



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

Appeal Number IA/41033/2014
IA/41040/2014
IA/41045/2014
and IA/41055/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower
Birmingham
On 2nd November 2015

Decision and Reasons Promulgated
On 19th November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

C A
A J
F A
L F H

(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe (Counsel, instructed by Elder Rahimi Solicitors)

For the Respondent: Mr D Mills (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants are a family and are nationals of Ghana. The Appellants' immigration history is considered below. The basic facts are that the adult Appellants appear to have entered the UK unlawfully many years ago and remained without leave. The children were born in the UK and the Third Appellant, their son, is now 9 and has lived in the UK all his life.
2. The Appellants applied for leave to remain (LTR) in the UK which was refused for the reasons given in the Refusal Letter of the 29th of September 2014. Their appeals were considered by First-tier Tribunal Judge Pooler on the papers as the Appellants elected not to attend the hearing. The appeals were allowed in a decision promulgated on the 3rd of June 2015. Following that the Respondent sought permission to appeal which was granted leading to this decision.
3. The Judge found that none of the Appellants could not succeed under the Immigration Rules in relation to private and family life (paragraph 21). The decision turned whether it was reasonable to expect the eldest child to leave the UK and go and live in Ghana. Turning to paragraph 276ADE the Judge rejected an argument based on the Third Appellant's approaching 10th birthday and the rights that would follow if he were to be granted British Citizenship. As the Judge noted in paragraph 27 there was nothing in the Third Appellant's circumstances to distinguish him from the majority of other children of his age. The Judge noted the parents' immigration history and then considered section 117B of the 2002 Act and concluded that it would not be reasonable to expect him to leave the UK, on that basis the Appellants succeeded.
4. The submission of Mr Pipe was that the findings made were open to the Judge and for the reasons given. He submitted that the Judge had been aware of EV (Philippines) & Ors [2014] EWCA Civ 874 although he had not referred to it, the Appellant's representatives had made reference to it in their written submissions. He submitted that it was not relevant as it did not concern paragraph 276ADE of the Immigration Rules as amended.
5. When first introduced paragraph 276ADE(iv) did not contain a reference the requirement that the removal of a child who had been in the UK for 7 years or more must be found to be unreasonable. That was added by HC780 which was further amended by HC810 which applied the reasonableness requirement to all applications made after the 9th of July 2012. Before that amendment the sub-rule simply referred to residence of at least 7 years.
6. The addition of the need to find that removal would be unreasonable must, in my view, mean that more is required than the fact that a child has established a life in the UK of the sort that would be expected of any child of that age. If that were not so, any child who had been in the UK for more than 7 years and lived a life comparable to other children of the same age would succeed, that would rob the term "unreasonable" of any meaning and make the amendment superfluous.

7. The overall circumstances have to be assessed and more than establishing the life that would be expected is needed to justify a finding that removal would be unreasonable. Although the case of EV (Philippines) concerns a case arising under the old version of the Immigration Rules, i.e. pre 9th of July 2012, there is nothing in the case that would suggest that the interpretation of the term should differ between the situation in that case and under the Immigration Rules as they now stand.
8. Lewison LJ at paragraph 58 to 60 made the following observations;
- “58. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?
59. On the facts of ZH it was not reasonable to expect the children to follow their mother to Tanzania, not least because the family would be separated and the children would be deprived of the right to grow up in the country of which they were citizens.
60. That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world.”
9. I find that the Judge was not entitled to find, against the background of a poor immigration history on the part of the adults in which everything established in the UK has been based on their continued illegal presence in the UK where education and health care to which none of them was entitled, that removal was unreasonable. The finding that the Third Appellant’s circumstances were essentially no different from any other 9 year old did not justify a finding that his removal could be said to be unreasonable. More is required and with the addition of the facts of the family’s overall, negative immigration history, the Third Appellant's personal circumstances were insufficient.
10. The decision of the First-tier Tribunal does not contain a full analysis of the family’s circumstances. At the hearing it was indicated by both representatives that the proper course of action, in the event that I found that the decision did contain an error of law, would be to remit the case to the First-tier Tribunal for re-hearing. Directions for that are given

separately but I indicate here to avoid confusion that I see no need for there to be an oral hearing and the case can be considered as a paper case in line with the Appellants original Notice to the First-tier Tribunal.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

The appeal is remitted to the First-tier Tribunal for re-hearing on all issues with no findings from the First-tier Tribunal being preserved.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

I make no fee award which is a matter to be considered by the First-tier Tribunal having decided the remitted appeals.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 18th November 2015