's evidence before the First-tier Tribunal was that he would not go to Ghana with the appellant if her appeal was dismissed [65]. However, his wishes in that regard are

not to the point since it is clear enough that the intention is to remove him to Ghana. This is a matter that is dealt with at [29] in the error of law decision. If the respondent's intention is to remove him to Ghana, which in our assessment it plainly is, the second appellant expressing the view that he would not go there, is irrelevant.

36. It also must be said that we were somewhat perplexed by the submission made on behalf of the appellants to the effect that the second appellant would not be able to receive protection in Ghana, he being a refugee from Liberia. There is nothing in Ghana against which he needs protection. There is no basis from which to conclude that he would be *refouled* to Liberia, even working on the assumption that he would still be at risk of persecution in Liberia.

37. Similarly, we do not consider that there is any merit in the contention that the second appellant simply could not be removed to Ghana because there is no evidence one way or the other of his being able to be admitted there and he does not have a travel document or passport allowing for his removal there.

38. In the first place, it is to be noted that the second appellant's evidence is that both his parents are from Ghana. It is reasonable to assume therefore that in practical terms the appellant would be admitted to Ghana.

39. On the question of his not having any form of travel document, the submission on behalf of the appellant is contrary to the decisions in *HH (Somalia) and others v Secretary of State for the Home Department* [2010] EWCA Civ 426 at [82] to [84] and also *MS (Palestinian territories) v Secretary of State for the Home Department* [2010] UKSC 25.

40. So far as family life is concerned therefore, there would be no interference with their family life in any respect in the appellants' removal to Ghana. Ss.117A-B of the 2002 Act thus have no part to play in the Article 8 assessment of the proportionality of the removal of the appellants with reference to their family life.

41. It is plain that the appellants will have established a family life in the UK since their arrival in 1999 and 2000, respectively. Both of them have been in employment, the first appellant apparently as a health care worker and the second appellant as an ambulance driver. There are letters in the respondent's bundle from what appear to be three friends of the appellants testifying to the relationship between the appellants. Although no evidence of the following has been provided, it is likely that in the time the appellants have been in the UK they will have established friendships, as well as various other social connections, aside from their association with their children's schools and health professionals. The first appellant said in evidence before the First-tier Tribunal, as recorded at [47] of the determination, that her mother's sisters in the UK had been providing support to her. The second appellant is recorded at [65] of the determination as having said that friends in the UK had been supporting him since he had been forced to stop work.

42. The private lives of the appellants' children are most significant in relation to the older child who has autism. He was born on 19 May 2009 and is therefore now 6

years of age. The other two children were born on 24 April 2010 and 9 January 2013, respectively. Their private lives because of their ages will plainly be limited.

43. We have given careful consideration to the evidence in relation to Z's autism. In the appellants' bundle that was before the First-tier Tribunal there is a report dated 25 September 2013 from Dr S Vidhyadharsan, an Associate Specialist in Community Paediatrics. Suffice to say, the conclusion of that report is that there are concerns about speech and language delay, social delay and play skills delay.

44. The report from Buxton School is dated 16 July 2014. We summarise it as follows. It states that Z did not attend a nursery because his challenging behaviour made him difficult to place. He has been diagnosed with autism and is on the schools register of Special Educational Needs due to his difficulties in social situations and with language and communication. He is described as a child with obsessions about cleanliness, for example he will not take a bath unless he has seen the bath has been washed out first. He will not use a new toilet unless he is very familiar with its location and its surroundings.

45. He was seen by an educational psychologist in October and December 2013 because there were concerns about him screaming and taking his clothes off at inappropriate times. It is reported that he finds change difficult, including the ending and beginning of activities, school visits and moves to a new class. Each of those has to be approached with care, using additional staffing and visual resources to make sure that he understands what is happening.

46. He is described as having a complex package of support at Buxton School, including speech and language classes and attendance at weekly sessions to improve his understanding of the purposes of communication. He also has special sessions to encourage make-believe play and is visited by the Borough's Specialist Team for teaching children with autism. As a result of that team work and careful planning he is said to be making progress in school.

47. The report continues that Z is a child with significant special educational needs who needs to be educated within a system that integrates health and educational support and which continues to monitor him closely so that his learning programme can be tailored and individualised. The view is expressed that it is unlikely that such a school system exists in Ghana and there is reference, albeit brief, to information from the internet listing specialist schools only in Accra and limited resources outside the capital city. It is suggested that it is unlikely that he would be accepted by his community or in his local school. It is further stated that in Ghana his home conditions would not permit expression of his fastidious obsessions about toilets and bathing, and the move itself would cause considerable distress to him.

