Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/27430/2016
HU/27433/2016
HU/27435/2016
HU/27440/2016
HU/27441/2016
HU/27443/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 October 2018	**On 16 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

CATHERINE [W]
JOSEPH [T]
AND THEIR CHILDREN
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr L Lourdes of Counsel
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

This is an appeal brought by a Ghanaian family against the decision of First-tier Tribunal Judge Chana promulgated on 18 May 2018 following a hearing at Hatton Cross on 16 April 2018 in which she dismissed the appeal of a mother and father and their three children against the decision of the respondent dated 12 December 2016 refusing to give them leave to remain under the Immigration Rules paragraph 276ADE(1) and Article 8 of the ECHR.

As a matter of history, it cannot be avoided to state the chronology of this case. The father was issued with periods of leave to remain and those provided him with valid leave until 14 June 2006. Thereafter he remained without leave and made various applications which were unsuccessful. In order to maintain himself in the United Kingdom he necessarily had to use false documents. The application centred upon the position of two children. At the relevant time the children were aged 8 and 7. The judge dealt with the position of each of the qualifying children, that is, those two children to which I have referred, and considered the effect of their removal to Ghana, a place which they had not visited.

The background to the legal decision-making has to centre upon the decision of the Court of Appeal in *MA (Pakistan)* [2016] EWCA Civ 705, and the judgment of Elias LJ, Lady Justice King and Sir Stephen Richards. In that case consideration was given to the interplay between the appellants' poor immigration history and the children's best interests. In paragraph 47 it was said:

> Even if we were applying the narrow reasonable test where the focus is on the child alone, it would not in my view follow that leave must be granted whenever the children's best interests are in favour of remaining. I reject Mr Gill's submission that the best interests assessment automatically resolves the reasonable question. If Parliament had wanted the child's best interests to dictate the outcome of the leave application, it would have said so. The concept of 'best interests' is after all a well-established one. Even where the children's best interests are to stay, it may still be not unreasonable to require the children to leave. That will depend upon a careful analysis of the nature and extent of the links in the UK and in the country where it is proposed he should return. What could not be considered, however, would be the conduct and immigration history of the parents.

The Court of Appeal's decision goes on to say in paragraph 49:

> Although this was not in fact a seven year case, on the wider construction of s.117B(6), the same principles would apply in such a case. However, the fact that the child has been in the UK for seven years would need to be given significant weight in the proportionality exercise for two related reasons: first, because of its relevance to determining the nature and strength of the child's best interests; and second, because it establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary.

Then, in paragraph 52 of the Court of Appeal's decision, a series of tests or considerations are set out which includes that there can be no substitute for a careful examination of all relevant factors when the interests of a child are involved in an Article 8 assessment (that is the decision found in subparagraph (6)) and finally, a child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent, subparagraph (7).

The interplay that is the central feature of a reasonableness consideration, is the interplay between the immigration history and the fact that the parents and the children have no substantive right to remain under the Immigration Rules (on the one hand) and the need to protect children against harm from being taken away unreasonably from the environment which they know and from which they benefit. It is worth pointing out, however, that in *AM (Pakistan) v Secretary of State for the Home Department* [2017] EWCA Civ 180 Elias LJ also said in paragraph 20 in reference to *MA (Pakistan)* that the court, admittedly reluctantly, concluded that it was inherent in the reasonable test in s. 117B(6) that the court should have regard to wider public interest considerations and in particular the need for effective immigration control.

In the cursory survey that I have conducted into the relevant case-law I shall also refer to the decision of the Tribunal in the case of *MT and ET (child's best interests; ex tempore pilot) Nigeria* [2018] UKUT 88. This was a decision by the President and Upper Tribunal Judge Lindsley given on 1 February 2018 following a hearing on 9 January 2018. The relevant passage in relation to the Tribunal's decision is found in the concluding paragraphs. In paragraph 34 it was said that there were no powerful reasons to mitigate against the child's right to remain. In the case of *ET* the child had been in the United Kingdom since the age of 4. She had remained in the United Kingdom for over ten years and, as a 14 year-old, she could plainly be expected to have established significant social contacts involving friends in school and outside such as in the church and she had embarked upon a course of studies leading to the taking of GCSE examinations.

These cases clearly establish that such cases are fact-sensitive. That must be apparent from the very opening of the italicised words in *MT and ET*, which begin:

> A very young child, who has not started school or who has only recently done so, will have difficulty in establishing that her Article 8 private and family life has a material element, which lies outside her need to live with her parent or parents, wherever that may be. This position, however, changes over time, with the result that an assessment of best interests must adopt a correspondingly wider focus, examining the child's position in the wider world, of which school will usually be an important part.

Thus, when dealing with children, one of the significant factors to bear in mind is whether the stage which the child has reached and the length of stay in the United Kingdom that the child has enjoyed is such as to merit a finding by the Tribunal or by the Secretary of State that it would be unreasonable for the child

to be removed but the range is a fact-sensitive range. In the case of a very young child, who has not started school, then there will be very little in the way of a powerful reason why the child cannot return with his or her parents. In contrast, even where the parents have a poor immigration history, by the time the child has been in the United Kingdom for a long period during which the child has been involved in education and is in the middle of a course of studies, then very different considerations may apply.

