



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

Appeal Numbers: AA/02167/2014  
AA/02168/2014  
AA/02169/2014  
AA/02170/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 13 August 2014**

**Decision & Reasons  
Promulgated  
On 8 December 2014**

**Before**

**UPPER TRIBUNAL JUDGE CONWAY**

**Between**

**MR KOFI ATTAH (FIRST APPELLANT)  
MRS GEORGINA AGYEMAN (SECOND APPELLANT)  
MASTER KOFI GIDEOAN ATTAH (THIRD APPELLANT)  
MASER EUGEN ADJEI-ABABIO ATTAH (FOURTH APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Murphy  
For the Respondent: Mr Bramble

**DECISION AND REASONS**

1. The appellants are citizens of Ghana. The first two appellants are husband and wife born in 1970 and 1972. The remaining appellants are their children born in 2006 and 2010.
2. They appealed against the decision of the Secretary of State made on 19 March 2014 to refuse their application for leave to remain in the UK. It was

refused on asylum and human rights grounds and under the Immigration Rules.

3. They appealed.
4. Following a hearing at Taylor House on 7 May 2014 Judge of the First-tier Tribunal McWilliam dismissed the appeals on asylum and human rights grounds and under the Rules.
5. She noted the immigration history. In summary, in respect of the first appellant he claimed asylum in September 2000 which was refused that month. An appeal was dismissed in December 2000. In November 2004 he sought a travel document. In October 2005 it was asserted that he had been granted ILR in July 2003 as a refugee but the Home Office had no record of this. The application for a travel document was refused in October 2005. In June 2009 his solicitors made further representations regarding legacy and human rights which the Respondent eventually refused in the decision of 19 March 2014.
6. As for the second appellant the respondent relied on a determination by a judge in August 2007. She had sought leave pursuant to paragraph 276B(b) and (ii) of the Immigration Rules. The judge in 2007 found that she did not enter the UK as claimed in 1991, did not work in the capacity claimed and that it was *'unlikely that she arrived sometime prior to her application of September 2005 and certainly by the time of decision had remained in the UK illegally without status'*. The judge (2007) noted that a copy of her son's birth certificate showing he was born in the UK on 31 August 2006 had been provided.
7. At the hearing before Judge McWilliam it was accepted that the appellants could not meet the requirements of paragraph 276ADE. The submission was that the appellants were relying on EX.1 of Appendix FM on the basis that they have a genuine and subsisting parental relationship with a child. Alternatively, they relied on article 8 ECHR.
8. The judge's findings and reasons are at paragraphs [25-46]. She found the evidence of the first and second appellants to be *'inconsistent both internally and with each other'*. It was *'vague and ambiguous in parts lacking in credibility'*. They were both *'unimpressive witnesses'* [25] and she did not accept their evidence.
9. They were *'wholly inconsistent'* about where their elder son is living. They were inconsistent about how long they had lived at the address in Tottenham and there were *'significant inconsistencies in relation to the living arrangements relating to their eldest son'* [26]. She preferred the account of the first appellant, namely, that the elder son is at present living with a pastor in Watford to enable him to attend a primary school with the younger child being accommodated at an address in Tottenham.

10. As for their claimed employment, namely, cleaning for members of the church congregation, the first appellant's evidence was that he was paid money which he used to buy food for his family, whilst the second appellant stated that the family was paid in food. The judge found it lacking in credibility that the appellants are solely reliant upon money or food they received from members of the church congregation in exchange for cleaning their houses. In that regard it was noted that there was no evidence from members of the congregation.
11. The judge also noted the admission by the second appellant that at the hearing before the Tribunal in 2007 she had been untruthful in saying she had been in the UK since 1991.
12. The judge went on to find that *'There is no persuasive evidence in relation to the difficulties that the appellants would encounter should they return to Ghana'*. She did not find credible that they would have no support from family. The first appellant had been *'vague about his wife's family and what she was doing in Ghana prior to coming here'* [28].
13. The judge further found that there was *'no cogent evidence'* [29] to support the assertions that if returned they would not be able to work, would have nowhere to live, their children would not be educated and they would not have the benefit of adequate health care.
14. She concluded on that matter that they had *'not established that they do not have family or friends in Ghana'*. Nor did she accept that *'neither appellant had ever been in properly paid employment in Ghana before coming to the UK'* [32].
15. She noted that it was not argued that the appellants were relying on their relationship with each other and that as such insurmountable obstacles to family life continuing outside Ghana was not material. In any event she found that there were no such insurmountable obstacles.
16. The appellants were arguing the parental route. Her conclusion under the Immigration Rules was that the appellants were unable to meet the requirements of paragraphs E-LTRPT.2.2-2.4. and thus whether or not they satisfied EX.1 was not material in relation to their parental relationship with their children. She noted of the claim that the elder child had lived in the UK continuously for at least seven years preceding the date of application that the claim was flawed *'because the application was made on 10 June 2009 when the eldest (sic) child was aged 2. The child was aged 7 on 31 August 2013'* [35].
17. Turning to consider Article 8 the judge considered the case law, in particular, **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC)** which states that after applying the requirements of the Rules only if there may be arguably good grounds for

granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them.

