



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: HU/17791/2016**

Appeal

THE IMMIGRATION ACTS

**Heard at FIELD HOUSE
On 28th November 2017**

**Determination
Promulgated
On 5th December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR W A
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C.APPIAH (Counsel)
For the Respondent: Mr P. KOTAS (Home Office Presenting Officer)

DECISION AND REASONS

1. I shall refer to the parties as “the appellant” and “the Respondent”. This is an error of law hearing and I consider whether or not there is a material error of law in the decision the First-tier Tribunal (Judge Frazer) (“FTT”) promulgated on 30th March 2017 dismissing the appeal against a refusal of leave to remain in the UK.

Background

2. The appellant is a citizen of Ghana and he entered the UK as a visitor until 10th March 2010. He and his partner have a child aged 4 years who have

limited leave until October 2018. The appellant is step father to his partner's first child aged 6 years who is a British citizen.

FTT decision

3. The FTT concluded that the appellant failed to meet the requirements for Suitability and under EX 1(b). The FTT considered Ex 1(a) and found that there was a genuine and subsisting relationship as between the appellant and his partner and with his step son [19]. The FTT found that the best interests of the children lay with them remaining with both parents [21-22]. Given that the appellant had no leave and his partner and child had limited leave in the UK, the FTT found that it was not unreasonable for them to return to Ghana and that EX 1(b) was not met [23]. The FTT concluded that there were no very significant obstacles to the family's integration in Ghana. There were no compelling circumstances to justify consideration of Article 8 ECHR [25].

Application for permission to appeal

4. In renewed grounds to the UT it was argued that the FTT failed to properly consider the evidence from the appellant's partner that she did not intend to return to Ghana and that she was lawfully resident in the UK and intended to seek to extend her stay.
5. The FTT failed to assess whether or not there were compelling circumstances for consideration of Article 8 (**MF(Article 8- new rules) Nigeria [2012] UKUT 00393 (IAC)**).

Permission grant

6. Permission was granted by UTJ Reeds who found that ground 1 was arguable in that the decision that it was reasonable for the British citizen child to move to Ghana was inadequately reasoned in the light of the respondent's guidance which explains that the effect of the parent's removal must not be to force the BC child to leave the EU, as held in (**SF & Ors(Guidance, post 2014 Act [2017] UKUT 120(IAC)**).

Rule 24 Response

7. The respondent opposed the application arguing that the FTT made findings that were reasonably open to make on the evidence.

Submissions

8. I heard submissions from both representatives which are set out in the record of proceedings. Mr Appiah also produced a skeleton argument and the Guidance Appendix FM section 1.0b, and **SF**. At the end of the hearing I reserved my decision.

Discussion and conclusion

9. I have referred to the guidance at 11.2.3 which provides that "where a decision to refuse and application would require a parent or primary carer to return to a country outside of the EU, the case must always be assessed on the basis that it would be unreasonable to expect a BC child to leave the EU with that parent or primary carer..." and in such cases it would be appropriate to grant leave to the parent to enable them to remain in the

UK with the child, provided that there is satisfactory evidence of a genuine and subsisting parental relationship. In this appeal there is no evidence of any criminality or other countervailing factors.

10. I am satisfied that the FTT ought to have considered the impact of the partner's position on the family under EX 1(a) and or section 117B(6) and that the decision as to the reasonableness of the BC child was inadequately reasoned and failed to take into account the respondent's clear guidance section 1.0b. There is a material of law and I set aside the decision. Ground 1 is made out.

Re - making the decision

11. The facts are not disputed. The eldest child is a British citizen and he has a genuine and subsisting relationship with the appellant. Both of the children were born in the UK and have lived here all their lives, and have never visited Ghana. Their mother had not lived in Ghana for 13 years and had lawful leave in the UK until October 2018. There is a family unit established in the UK. I am satisfied that the evidence shows that the appellant comes within the definition of parent of the BC child. I am not satisfied however that the decision would in effect force the child to leave the UK. The appellant's partner stated that she did not intend to leave the UK and would not return to Ghana and thus the children could remain in the UK with her. She has lawful leave to remain in the UK at least until 2018. There would be an interference with the family life as the partner and the children would remain in the UK and the appellant returned to Ghana. In the light of the fact that the appellant has a subsisting relationship with both children it would not in my view be in the best interest to be separated from the appellant. The appellant's partner has lawful leave to remain until October 2018 and a son who is a British citizen. Even if she were not to be granted further leave to remain, there would be a separation of the family until October 2018 which is significant given the ages of the children. These factors in my view amount to compelling circumstances which justify consideration of Article 8.
12. Following the stages in **Razgar** I am satisfied that there is family life established in the UK and that there would be an interference caused by the separation of the family. The decision is lawful as the appellant cannot meet the Rules. The question of proportionality is determinative. The British citizen child is a qualifying child and the provisions of reasonableness under EX 1(a) and section 117B(6) 2002 Act are met on the facts as found above. I conclude that the break up of the family life in such circumstances would be disproportionate. I place weight on the respondent's guidance cited above.

Decision

13. There is a material error of law in the decision which shall be set aside. I remake the decision and substitute a decision to allow the appeal.

Signed

Date 2.12.2017

GA Black

Deputy Judge of the Upper Tribunal

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

NO FEE AWARD

Signed

2.12.2017

Date

GA Black

Deputy Judge of the Upper Tribunal