IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos:
UI-2023-000138, UI-2023-000140
UI-2023-000135, UI-2023-000139

On appeal from:
HU/56903/2021, HU/56901/2021
HU/56901/2021 HU/56905/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 May 2023

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

DANIEL CHIDI
ANITA MURPHY
AMARA ADEPA FRIMPOMAA ANKRAH
AMARIS AKYEDEPA AKYERE CHIDI

(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Shahadoth Karim of Counsel, instructed by Blackstone Law Associates Limited
For the Respondent: Mr Chris Avery, a Senior Home Office Presenting Officer

Heard at Field House on 27 April 2023

DECISION AND REASONS

Introduction

1. The appellants challenge the decision of the First-tier Tribunal dismissing their appeal against the respondent's decisions on 21 October 2021 to refuse them leave to remain on human rights grounds by reference to paragraph 276ADE of the Immigration Rules HC 395 (as amended) and/or by reference to Article 8 ECHR outside the Rules. The appellants are Ghanaian citizens, a husband and wife and their two young daughters.

2. For the reasons set out in this decision, I have come to the conclusion that the appellants' appeals should be dismissed.

Procedural matters

3. **Vulnerable appellants.** The third and fourth appellants are minors and are entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellants Guidance. They were not present at the hearing today, so no adjustments were needed.

4. **Mode of hearing.** The hearing today took place face to face.

Background

5. The first and second appellants are the parents of the third and fourth appellants. The adult appellants came to the UK in February 2017 as a student and student dependent, but the first appellant was unable to commence his course and both visas were curtailed to expire on 22 August 2017. The first and second appellants did not embark for Ghana, remaining in the UK without leave.

6. The second appellant was heavily pregnant when she arrived in February 2017: the third appellant, the couple's elder daughter, was born on 14 April 2017. The fourth appellant, also a daughter, was born on 5 August 2018. At the date of hearing on 29 July 2022, the third appellant was just 5 years old, and her sister was not yet 4 years old. Both had begun attending school, in Year 1 and Reception respectively.

7. At [28], [32], and [39]-[40], the First-tier Judge set out his approach to the best interests of the children. The strongest point was that the third appellant was receiving medication for ear nose and throat problems and was awaiting an operation to remove her adenoids and tonsils (an adenotonsillectomy), following which she would need about 2 weeks away from school to recover. There was no evidence before the First-tier Judge that this medication and operation are not available in Ghana, although they might cost money there.

Upper Tribunal proceedings

8. The main basis of the appellants' Upper Tribunal appeal is that the section 55 best interests of the third and fourth appellant have not been properly considered, with particular reference to the fourth appellant's medical problems. There is no challenge to the dismissal of the appeals of the adult appellants.

9. Permission to appeal to the Upper Tribunal was granted by First-tier Judge Robinson, who considered it arguable that the First-tier Judge had failed adequately to reason his assessment of the best interests of the third and fourth appellants.

10. There was no Rule 24 Reply on behalf of the respondent.

11. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

12. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal.

13. For the appellants, Mr Karim relied on a letter dated 24 May 2022 from Ms Noshin Siddiqi MBBS MRCS (ENT), a speciality doctor in ENT at the Royal Free London Hospital, written to the appellant's general practitioner, Dr T Patalay MBBS FRCS. The fourth appellant had been taken to see Ms Siddiqi by the first appellant.

14. Dr Siddiqi recorded that she had discussed her finding about the fourth appellant's airway obstruction with the first appellant 'who is keen to proceed with adenotonsillectomy'. Dr Siddiqi had explained the risks and 'need to take two weeks off from school to recover from the operation'. The fourth appellant had been listed for the operation and the father directed to the ENT UK website for patient information regarding the surgery.

Conclusions

15. I remind myself of the guidance given by the Court of Appeal in *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] in the judgment of Lord Justice Lewison, with whom Lord Justices Males and Snowden agreed. In dismissing the appeal, Lewison LJ said this:

> "65. This appeal demonstrates many features of appeals against findings of fact:
>
> i) It seeks to retry the case afresh.
> ii) It rests on a selection of evidence rather than the whole of the evidence that the judge heard (what I have elsewhere called "island hopping").
> iii) It seeks to persuade an appeal court to form its own evaluation of the reliability of witness evidence when that is the quintessential function of the trial judge who has seen and heard the witnesses.

iv) It seeks to persuade the appeal court to reattribute weight to the different strands of evidence.
v) It concentrates on particular verbal expressions that the judge used rather than engaging with the substance of his findings.

66. I re-emphasise the point that it is not for an appeal court to come to an independent conclusion as a result of its own consideration of the evidence. Whether we would have reached the same conclusion as the judge is not the point; although I am far from saying that I would not have done. The question for us is whether the judge's finding …was rationally insupportable. In my judgment it was not. In my judgment the judge was entitled to reach the conclusion that he did. I would dismiss the appeal."

16. The same applies to the challenge here. The First-tier Judge did consider the material now relied upon. It is relatively sparse, and the grounds of appeal are really a challenge to the weight which he accorded to that evidence.

17. The conclusion to which he came was properly, intelligibly and adequately reasoned and was unarguably open to him.

18. These appeals were dismissed at the hearing.

Notice of Decision

19. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law
I do not set aside the decision but order that it shall stand.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 27 April 2023