Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17022/2018
HU/17024/2018
HU/17028/2018
HU/17029/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 March 2019	**On 27 March 2019**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

FH
JAA
JMA
JOD
(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellants: Ms F Allen, Counsel, instructed by Maliks & Khan Solicitors
For the respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. These are appeals against the decision of Judge of the First-tier Tribunal James (the judge), promulgated on 2 January 2019, in which

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she dismissed the appellants' appeals against the respondent's decisions dated 31 July 2018 refusing their human rights claims.

Factual Background

2. The appellants are nationals of Nigeria. The 1st appellant was born in 1983 and is the mother of the remaining appellants. The 2nd appellant, at the date of the First-tier Tribunal decision, was 5 years old, the 3rd appellant was 3 years old and the 4th appellant was 2 years old. The 2nd to 4th appellants were born and had continuously resided in the UK.

3. The 1st appellant entered the UK on 16 June 2009 as a student. She was granted further leave to remain which expired on 30 August 2011. She claimed that the father of her children was a Dutch national and she made several applications to obtain EEA residence cards for herself and her children but these were all refused. On 10 May 2017 she and her children made human rights claims.

4. In his decision dated 31 July 2018 the respondent found there were no very significant obstacles, as required by paragraph 276ADE(1)(vi), to the 1st appellant's reintegration into Ghana, and that the 2nd to 4th appellants did not meet the requirements of paragraph 276ADE(1)(iv) because they had not resided in the UK for at least 7 continuous years. Nor was the respondent satisfied that there were any exceptional circumstances sufficient to warrant a grant of leave to remain in accordance with Article 8 principles outside the immigration rules. The appellants had a right of appeal to the First-tier Tribunal which they exercised.

The decision of the First-tier Tribunal

5. The judge heard oral evidence from the 1st appellant and took into account a 38-page bundle provided by the appellants that included, inter alia, a signed statement from the 1st appellant, statements from the 1st appellant's sister and cousin, a letter from the 2nd appellants' Head Teacher dated 26 September 2018, and a letter from the 2nd appellant's GP dated 9 October 2018. The GP's short letter stated,

> "This 4 years old boy suffers with severe speech and language impairment. He also suffers with social communication difficulties, probably related to his speech and language delay."

6. In her findings the judge provided a number of reasons for rejecting the 1st appellant's claim that there would be very significant obstacles to her integration in Ghana. The judge found, inter alia, that there was nothing to indicate that financial support received by the appellants from the 1st appellant's sister in the UK would not continue if they were returned to Ghana. The judge also noted that the 1st appellant

had a younger sister living in Ghana who would be able to provide information about work availability. The judge was not satisfied that the 1st appellant would be unable to work. The 1st appellant's claim that she would be destitute in Ghana was said to have been an overstatement. The judge noted that the 1st appellant previously received treatment for breast cancer, but there was no new medical evidence relating to her current condition and a letter dated 8 September 2017 in the respondent's bundle indicated that the 1st appellant was currently considered to be cured. Other than a mammogram appointment for 3 January 2019 and an invitation to a Health and Well-being Event on 8 November 2018 there was no other supporting documentary evidence that the 1st appellant's cancer would return. The judge found there was no evidence that the 1st appellant's removal to Ghana would have any increased impact on her by reason of her being a cancer survivor.

7. At paragraph 19 the judge considered the medical evidence relating to the 2nd appellant. The judge referred to the GPs letter of 9 October 2018 and set out a relevant extract. The judge had this to say about the GP's short letter.

> "He [the GP] provides no greater insight into his condition beyond saying that he has social communication difficulties which are probably related to his speech and language delay. Before me the 1st Appellant has stated that as the 2nd Appellant is only aged 5 it is not clear how his developmental delay will turn out and it is still being assessed. I am not satisfied that the 2nd Appellant has shown he will have significant long-term impairment."

8. At paragraph 23 the judge found that the "appellants" had not demonstrated that they would face very significant obstacles to integration and return to Ghana. I pause to note that this is a misstatement of the relevant immigration rules so far as they relate to the children. There is no requirement for the 2nd to 4th appellants to demonstrate the existence of very significant obstacles. It was not however disputed that the children could not, in any event, have met the requirements of paragraph 276ADE(1)(iv) as they had not lived in the UK for at least 7 years.