This was the approach that was adopted by the First-tier Tribunal Judge. She begins in paragraph 7 by examining the evidence. In relation to English, it was said by the judge that the mother speaks English and the children speak English. She also speaks the Ghanaian dialect. The position of the mother was examined in the following paragraphs. She says that she spoke in a Ghanaian dialect at home but the children do not understand it. She has a qualification in home economic science. She said that she could not get a job in Ghana and she only has contact with two of her former schoolmates. Joseph, the father, also gave evidence. He said that he had worked in the United Kingdom as a courier. He had finished high school in Ghana and did not have any qualifications and he submitted that he could not find work in Ghana as there were no jobs and that is why people turned to robbery.

The judge's assessment of the evidence then takes place between paragraphs 13 and 28 of the determination insofar as it relates to the Immigration Rules. There then follows a passage dealing with Article 8 in paragraphs 29 to 43 of the determination.

The judge accepted that her role was to pay particular regard to the two qualifying children aged 7 and 8 in the sense that they were qualifying children within the meaning of s. 117D(1). She refers to the fact that case-law had indicated that the child's connections to the United Kingdom become more important from the ages of 4 to 11 and she then moved on to consider the likely circumstances of the qualifying appellants if returned as a family unit to Ghana. She conducted what she described as an individual consideration and assessment of the best interests of these qualifying appellants and first and foremost took into account the simple fact that the removal of the family to Ghana does not involve the separation of the children from their parents or siblings.

The judge went on to consider the importance that the best interests of the children included the provision of security, wellbeing, social integration, education and to be clothed, housed and fed and took those as significant factors in the consideration of the children's best interests. She then assessed the evidence provided by the mother that, although they speak to each other in the Ghanaian local dialect, the children only understand a couple of words. That perhaps would be surprising in that if the children are spoken to in a language which the parents realise their children do not understand, there would be limited point in conducting such conversations but the judge was content to rely upon the fact that the parents speak the local dialect, the

children are very young and are in a position to learn to speak it relatively quickly.

The judge then went on to consider their education on return to Ghana and was satisfied that there was a system of education in Ghana such as not to subject them to harm on return to Ghana without the benefit of such education. There was also, the judge noted, no background evidence that the children would not live in a secure environment with medical care being available and the judge made the obvious point that children are capable of making friends in Ghana and continuing to socialise as they do in the United Kingdom.

She went on to consider the safety of the children and that included an assessment as to whether the parents would be able to find work to support themselves and she rejected the parents' evidence that there were no jobs in Ghana and that people had to resort to robbery to support themselves. At the hearing the judge found that it became increasingly obvious that the parents have relatives in Ghana who can support them in integrating and that they contradicted each other's evidence as to the nature of the support mechanisms which existed in the form of relatives living in Ghana. She said: "*I find I have not been told the whole truth about their circumstances.*"

One of the matters which is of crucial importance in the consideration of these cases is that the children's best interests must not be determined as against the wrongdoing of the parents but the judge expressly advised herself against taking that approach in paragraph 27 by saying: "*I emphasise that I do not take against the third appellant the illegal status of their parents in determining their interests.*" In consideration of the circumstances as a whole the judge concluded that it would be reasonable for the qualifying appellants to return with their parents as a family unit.

I do not need to go beyond that in my consideration of the Article 8 claim because very much the same considerations were in play.

The Secretary of State points out that the letters of support spoken in support of the appellants were within the Ghanaian community and those therefore indicated that the appellants including the children were embedded within the Ghanaian community within the United Kingdom and consequently the differential, as it were, between their life in the United Kingdom and their life on return to Ghana has to be seen in the context of the community in which they thrive in the United Kingdom. It is true that the judge did not use the word "*powerful*" as is suggested in *MA (Pakistan)* but that, in my judgment, is an adjective that properly describes the nature of the reasons that were put forward by the judge.

The judge fully reasoned why there would be no harm to the children. They would be returning to an environment where they would benefit from education, healthcare, relatives and an environment with which they were broadly familiar. They would be able to speak English and they would be able

to pick up the Ghanaian dialect which their parents use to them in the United Kingdom. It does not seem to me that it was essential that the children at the age of 7 or 8 should be able to write this dialect. Indeed, many children of that age have only a limited ability to write English in any event.

So, the factors which the judge identified were factors that were all material to her consideration of the best interest of the children and there is nothing in the grounds of appeal to suggest that the judge erred in law. It is simply wrong to assert that any of the case-law supports the bold proposition that once a child has been in the United Kingdom from birth until the age of 7 or 8, that child can no longer lawfully be removed from the country. That is far too simplistic an approach to be adopted. Instead, one has to adopt a nuanced, fact-sensitive, sympathetic approach to the position of the child, based on the evidence that is placed before the Tribunal, and reach a decision upon that material as to whether it can properly be said to be reasonable to deprive the child of the environment that child currently enjoys in the United Kingdom.

For the reasons I have given I find that that was the approach adopted by the judge and accordingly I dismiss the appellants' appeal against the determination of the First-tier Tribunal, whose determination of the appeal shall stand.

DECISION

The determination of the First-tier Tribunal discloses no material error of law and the decision of the First-tier Tribunal Judge shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL

Dated 09 October 2018