



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/51950/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On October 28, 2014**

**Decision Promulgated
On October 30, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR JOSEPH ACKAH
(No anonymity order made)**

Respondent

Representation:

For the Appellant: Mr Tarlow (Home Office Presenting Officer)

For the Respondent: Ms Poynor Counsel, instructed by Elder Rahimi Solicitors

DETERMINATION AND REASONS

1. Whereas the respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.

2. The appellant, born November 30, 1986 is a citizen of Ghana. On January 10, 2013 the appellant entered the United Kingdom as a family visitor with leave valid until May 19, 2013. On April 25, 2013 he applied for a variation of his leave. The respondent refused his application on November 22, 2013 and at the same time a decision to remove under section 47 of the Immigration, Asylum and Nationality Act 2006 (as amended) was taken.
3. On December 6, 2013 the appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 arguing the application should have been allowed under article 8 ECHR.
4. The matter was listed before Judge of the First-tier Tribunal Hanbury (hereinafter referred to as "the FtTJ") on June 24, 2014. In a determination promulgated on July 4, 2014 he allowed the appeal under article 8 ECHR.
5. The respondent appealed that decision on July 14, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Colyer on September 8, 2014. He found the FtTJ may have erred for the reasons set out in the respondent's grounds.
6. The appellant was in attendance at the hearing.

SUBMISSIONS ON ERROR OF LAW

7. Mr Tarlow adopted the grounds of appeal and submitted the FtTJ had placed undue and exceptional weight on the Family Court order. This decision was not binding on the Tribunal and the FtTJ had erred in placing too much weight on it. The FtTJ failed to attach weight to the fact the appellant had only been here a short period of time and the fact there were other relatives to whom a residence order could be made and of course Social Services would be able to assist if there was no one else. There was nothing exceptional within the Rules that brought article 8 into play.
8. Ms Poynor relied on a rule 24 response and submitted the respondent had not considered the determination as a whole. The FtTJ had the benefit of a detailed skeleton argument in which counsel had set out the weight and approach to be taken with family court decisions in this jurisdiction. The FtTJ had regard to Nimako-Boateng (residence orders-Anton considered) [2012] UKUT 00126 (IAC) and followed the approach suggested. He took the Order as his starting point and then considered the facts. He did not find the order determinative but merely evidence that should be given substantial weight in light of the fact that court had reports from a Guardian ad litem and an independent social

worker. The FtTJ had both reports and other evidence from that court before him. There was no error in law. As regards the second ground of appeal there was also no error. The grandmother did not speak good English and the evidence suggested that this appellant had a good understanding of English. The FtTJ found there were cultural and language issues and it was not contested the child could not speak Tui. The fact the appellant spoke Tui did not go assist any assessment of what was in the children's best interests.

9. Mr Tarlow in response emphasised that the FtTJ had treated the Family Court decision as determinative and that amounted to an error.

ASSESSMENT OF ERROR IN LAW.

10. This is an appeal against the FtTJ's decision to allow this appeal under article 8 ECHR.
11. The FtTJ allowed the appeal based on the evidence and submissions presented to him. The FtTJ was placed in an invidious position because it seems Southwark Social Service encouraged the appellant to come to the United Kingdom for a visit in order to assess his suitability as a potential carer for two children. The FtTJ was not provided with any visa application form but it is clear that once he was here he became involved in his nephews' lives and on March 28, 2013 a residence order was made in his favour.
12. The Family Court heard representations from the Local Authority, Counsel for the children, mother and grandmother and expert evidence from the court appointed guardian ad litem and an independent social worker. The conclusion drawn was that the two children (twins now aged 10) should reside with their grandmother and the appellant.
13. The FtTJ noted the appellant could not satisfy the Rules but was satisfied he could deal with this outside of the Rules. I do not disagree with his approach as the rules do not provide for a scenario such as this. He then applied the approach set out in Razgar [2004] UKHL 00027 in paragraphs [13] to [15] of his determination. The FtTJ was clearly aware of the family matrix and circumstances.
14. He reminded himself that one of the factors he had to consider was the "best interests of the child" and he also had regard to the guidance set out in Nimako-Boateng (residence orders-Anton considered) [2012] UKUT 00126 (IAC) and this was expanded on in some detail in original counsel's skeleton argument. He placed great weight on the detailed evidence before the Family Court.

Sometimes in Family court proceedings the only evidence is that of the parties but in this case there was evidence from a guardian, social worker and an independent social worker. There conclusions were that the child's best interest was with the appellant and they examined his and relevant party's suitability to care for these children.

15. The FtTJ was entitled to place weight on the court's conclusions and he did so in paragraph [16] of his determination and he also noted the respondent did not oppose that approach. He concluded that their welfare would be adversely affected if the appellant were forced to leave. He had regard to the fact a court had properly assessed what was in the childrens' best interests.
16. Whilst best interests of the child are not the only consideration the FtTJ was entitled to give them more weight than normal. He was aware of the consequences of refusing the appellant's application and concluded it would be disproportionate to remove him.
17. Mr Tarlow raised a point in paragraph [8] of his grounds about there being no contact order in place for family members. I do not see how this helps the respondent's position albeit this was a case where the court made no contact order because one was not needed. Ironically, if no other person could look after the children then this, if anything, strengthened the appellant's hand.
18. There was no error in law.

DECISION

19. There is no material error of law and I uphold the original decision.
20. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated: **October 28, 2014**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I do not alter the decision to make no fee award.

Signed:

Dated: **October 28, 2014**

Deputy Upper Tribunal Judge Alis