Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA262562014
IA262792014
IA262852014
IA262882014
IA262892014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 May 2016	**On 24 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

EB
ASG
ASG
TG
CS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

Representation

For the Appellants: Mr A Joseph, Counsel instructed by Quality Solicitors Orion
For the Respondents: Mr T Melvin, Home Office Presenting Officer

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no

report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. By my decision promulgated on 8 February 2016 (appended to this decision) I set aside the decision of the First-tier Tribunal ("FtT"). I hereby remake the decision of the FtT.

Background

2. The factual background to this appeal is as follows:

   (a) The appellants are a family unit. Apart from the third appellant, who was born in and is a citizen of the United States of America, they are citizens of Ghana.

   (b) The first and second appellants are a married couple born on [ ] 1975 and [ ] 1966. The other appellants are their children, born on [ ] 1988, [ ] 2002 and [ ] 2007. They have a fourth child who was born on [ ] 2013.

   (c) The first four appellants entered the UK in around 2005 as visitors and remained thereafter without leave to do so. The fifth appellant was born in the UK. The appellants claim that prior to entering the UK they lived in Italy and for a brief period in the US. They also claim that none of their children were born in Ghana or have ever lived there.

   (d) The fourth appellant (born on [ ] 1988) was the only appellant to give oral evidence. I found him credible and accept the evidence he gave, which in sum is that he is fully integrated into life in the UK and has minimal connection to Ghana. All of his schooling has been in the UK. He currently attends a performing arts college and has taken some GCSEs. He has been to Ghana only once – on a brief visit when aged 4 – and is not in contact with anyone in Ghana. He has no knowledge about life in Ghana or ideas as to what he would do upon moving there with his family.

   (e) The third appellant (born on [ ] 2002) was born in the US and is not a Ghanaian national. Now aged 13, all of her education has taken place in the UK. The fifth appellant, similarly, has undertaken all of her education in the UK.

3. The appellants applied for leave to remain on the basis of their family and private life. On 4 June 2014 their application was refused. The respondent was not satisfied that they could meet the requirements of either Appendix FM to the Immigration Rules or Rule 276AD. She also did not accept that there were exceptional

circumstances to justify allowing the application outside the Rules. In respect of the third, fourth and fifth appellants, the respondent acknowledged that they had been in the UK over seven years and therefore satisfied the first part of Rule 276ADE(1)(iv) but determined that it would be reasonable for them to leave the UK. Accordingly, it found they were unable to meet the requirements of this Rule.

Applicable law

4. In considering this appeal, I have adopted a two stage approach: firstly, I have considered, in respect of each of the appellants, whether they are able to satisfy the requirements of the Immigration Rules. Secondly, in so far as any of the appellants are unable to meet the Rules, I have considered whether their removal from the UK would be contrary to Article 8 ECHR outside the framework of the Immigration Rules.

5. Although I have considered each appellant individually, I have kept in mind that they are a family unit and the appeals need to be considered together with reference to each other and taking into account all material facts and considerations. See PD & Others (Article 8 – conjoined family claims) Sri Lanka [2016] UKUT 00108 (IAC).

6. The Immigration Rules relevant to this appeal are those found at paragraph 276ADE(1) which provide as follows:

> *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) 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.*

7. In considering the appeal outside the Rules, I have had regard, *inter alia*, to

   (a) the mandatory considerations set out in Part 5A of the Nationality Immigration and Asylum Act 2002, in particular section 117B; and

(b) the case law which makes it clear that there must be "compelling circumstances" to allow an appeal outside the Rules. See, for example SS (Congo) [2015] EWCA Civ 387.

8. I have also kept in mind that this appeal concerns the future of four children (the third, fourth and fifth appellant and their youngest sibling who is not a party). Their interests are a primary consideration and there must be a properly considered evaluation of their best interests which can then be balanced with other material considerations. See, for example, EV (Philippines) and others [2014] EWCA Civ 874; and JO and Others (section 55 duty) [2014] UKUT 552 (IAC).

