



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

Appeal Numbers: HU/05625/2015  
HU/05628/2015  
HU/05636/2015  
HU/05656/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14<sup>th</sup> December 2017**

**Decision & Reasons  
Promulgated  
On 17<sup>th</sup> January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**WAM (FIRST APPELLANT)  
MG (SECOND APPELLANT)  
KAM (THIRD APPELLANT)  
HAW (FOURTH APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr A Maqsood of Counsel, instructed by Blackrock Solicitors

For the Respondent: Mr P Duffy, HOPO

**DECISION AND REASONS**

1. These are the appellants' appeals against the decision of Judge O'Garro made following a hearing at Hatton Cross on 31<sup>st</sup> January 2017.

## **Background**

2. The appellants are citizens of Ghana. The first appellant came to the UK illegally in 1999 and has remained here ever since. His wife entered the UK on a visit visa in 2003 and has also overstayed since. The third appellant is a British national, as a consequence of having lived in the UK for ten years. The fourth appellant is a qualifying child.
3. The family have, over the years, made a number of applications, firstly for EEA residence cards and then under the family and private life ten year route and Article 8.
4. The judge accepted that the first appellant had lived away from Ghana for seventeen years, and the second for thirteen years. He also accepted that the third appellant was a British national and the fourth a qualifying child. He concluded however that it would be reasonable for them to return with their parents to Ghana, which was in their best interests and having regard to the parents' appalling immigration history the public interest required their removal.

## **Submissions**

5. The appellants sought permission to appeal on the grounds that the judge had not properly applied the relevant case law.
6. Permission to appeal was initially refused but subsequently granted by Upper Tribunal Judge Smith on 5<sup>th</sup> October 2017.
7. Mr Duffy said that he could not defend the determination and he was happy for me to set it aside and remake the decision, allowing the appeal.

## **Findings and Conclusions**

8. The judge erred in law.
9. He did not properly apply the relevant case law set out in R on the application of MA and Others [2016] EWCA Civ 705 where the Court of Appeal held that strong countervailing factors are required to justify an interference with a child's private life where there has been seven years' residence, the more so where, as here one of the children is British.
10. There is also a failure to consider the respondent's policy and guidance set out in the Immigration Directorate Instruction Family Migration: Appendix FM, Section 1.0b Family Life (as a Partner or Parent) and Private Life: Ten Year Routes which reads:

“11.2.3 Would it be unreasonable to expect a British citizen child to leave the UK?”

Save in cases involving criminality, the decision maker must not take a decision in relation to the parent or primary carer of a British citizen child where the effect of that decision would be to force that British child to leave the EU, regardless of the age of that child. This reflects the European Court of Justice judgment in Zambrano.

Where a decision to refuse the application would require a parent or primary carer to return to a country outside the EU, the case must always be assessed on the basis that it would be unreasonable to expect a British citizen child to leave the EU with that parent or primary carer.”

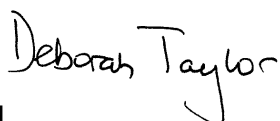
11. It was on that basis that Mr Duffy very properly made the concession that the appeal ought to be allowed.

### **Notice of Decision**

12. The original judge erred in law. His decision is set aside. It is remade as follows. The appellants’ appeals are allowed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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.



Signed

Date 13 January 2018

Deputy Upper Tribunal Judge Taylor