9. At paragraph 24 the judge stated,

> "Before considering Article 8 outside the Rules I have considered the best interests of the children under s.55 of the 2009 Act. The Respondent considered this issue in detail in the RFR and I concur with their conclusions with one additional comment. The Appellants rely on the 2nd Appellant's condition to assert that he should remain in the UK and, for the sake of family unity, they should all remain together in the UK. I do not accept that argument. First the 2nd Appellant's condition is unspecified beyond the broad generalisation. There is no prognosis. It has been described as a delay suggesting that given time there will be no

problem. I am not satisfied that the 2nd Appellant's condition is such as to make his best interests to remain in the UK rather than stay in the family unit in Ghana."

10. The judge then engaged in an assessment of article 8 outside the immigration rules and in accordance with the structured approach identified in *Razgar* [2004] UKHL 27. In assessing the issue of proportionality, the judge referred to s.117B of the Nationality, Immigration and Asylum Act 2002, noted that it was in the public interest to maintain effective immigration controls, noted that the appellants did not meet the requirements of the immigration rules, noted that they could speak English and that they were not financially independent. The judge noted that the appellants' immigration status was precarious. The judge stated that, "the best interests of the children are to remain with the 1st Appellant on her return to Ghana. They have not shown they will face very significant obstacles to integration on return to Ghana. In those circumstances I find the decision was proportionate." The appeals were dismissed.

The grounds of appeal and the error of law hearing

11. The initial grounds, drafted by the 1st appellant, took issue with the judge's factual findings relating to financial support from the 1st appellant's sister and the judge's assessment of the 2nd appellant's medical condition. The grounds claimed that the appellants had established private lives in the UK and that they had no house, income or financial support in Ghana.

12. In granting permission Judge of the First-tier Tribunal Keane found that the grounds amounted to no more than a disagreement with the findings of the judge, and an attempt to reargue the appeals. Judge Keane however found it arguable that the judge did not take into account or accord weight to the private lives that the 2nd, 3rd and 4th appellants may have developed in the UK during their periods of residence, and that there were no relevant findings of fact in respect of the children's private lives. Judge Keane additionally found it arguable that the judge failed to accord weight to the evidence relating to the 2nd appellant's condition and that her assessment of that medical evidence was irrational.

13. Ms Allen provided a document headed "amended Grounds of appeal further to grant of permission." It was agreed that this document did not constitute an application to amend the grounds but reflected the basis of the grant of permission. In her written grounds, amplified by her oral submissions, Ms Allen submitted that the judge erred in her consideration of the best interests of the three children, failed to make any findings of fact as to the private lives of the children, failed

to accord any weight to the children's length of residence in her proportionality assessment, and failed to consider the impact of removal on the children. It was further submitted that the judge failed to take proper account of material evidence, namely the letter from the Head Teacher dated 26 September 2018 and the GPs letter dated 9 October 2018. It was submitted that the judge's characterisation of the 2nd appellant's condition as being "unspecified beyond a broad generalisation" was irrational. Mr Avery, representing the respondent, submitted that the decision showed that the judge was alive to the circumstances of the family in the UK and the particular circumstances the children and that any criticism of the judge's lack of detailed findings reflected the lack of cogent evidence before her. He submitted that the judge adequately dealt with the medical evidence.

Discussion

14. There has been no challenge to the judge's actual factual findings, other than her assessment of the medical evidence relating to the 2nd appellant. The judge found that the 1st appellant would receive financial support from her sister in the UK, that the 1st appellant also had a sister in Ghana who could provide information about work availability, and that the 1st appellant was able to work in Ghana. The judge expressly rejected the 1st appellant's claim that she would be destitute if returned to Ghana. The judge additionally rejected the 1st appellant's claim that her status as a cancer survivor would have any increased impact on her return to Ghana. In it with these factual findings in mind that I approach the grounds of challenge.