18. She found that there were arguably good grounds namely the two young children both of whom were born in the UK, the elder being now seven.
19. She went on to consider the best interests of the children. She noted that there was *'very little evidence about either child'*. The elder was in year 3 at a primary school and there was no reason to disbelieve his father that he is making academic progress. However, the younger had not yet started school. The judge noted that both children had been born in the UK. She went on: *'Whilst it might be the case that there is better health care and education provision here as opposed to that in Ghana ... it would be in the best interests of both children to be with both their parents who it is proposed are removed from the UK to Ghana'* [40]. The judge reiterated that she did not accept the evidence that they would not have any support and that they do not have family there or that there would be no state education or health provision whatsoever.
20. Advancing to proportionality the judge noted that the appellants could not satisfy the Immigration Rules. She also noted that correspondence from the appellants' solicitors to UKBA enclosed documents such as P60s which was inconsistent with the first appellant's evidence that he had never worked officially in the UK. She noted that the first appellant had been in the UK since 2000 and, she found, the second appellant since 2005. Such was a *'significant period of time and was a factor in their favour'*. However, the immigration history was *'not impressive'* [43] as they had chosen to remain here after unsuccessful appeals and to start a family together. They were aware that that their status was at all times precarious.
21. She repeated that their evidence lacked credibility. It was not accepted that they did not have family in Ghana. There was no evidence of significant ties with others in the UK. Whilst the elder son's education would be disrupted the children's best interests would be to return to Ghana with their parents. The judge noted that the elder child's situation having to live apart during the week from his parents *'must be unsettling and difficult for him'* [44].
22. The judge concluded that the appellants *'have made between them a series of unsuccessful applications and appeals and for one reason or another they have decided to remain in the UK illegally and start a family here'* [45].
23. She noted the delay between the application in 2009 and the decision in 2013 but considered the impact to be *'neutral'* as *'both the appellants had*

*made previous applications and had unsuccessful appeals prior to their final application’.*

24. The judge dismissed the case under Article 8 ECHR.
25. They sought permission to appeal which was granted by a judge on 12 June 2014 who stated:

*‘...'*

*The application for permission to appeal contends that the judge erred by contradicting herself in her findings in relation to the situation the family would face in Ghana. The judge erred in rejecting the evidence that the family are wholly dependent on assistance from members of their church and community. The judge did not properly apply para EX.1 of Appendix FM. Despite finding that there were arguably good grounds for the children being granted leave outside the Rules the judge went on to find that it was in their best interests to return with their parents to Ghana.*

*The older child, though not a British citizen, had resided in the UK for more than 7 years by the date of the refusal letter and the judge arguably misconstrued para EX.1 of Appendix FM. The grounds are arguable’.*

26. In submissions before me Mr Murphy sought essentially to make two points. First, he questioned whether the judge should have been looking at the Rules as the application was made prior to June 2012. In accordance with **Edgehill and another v SSHD [2014] EWCA Civ 402** consideration should have been made by the Secretary of State to the seven year residence policy in respect of children (DP5/96). The case should be remitted to the Respondent to make a fresh decision.
27. Mr Murphy’s second point was to question whether the best interests of, particularly, the elder child had been adequately considered. It might be thought that as the elder child is in school and the younger about to start their best interests would be to stay in the UK. However, there was no independent finding as to their best interests. Rather, the finding had been that the family should be removed and as such it was in the best interests of the children to go.
28. Mr Murphy essentially left the remaining written grounds for me.
29. In reply Mr Bramble noted that the **Edgehill** point had not been taken in the grounds. In any event **Edgehill** was not relevant to this case. It was a case on its own facts about long residency. Also the seven year threshold only arose in 2013.