Paragraph 276ADE(1)(vi) and the first and second appellants

9. The first two appellants argue that they satisfy the requirement of 276ADE(1)(vi) because there would be "very significant obstacles" to their integration into Ghana. They claim to not have resided in Ghana since around 1998 (ie for almost 20 years), to have only superficial links to the country and to be fully integrated into life in the UK.

10. I accept that the first and second appellants have lived most of their adult lives outside of Ghana and that they, along with their children, are now well integrated into life in the UK. However, that does not mean they would face very significant obstacles integrating into Ghana. Ghana is the country of their nationality where they grew up and were educated. They are familiar with the language, culture and society. No evidence was put before me to show that they would be unable to find work or educational opportunities for their children upon return to Ghana. Whilst they would undoubtedly face challenges moving to Ghana, the evidence before me falls significantly short of showing that there would be significant – and certainly not "very significant," which is the requirement under the Rules – obstacles to integration. Accordingly, I find that the first and second appellants are unable to satisfy the Immigration Rules.

Paragraph 276ADE(1)(iv) and the third appellant

11. At the date of the application the third appellant was under 18 and had lived continuously in the UK for more than seven years. Accordingly, the question to be addressed, under 276ADE(1)(iv), is whether it would not be reasonable to expect her to leave the UK.

12. If the third appellant is removed from the UK it will be to Ghana, along with her family. In considering the reasonableness of her removal I take into account, on the one hand, that:

(a) She has never lived in, and is not a national of, Ghana.

(b) She is now a teenager and has lived almost her entire life (and has been educated solely) in the UK.

(c) Her connections to Ghana (other than it being the country of her parents' nationality) are minimal.

(d) She is fully integrated into life and education in the UK which is where all her friends and wider family live.

13. On the other hand, the third appellant is a fit, healthy and capable girl with supportive parents and there is no reason to believe she would be unable to integrate into, and gain an education in, Ghana, a country where her parents are citizens and with which they are familiar.

14. As highlighted in the recent decision of PD & Others at paragraph [39], the test of "reasonableness", which is applicable in respect of the third appellant, represents a less exacting threshold than other tests found in the Immigration Rules, such as "insurmountable obstacles, exceptional circumstances [and] very compelling factors". Reasonableness is certainly a less exacting standard than "very significant obstacles" which is the test relevant in respect of the first and second appellants.

15. Weighing all of the circumstances relevant to the third appellant, and noting in particular the length of time she has spent in the UK, her age, and the absence of connection to Ghana (where she is not a citizen), I find that it would not be reasonable to expect her to leave the UK. Accordingly, I find that the third appellant meets the requirements of Paragraph 276ADE(1)(iv) of the Immigration Rules and is entitled to remain in the UK on that basis.

Paragraph 276ADE(1)(iv) and the fourth appellant

16. At the date of the application the fourth appellant was under 18 and had lived continuously in the UK for more than seven years. Accordingly, as with the third appellant, the question to be addressed is whether it would not be reasonable to expect him to leave the UK.

17. The fourth appellant is 17 years old and has lived in the UK since the age of 6. His connection to Ghana is minimal, having never lived there and only visited on one occasion. He has gone through the UK education system and built his life in the UK, developing relationships and connections. Lengthy residence in the UK as an older child is generally more significant, in terms of whether removal is reasonable, than time spent in the UK at a younger age: see, for example, Azimi-Moayed and others [2013] UKUT 00197) (IAC) where seven years from the age of four is contrasted with the first seven years of life.

18. As a healthy, articulate and intelligent young man the fourth appellant would no doubt be able, with the support of his parents, to adapt to life in Ghana and

overcome any obstacles he may face. However, that does not make it reasonable for him to be removed to a country he hardly knows from the country in which he has spent most of his life and his entire adolescence. Considering all of the factors relevant to the fourth appellant's circumstances, and noting in particular the length of time he has been in UK, his age whilst in the UK (6 – 17), his complete immersion into life in the UK and the absence of connection to Ghana, I find that his removal from the UK would not be reasonable and that he therefore satisfies the requirements of Paragraph 276ADE(1)(iv) of the Immigration Rules.

