



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

Appeal Numbers: IA/00380/2014  
IA/00381/2014

**THE IMMIGRATION ACTS**

**Heard at Taylor House  
On 22 October 2015**

**Decision & Reasons  
Promulgated  
On 2 November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PEART**

**Between**

**MRS GEORGINA CASELY HAYFORD AWUKU (FIRST APPELLANT)  
MR ROBERT CASELY HAYFORD AWUKU (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr I Khan of Counsel

For the Respondent: Ms Willocks-Bristoe, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Ghana. They were born respectively on 11 May 1977 and 25 May 1970.
2. They appealed against the respondent's decisions dated 12 December 2013 to refuse to vary leave to remain and to give directions under Section 47 for their removal to Ghana.

3. Judge Flynn (the judge) allowed the appeals under the Immigration Rules and on human rights grounds in a decision promulgated on 6 May 2015. The judge was satisfied that Mr Awuku had completed over ten years' continuous lawful residence in the United Kingdom and therefore satisfied the requirements of paragraph 276B. The judge went on to consider the wider aspects of Article 8, took into account s.117B of the 2002 Act and the relevant case law and found that the appellants' removal would be disproportionate.
4. The grounds claimed the judge materially erred in law in allowing the appeal under paragraph 276B. That was because the judge could only have allowed the appeal to the extent that the SSHD consider an exercise of discretion in respect of paragraph 276B(ii).
5. In granting permission to appeal, Judge Pirotta considered the grounds disclosed an arguable error of law in allowing the appeal outright under paragraph 276B as the judge had power only to remit the decision to the Secretary of State for further consideration. That was because the Secretary of State had a discretion which she was entitled to carry out.

### **Submissions on Error of Law**

6. Ms Willocks-Bristoe relied upon the grounds. Whilst the second appellant had over ten years' continuous lawful residence, his wife, the first appellant, did not satisfy paragraph 276B in that regard. For that reason alone, the judge had erred. In addition, the extent of the judge's jurisdiction was to allow the appeal to the extent that the Secretary of State consider her discretion under paragraph 276B(ii).
7. Mr Khan did not take issue in terms with Ms Willocks-Bristoe's submissions. He accepted that the first appellant did not satisfy paragraph 276B and that the judge had erred in that regard. He also accepted that the respondent had a discretion to exercise under paragraph 276B(ii) however, he submitted that she had been given the opportunity to do so (see the account of the judge at [28]-[39]), such that the judge did not err.

### **Conclusion on Error of Law**

8. At [39] of the decision the judge recorded the Presenting Officer's submission that the respondent would need to carry out additional checks such that the appeal should be allowed only to the extent of remitting the case to the respondent. Whilst the judge made that recording of the submission, she went on to allow both appeals under the Immigration Rules in error. I set aside the judge's decision. I must treat the two appellants separately. As regards the second appellant, I remake the decision by allowing the appeal to the extent only of remitting the circumstances to the Secretary of State to exercise her discretion under paragraph 276B(ii). With regard to the first appellant, I remake the decision by dismissing her appeal under the Immigration Rules because

she had not completed ten years' continuous lawful residence in the United Kingdom.

9. The circumstances are also remitted to the Secretary of State in light of my decision, to consider afresh the appellants' family circumstances under Article 8.

### **Notice of Decision**

#### **First appellant**

10. I remake the decision by dismissing the appeal.

#### **Second appellant**

11. I remake the decision by allowing the appeal to the extent that the Secretary of State exercise her discretion with regard to paragraph 276B(ii).

#### **First and Second appellant**

12. I remake the decision by allowing the appeal to the extent that the Secretary of State consider afresh the appellants' family circumstances under Article 8, in light of my decisions at [10] and [11] above.

Anonymity direction not made.

Signed

Date 22 October 2015

Deputy Upper Tribunal Judge Peart