



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/01203/2018
HU/01209/2018
HU/01212/2018

THE IMMIGRATION ACTS

Heard at Field House
On 25 June 2019

Decision & Reasons Promulgated
On 24 July 2019

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

RACHEAL [M] (FIRST APPELLANT)
N O (SECOND APPELLANT)
K O (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr N Garrod instructed by Justice and Law Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant is a national of Ghana. She together with the second appellant, NO, and the third appellant, KO, sought leave to remain on the basis of family life. Leave was refused by the Secretary of State on 11 December 2017 and they were unsuccessful in an appeal before a First-tier Judge.

2. In a decision following a hearing on 13 March 2019 I held that there were errors of law in the judge's decision such that it required to be remade.
3. The particular issue concerns the second appellant, NO, who was born in the United Kingdom on 22 April 2009. The judge found the matter to be finely balanced but concluded that it would not be unreasonable for her to be removed from the United Kingdom. He considered it to be irrelevant that if she stayed in the United Kingdom she would be eligible to apply for British citizenship when she was 10 years old, as she could not do so at that time. I concluded that the judge had not given proper consideration to the amount of time that the second appellant had spent in the United Kingdom and the private life she has developed while here.
4. Before the renewed hearing the second appellant reached the age of 10, and an additional statement was put in by the first appellant referring to the fact that on 14 May of 2019, some three weeks after the second appellant's 10th birthday she had submitted an application for registration for her as a British citizen under section 3(1) of the British Nationality Act 1981. She also attached a copy of a letter acknowledging receipt of her application and a letter requiring her biometrics to be provided.
5. Ms Everett, who appeared on behalf of the Secretary of State, properly and wisely acknowledged the difficulty that the Secretary of State was in in the circumstances that the case had now reached. On the face of it it seemed clear that the second appellant qualified as a British citizen and that as was frankly acknowledged put the Secretary of State in difficulty with regard to the reasonableness of her removal. It was a question of qualification, rather than status and therefore it was not necessary to await the formal awarding of British citizenship to the second appellant.
6. In the circumstances I did not need to call on Mr Garrod who appeared on behalf of the appellants.
7. I am satisfied that the appeal in this appeal must be allowed, as I indicated at the hearing. The second appellant has now qualified for British citizenship status and there is no reason to suppose that she is not of good character or that she has spent more than 90 days outside the United Kingdom. Her age and the fact of her having been born in the United Kingdom on or after 1 January 1983 is acknowledged. In these circumstances I find it would clearly be unreasonable for her to be removed from the United Kingdom, and in the circumstances that in effect precludes the removal of the other appellants since a 10 year old child cannot be expected to remain in the United Kingdom on her own. These appeals are therefore allowed under Article 8.

8. No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 27 June 2019

Upper Tribunal Judge Allen