Paragraph 276ADE(1)(iv) and the fifth appellant

19. The fifth appellant is nine years old and has lived her whole life in the UK. She has never visited Ghana. Whilst I accept that moving to Ghana would represent a huge disruption to her life, she would be moving with both her parents, who are from Ghana. She is still young and no evidence has been put before me to show particular circumstances (such as health problems) that would make the transition particularly challenge. Given her age, and that she would be travelling with her parents (and siblings) I do not consider her removal unreasonable. The fifth appellant's best interests are to remain with her parents and if they are removed to Ghana it is in her interests to accompany them and it is not unreasonable for her to do so. Accordingly, I find that the fifth appellant is unable to succeed in her application under the Immigration Rules.

Article 8 outside the Rules

20. Having found that the first, second and fifth appellants are unable to meet the requirements of the Immigration Rules, I now turn to consider their appeals under Article 8 ECHR outwith the framework of the Immigration Rules.

21. It is clear, from the length of time they have spent in the UK and the relationships they have developed, that the first and second appellants have established a private life in the UK and that their removal would interfere with that private life thereby engaging Article 8. The more difficult question and the issue for me to resolve is the proportionality of their removal.

22. In considering proportionality I apply the mandatory considerations stipulated in Part 5A of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act"). Several of the considerations weigh against the first and second appellant – their private life was established whilst in the UK unlawfully, they are not financially independent, and the maintenance of effective immigration control is in the public interest.

23. However, Section 117B(6) states that where someone is not liable to deportation (which is the case here) the public interest does not require their removal if

(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."

24. Given that the third, fourth and fifth appellants have lived in the UK for a continuous period of seven years or more, they all meet the definition of being a "qualifying child". As explained above in the context of considering the Immigration Rules, it would not be reasonable to expect the third and fourth appellants to leave the UK.

25. In Treebhawon and others (section 117B(6)) [2015] UKUT 00674 (IAC) Section 117B(6) was clarified as follows:

> *"20. In section 117B(6), Parliament has prescribed three conditions, namely:*
>
> *(b) the person concerned is not liable to deportation;*
> *(c) such person has a genuine and subsisting parental relationship with a qualifying child, namely a person who is under the age of 18 and is a British citizen or has lived in the United Kingdom for a continuous period of seven years or more; and*
> *(d) it would not be reasonable to expect the qualifying child to leave the United Kingdom.*
>
> *Within this discrete regime, the statute proclaims unequivocally that where these three conditions are satisfied the public interest does not require the removal of the parent from the United Kingdom. Ambiguity there is none.*
>
> *21. Giving effect to the analysis above, in our judgment the underlying Parliamentary intention is that where the three aforementioned conditions are satisfied the public interests identified in section 117B(1) – (3) do not apply."*

26. The first and second appellants have a genuine and subsisting parental relationship with three qualifying children. For the reasons set out above at paragraphs [11]-[18], it would not be reasonable to remove two of those children (the third and fourth appellants) from the UK. Accordingly, the first and second appellants satisfy the conditions of Section 117B(6) with the consequence that the public interest does not require their removal from the UK. In the absence of there being a public interest in the removal of the first and second appellant from the UK, the balancing exercise under Article 8 inevitably falls firmly in their favour.

27. In respect of the fifth appellant, as explained in paragraph [19], it is in her best interests to reside with her parents, whether that be in the UK or Ghana. Accordingly, to the extent that the first and second appellants succeed in their appeal under Article 8, the fifth appellant's appeal also succeeds.

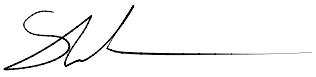
Decision

28. Accordingly, I remake the decision of the FtT by:

(a) allowing the third and fourth appellants' appeals under paragraph 276ADE(1)(iv) of the Immigration Rules; and

(b) allowing the first, second and fifth appellants' appeals under Article 8 ECHR outwith the framework of the Immigration Rules.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 23 May 2016