48. In the error of law decision it was concluded that there was no error of law in the judge's assessment of the extent to which Z would be able to receive treatment for his condition in Ghana, notwithstanding the criticisms that could have been made of the First-tier Judge's reliance on information in the letter from the school in terms of the

expertise of the writer. As is pointed out however, no issue was taken on behalf of the respondent on that point, either at the hearing or in the grounds before the Upper Tribunal.

49. It is a preserved finding therefore, that as set out at [76] of the First-tier Tribunal's determination, the move itself to Ghana would have an adverse impact on Z and it would be difficult for him to access support for his special educational needs there.

50. Having said that, it is not the case that there would be no treatment for Z in Ghana, as accepted by the first appellant and as reflected at [50] of the First-tier Tribunal's determination. In the respondent's bundle there is a Country of Origin Information response dated 23 October 2013, albeit apparently in relation to a different case from that of these appellants. It relates to a 5 year old female with Down's syndrome, experiencing 'minor hearing problems' for which she was receiving speech and language therapy and attending a special school. In relation to treatments available in Ghana, the short report states that treatment and follow-up by a speech therapist is available, as well as by an audiologist. There is a special school for children with Down's Syndrome. As to medical centres that would provide treatments, the response was that these could be found in Accra at the main teaching hospitals of Korle-Bu and Komfo Anokye in Kumasi.

51. Whilst that information is less than perfect in relation to autism, it is a reasonable conclusion that there is treatment available for children with autism, at least in Accra. No submissions to the contrary were made on behalf of the appellant before us, and as indicated already, such seems to have been accepted before the First-tier Tribunal.

52. We accept that change would be very difficult for Z to understand and that this will undoubtedly make his care and management very difficult for his parents. The report from Buxton School is written by a person who is described as a Primary Special Educational Needs Co-ordinator. We do not know what her qualifications are but we are nevertheless prepared to accept that a move to Ghana would cause considerable distress to Z, as stated in her report.

53. However, he has the benefit of the support and care of two loving parents, which again it is reasonable to conclude would to some extent help to mitigate his distress.

54. It is not suggested on behalf of the appellants that Z's condition is such as to reach the high Article 3 threshold. The evidence does not reveal that Z's autism of itself, under Article 8, provides a stand-alone basis for a conclusion that his, and therefore the appellants', removal would be disproportionate. As was explained in *GS (India)* there would need to be something more in the Article 8 claim.

55. Furthermore, there is no "obligation to treat" in Article 8 cases as explained in *MM (Zimbabwe)* [2012] EWCA Civ 279, repeated at [111] of *GS (India).*

56. In *EV (Philippines)* it was said at [60] that:

> "Just as we cannot provide medical treatment for the world, so we cannot educate the world."

57. That observation, it seems to us, is apposite in the case of these appellants, reflecting on the proportionality of removal in circumstances where it has been found by the First-tier Tribunal that the children's best interests are to remain in the UK. This is particularly so in terms of the eldest child, Z. We accept that the medical treatment and education he would be able to receive in Ghana would not be of the same standard as in the UK. Even if absence of treatment was a determinative factor, which it is not, there is nevertheless evidence that he could obtain treatment. His parents' have connections with Ghana, as already explained, the more so in the case of the first appellant.

58. The private lives of the appellants themselves attract little weight, as mandated by s.117B(4). We do not consider that the force of that provision has so much bite in relation to the appellants' children. In the first place, their private lives are limited because of their ages. In the second place, it is questionable as to whether that provision could be said to apply to very young children who will have made no conscious decision about establishing any private life.

59. Nevertheless, a further factor that tells against the appellants is their lack of financial independence, (see s.117B(3)) albeit that that is because they are no longer allowed to work because of their unlawful status. Neither the appellants nor their children have any lawful status in the UK.

60. Considering all the circumstances, we are satisfied that the respondent has established that the removal of the appellants (with their children) is a proportionate response to the legitimate aim of maintaining an effective immigration control. Accordingly, the appeals in each case are dismissed.

Decision

61. The decision of the First-tier Tribunal involved the making of an error on a point of law. The First-tier Tribunal's decision having been set aside, we re-make the decisions by dismissing the appeal of each appellant.

Upper Tribunal Judge Kopieczek 9/09/15