



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/39506/2013**

**Appeal Numbers:**

**IA/39533/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 21 October 2014**

**On 3 December 2014**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

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

Appellant

**and**

**(1) Mr A K A**

**(2) Ms A K Q**

**(ANONYMITY DIRECTION MADE)**

Respondents

**Representation:**

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondents: Mr L Wilcox, Counsel (instructed by Sutovic & Hartigan)

**DETERMINATION AND REASONS**

*Introduction*

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Colyer on 16 October 2014 against the determination of First-tier Tribunal Judge Warren L Grant who had allowed the Respondents' appeals against removal on human rights (Article 8 ECHR) grounds in a determination promulgated on 3 September 2014.
2. The Respondents are nationals of Ghana, respectively born on 18 April 1964 and 11 March 2005. It is not necessary to repeat their immigration history which is set out at [7] to [9] of Judge Grant's determination. In essence the Respondents' husband/father had been granted DLR following an appeal to the First-tier Tribunal, in which his Article 8 ECHR claim was allowed by First-tier Tribunal Judge Dawson (as he then was). First-tier Tribunal Judge Dawson had stated that his removal would also breach the Article 8 ECHR rights of his wife and son, i.e., the First Respondent and Second Respondent in the present appeal. The First Respondent and Second Respondent had however not been granted leave to remain in line with that granted to their husband/father because they had not submitted fee paid applications. Judge Grant noted that by 10 September 2016 the husband/father would have accrued not less than 25 years residence in the United Kingdom which would enable him to comply with paragraph 276ADE of the Immigration Rules. Judge Grant considered that he was bound by Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka \* [2002] UKIAT 00702 and allowed the Respondents' Article 8 ECHR appeals.
3. Permission to appeal was granted because it was considered that it was arguable that the judge had erred in law in his approach and had not followed Gulshan (Article 8 - new rules - correct approach) [2013] UKUT 00640 (IAC) and Nagre [2013] EWHC 720 (Admin). The judge had not identified any compelling or exceptional factors. EV (Philippines) [2014] EWCA Civ 874 was relevant. The judge's proportionality analysis had failed to take account of section 117B the Nationality, Immigration and Asylum Act 2002, and the public interest generally.
4. Standard directions were made by the tribunal, indicating that the appeal would be reheard immediately if a material error of law were found. A rule 24 notice opposing the appeal had been filed on the Respondents' behalf.

*Submissions - error of law*

5. Mr Bramble for the Appellant relied on the grounds of onwards of appeal and the grant of permission to appeal. He submitted that the judge's findings and reasoning had been superficial and inadequate, such that the appeals ought to be revisited. The determination was extremely brief. The judge had not given sufficient attention to the components of section 117B, nor the fact that the Respondents had not satisfied the Immigration Rules.
6. Mr Wilcox for the Respondents relied on his skeleton argument and the rule 24 notice. There had never been any claim that the Respondents satisfied the Immigration Rules. Section 117B(4) was not satisfied as the sponsor husband/father only had DLR and so was not settled within those provisions. The Second Appellant was required to attend school by law. EV (Philippines) [2014] EWCA Civ 874 was not relevant because there both parents were to be removed. The judge had reached a properly reasoned decision.
7. Mr Bramble addressed the tribunal briefly in reply. The Respondents and their sponsor could continue their family life in Ghana without difficulty.
8. The tribunal indicated that it found no material error of law and reserved its determination which now follows.

*No material error of law finding*

9. The judge's treatment of the evidence was sufficient and he set out his essential findings. The judge explained why he was bound by the tribunal's findings in 2009 concerning the family life between the Respondents and their sponsor, indicating that he did not necessarily endorse them, but that the Secretary of State had made no challenge, despite having had full opportunity. Those unchallenged findings from 2009 were in effect reinforced by the subsequent evidence of continuing family life presented to the judge.

The judge carefully set out the current law including discussion of MM (Lebanon) [2014] EWCA Civ 985 which post dated Gulshan and Nagre. The judge also set out sections 117A and 117B of the Nationality, Immigration and Asylum Act 2002 in full and plainly paid close attention to them. The determination was not unduly brief at all, but was rather incisive and succinct, taking full account of public interest issues such as the disputed access to the NHS. The particular factual matrix found by the judge was not covered by the Immigration Rules, specifically the wife and son of a person granted DLR in 2009, who had neither been granted DLR in line with him nor removed. They had made applications to be treated in line with their son/father, not simply remained unlawfully. The Secretary of State's position was hardly logical. It was open to the judge to find that it was disproportionate for the Respondents to be removed in all the circumstances.

10. The tribunal accordingly finds that there was no error of law in the determination and there is no basis for interfering with the judge's decision.

### **DECISION**

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**