30. As for the best interests of the children the judge had given adequate consideration. She appreciated that there would be disruption to the schooling of the elder child. She had noted the lack of credibility. There was very little other evidence about either child. As such it was difficult to see what more she could have said.
31. In considering this matter I do not find any of the issues raised to have merit. Dealing first with the **Edgehill** point I do not see it to be an error of law for the First-tier Judge in an immigration appeal not to have dealt with an issue which it was accepted was not raised before her. Indeed it was not even raised in the grounds seeking permission to appeal.
32. Even if I am wrong on that matter and the judge should have considered the seven year child concession I do not see that it could have benefitted the appellants. That policy (DP5/96) was withdrawn by a Ministerial Statement on 9 December 2008. The essence of the policy was that if a parent or parents faced deportation or removal DP5/96 would apply if they had a child, under 18 years, living with them in the UK and the child had been living continuously in the UK for seven years or more.
33. The applications were made in June 2009. At that time the elder child (born in 2006) had not been living in the UK continuously for seven years. The younger child was not yet born. The family had accrued no rights under the policy.
34. I conclude that even if the judge erred in not considering the policy it was not material as it could not have affected the outcome.
35. I also do not find merit in the submission that the judge did not give adequate consideration to the best interests of the children. She carefully set out and clearly had in mind the guidance given in **Azimi-Moayed and Others (Decisions affecting children; onwards appeals) [2013] UKUT 197** and **Zoumbas v SSHD [2013] UKSC 74**.
36. She was aware that they were not British citizens and had no right to future education and health care in this country. She was aware that the family are here unlawfully, and had chosen to remain after unsuccessful appeals and to start a family together despite having no lawful status. Specifically in relation to the children she acknowledged that education provision was likely to be better here than in Ghana but noted that there was '*very little evidence about either child*' [40] merely that the elder child was at primary school. She acknowledged that removal would disrupt that child's education. However, noting that the appellants had poor credibility she did not accept that they would not have family and support in Ghana. Nor did she accept that there would be no state education or health provision in Ghana. From my reading of her findings the judge was stating that almost no evidence had been provided about the children's best interests and even if the best interests of the elder child were in

continuing in education here these were outweighed by the cumulative effect of other considerations. These were findings which were open to her on the very limited evidence about the children before her. Her conclusions on the children's best interests were adequate.

37. As for the written grounds as indicated these were simply left for me. The first is that the judge contradicted herself in stating at [29] that there was no cogent evidence before her that there would be no provision of education or health care for the children should they return and there would be nowhere to live, yet at [32] she did not accept that neither the appellant or his wife has ever been in properly paid employment in Ghana prior to coming to the UK. That, the submission continues, is what the first appellant is stating, namely, that he would not find work to provide for the education and health care of the children.
38. There is no contradiction. Whilst it could perhaps have been expressed more clearly, the judge in stating '*I do not accept neither appellant has ever been in properly paid employment ...*', is saying the claim is that neither the first nor second appellant has ever been in paid employment but she does not accept that claim.
39. As for the claim that it had been accepted that the appellants during the time they have been in the UK have lost contact with Ghana and have no relatives or friends there to whom they could turn for support, such was, on the contrary, not accepted by the judge [40]. Her findings on those matters were open to her on the evidence before her.
40. Ground 2 is a claim that the judge erred in failing to accept that the appellants are receiving help from members of the church and their community. This amounts to nothing more than a disagreement with the judge's findings for which she gave adequate reasons which included that there was no evidence from the church.
41. Ground 3 claims that in citing the case of **Sabir (Appendix FM-EX.1 not freestanding) [2014] UKUT 63** the judge erred. She applied Section (b) of EX.1. which concerns genuine and subsisting relationship with a partner which was not relevant to the appellants' case. Section (a)(i) and (ii) were the only provisions which applied to the appellants.
42. I do not see this ground to have merit. Whether or not she should have referred to **Sabir**, it is clear that she put her mind to the parental relationship finding that E-LTRPT.2.2-2.4 could not be met not least because 2.2(d) could not be satisfied as the children had not lived continuously in the UK for seven years prior to the date of application [35] with the further consequence that EX.1 (a) (i) (cc) could not be met.
43. The final written ground is that the judge contradicted herself by stating [37] that arguably there are good grounds for granting leave outside the

Rules to the two young children born in the UK, yet she reached the conclusion that it would be in their best interests to return with their parents to Ghana. Also, she erred in not giving proper weight to Article 8, the grounds stating 'it is obvious that the appellant and others have made many ties in the UK and it would be disproportionate to remove them'.

44. I again find these points to have no merit. The judge was entitled to find that there were arguably good grounds for granting leave outside the Rules, but on specific consideration of the facts to conclude that the appeal under Article 8 could not succeed. She carried out the balancing exercise at [42] to [46]. Such included that very little evidence was put before the judge about the family's circumstances and what was put was largely not believed. There was no credible evidence before the judge about ties in the UK. On the evidence before her she was entitled to conclude that any interference was proportionate to the legitimate aim.
45. For the reasons stated the decision of the First-tier Tribunal shows no material error of law and the decision dismissing the appeals stands.

### **Decision**

The decision of the First-tier Tribunal shows no material error of law and that decision dismissing the appeals stands.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Conway