15. Ms Allen contends that the judge was not rationally entitled to describe the 2nd appellant's condition as "unspecified beyond the broad generalisation." I find the judge was rationally entitled to his description based on the generality of the GP's assertion and the absence of any details of the 2nd appellant's speech and language impairment. The letter from the GP was very brief. The judge demonstrably had regard to this letter at paragraph 19 of her decision, where she referred to the 2nd appellant as suffering from "severe speech and language impairment." No further details were provided by the GP in respect of the nature and severity of the impairment. As the judge accurately pointed out, there was no prognosis. The GP referred to the "delay" of the 2nd appellant's speech and language and the judge was rationally entitled to conclude from this that there was insufficient evidence that the 2nd appellant would have significant long-term impairment. The judge was clearly aware of the medical evidence and she provided legally adequate reasons for her assessment of that evidence. The challenge to her assessment therefore fails on rationality grounds fails.

16. Ms Allen submits that the judge failed to take into account the letter from the Head Teacher of the 2nd appellant's school dated 26 September 2018. I cannot accept the submission. Firstly, the judge made general reference to the 38-page bundle produced by the appellant at paragraph 10, indicating that he had taken all the documents into consideration. Secondly, at paragraph 19 the judge stated that the 2nd appellant's developmental delay was still being assessed. The GP's letter was silent on the issue of current assessment, but this was mentioned in the Head Teacher's letter. This suggests that the judge did take the letter into account. The letter from the headteacher did not, in any event, add anything of significance to the GP's letter other than to say that the 2nd appellant was currently on a waiting list for Speech and Language Therapy. The Head Teacher's letter did not describe the nature or severity of the 2nd appellant's speech and language impairment.

17. Ms Allen criticises the judge's assessment of the best interests of the children pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009. It is apparent from paragraph 24 of the judge's decision, again set out in paragraph 9 above, that she adopted the detailed s.55 assessment contained in the Reasons for Refusal Letter. The judge was entitled to adopt the clear reasoning contained in the Reasons for Refusal Letter. In his decision the respondent noted the ages of the children (at the date of the respondent's decision), that they had lived in the UK all their lives, that the children would be removed with the 1st appellant and their siblings and that the family unit would not be disrupted, that the children were nationals of Ghana and would be able to enjoy the benefits and advantages that citizenship entailed, that the children would be returning to a country where the official language was English and where English was spoken throughout the country, that the children would be returned to a country where there was provision for their education, and that they were not yet old enough to have started to study towards a recognised qualification. These points reflect the relevant considerations identified in *EV (Philippines) & Ors v Secretary of State for the Home Department* [2014] EWCA Civ 874 (at [35]), as did the judge's assessment of the 2nd appellants medical condition. Having properly adopted the reasoning contained in the Reasons for Refusal Letter, I find the judge was rationally entitled to her conclusion relating to the best interests of the children.

18. Ms Allen contends that the judge failed to make findings in respect of and failed to take into account the private lives established by the children, and in particular their length of residence, the fact that they were born in the UK, and the 2nd appellant's medical condition, when assessing proportionality. At the date of the First-tier Tribunal's decision the children were aged 5, 3 and 2. There was very little evidence before the judge going to the nature and extent of the

children's private lives. It is difficult to ascertain, based on the evidence that was made available to the judge, what particular findings she could have made in respect of the children's private lives. This is not surprising given their ages. Headnote (ii) of *Azimi-Moayed and others (decisions affecting children; onward appeals)* [2013] UKUT 00197 reads,

> "Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period."

Headnote (iv) of the same case indicates,

> Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child that the first seven years of life.

19. Although the judge does not expressly refer to the children's ages or the fact that they were born in the UK in her proportionality assessment, it is clear that the judge was aware of the children's ages since she set out their dates of birth in paragraph 1 of her decision, and she expressly adopted the respondent's assessment of their best interests which included consideration of their ages and the fact that they had always lived in the UK. The judge again noted that the best interests of the children were to remain with their mother. The judge had already considered the 2nd appellant's medical condition and was rationally entitled to conclude that it was not such as to make his best interests to remain in the UK rather than stay with the family unit and return to Ghana. Although the 2nd to 4th appellants did not have to show that they faced very significant obstacles to integration and return to Ghana, they could not meet the requirements of the immigration rules and they were not 'qualified' children as defined in s.117D of the Nationality, Immigration and Asylum Act 2002. I am satisfied that the judge did have in mind all of these relevant factors when she carried out her proportionality assessment.

20. For the reasons given above I am not persuaded that the determination contains any material legal error.

Notice of Decision

The First-tier Tribunal's decision did not contain a material error of law. The appeals are dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants in this appeal are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

31 March 2019
Date

Upper Tribunal Judge Blum