IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/16102/2014
IA/16103/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 December 2014	**On 15 January 2015**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

JOYCE AMA BOATENG
NICHOLE AKUA OSEI-MARTIN
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms S Praisoody, Counsel instructed by Shan & Co Solicitors
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Ghana born on 31 March 1977 and 21 February 2007. They are mother and daughter. They appeal with leave against the determination of First-tier Tribunal Judge Hawden-Beal in which she dismissed their appeals against the respondent's decision made on 20 March 2014 to issue a removal direction under Section 10 of the

Immigration and Asylum Act 1999 and to refuse to grant further leave under Article 8 of the ECHR.

2. The appellants were granted permission to appeal on the basis that given that the second appellant is a minor who was born in the UK and who faces removal to Ghana, it is arguable that the judge's failure to consider her best interests under Section 55 amounts to a material error of law.

3. The judge found that at the date of the respondent's decision, the appellants were mother and daughter aged 37 and 7, who had applied to stay in the UK on the basis that the first appellant had been here since 1998 and the second appellant had been born here to a British father and that to remove them would breach their rights under Article 8.

4. According to the refusal letter, the applications were a review of the decision from December 2010 when their applications to remain in the UK outside the Immigration Rules were refused with no right of appeal. The first appellant claims to have come to the UK on 10 July 1998, on a passport which had not been issued to her. There was no evidence of her entering the UK or of residence in the UK until 2003. In February 2007 the second appellant was born and in 2010 the application which was the precursor to the appeal was lodged.

5. The first appellant said in oral evidence that she and the second appellant could not return to Ghana because she had lost her parents and they have no one there. Life would be difficult financially and the education system is not good. The second appellant is integrated here and has made friends at school. Since disease is rife the second appellant cannot live in Ghana.

6. She said in evidence that she did not know where the second appellant's father was, that in April this year, she went to collect her daughter from school and was told by the teacher that her father had come to the school to see her. They did not recognise him but they asked the second appellant if she did and she said yes. According to the second appellant and the teachers, she and her father had a chat. The first appellant said the child's father was born here and that she saw his birth certificate and passport when they both went to register the second appellant's birth. She did not however have a copy of these documents. The judge noted that the second appellant's father did not attend the hearing because they have not had contact with him for some time and the first appellant did not know where he was. The last time she had contact with him was about a year or more before he went to the school. On that occasion she called him on his telephone and he came to put a birthday card through the door. She shouted at him as he walked away but they did not talk. He was aware of their status and was not prepared to assist. She said he was concerned about the second appellant but not about her because they had a fight. She has been told that he is proud of his daughter and has her photograph which he took from the first appellant's Whats App profile after a friend tagged it for him. She thought he was willing to see the

second appellant and would not be able to if she went to Ghana. The second appellant is pressing to see him. She has lived here for sixteen years and her daughter has a life here.

7. She said when she left Ghana she was 21 years old, an only child who had lived in a small village. Until the deaths of her parents in 2006, she had kept in touch with them. When she came to the UK in 1998 her plan was to work and support her family who were very poor. Her daughter could not go to school in Ghana because the standard there was not very good.

8. She said that after her and the second appellant's father separated in December 2009, they arranged that he would see her every Friday while she went to church, but when she went to his one day to drop off the second appellant, he would not answer the door or his telephone, even though she knew that he was there. He only saw the second appellant four to five times in between December 2009 and April 2014. She said that he did intend to get a British passport for the second appellant but when they separated he did not. He did not know that the second appellant may have to return to Ghana because she has not told him. She has tried to contact him but he will not pick up his phone.

9. The judge found as follows:

> "*25. Paragraph EX.1 of Appendix A states that if the child for whom the first appellant has sole responsibility has been here for 7 years, the first appellant may succeed under Appendix FM but only if it is not considered to be unreasonable for the child to leave the UK. In this case her daughter, the second appellant has been raised by the first appellant since her father left the family home in 2009. According to the first appellant, the second appellant and her father have only seen each other 4-5 times in the intervening 5 years. He is not in contact, cannot be contacted by the first appellant, does not know of the hearing today and is not supportive. The first appellant says that he came to see the second appellant in April 2014. According to the letter from the school at page 12 of the appellant's bundle the visit was in March 2014 and the father is now the second emergency contact for the child. If that is the case how did the school get that information? Was it supplied to the school by the father or the first appellant? If it was by the father and this letter is dated May 8th 2014, why has the first appellant not approached the school to see if they will pass a message onto the father about these proceedings? As it stands today there has been no contact with the father since March, there is nothing from him to say that he is supporting their application, no evidence that he is a British citizen and nothing to say that he is in the slightest bit bothered about the appellants and the fact that they will gave to go back to Ghana*
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> *26. Given that the second appellant has been raised by her mother, has had little contact with her father, is not a British citizen and has only been in the UK education system for 3 years and according to* ***Azimi Moayed*** ***[2013] UKYT 197 (IAC)*** *is not even half way through the time period considered by the Tribunal to be more significant to a child*

(seven years from the age of 4 rather tan the first 7 years of life). I am satisfied that it is reasonable to expect the second appellant to leave the UK, with her mother where she will be able, with the help of the first appellant to develop social, cultural and educational ties to her home country. I therefore am satisfied that both appellants have not met all the requirements of Appendix FM in relation to their family life.

27. *As far as their private lives are concerned, the first appellant cannot meet the requirements of paragraph 276ADE because she has not been here long enough to meet any of the time limits imposed by that paragraph and I am not satisfied that she has lost all social, family or cultural ties to her home country because she has admitted to be involved in the church with other Ghanaians and to listen to the radio to keep herself up to date with what is going on in her home country, in which she spent the first 21 yeas of her life. I am further satisfied, in light of the new requirements of paragraph 276ADE(vi) that there are no very significant obstacles to her integration into the country to which she would have to go if she had to leave the UK.*

28. *As far as the second appellant is concerned, it is accepted that she is a minor who has lived here for at least 7 years but as for EX.1, the question is whether it is reasonable to expect her to leave the UK and, as in paragraph 26, I am satisfied that it is. She has been cared for by the first appellant alone since 2009, has had sporadic contact with her father who is not supportive of this application and will be returned to Ghana with the first appellant, with whom it is in her best interests to stay. I therefore find that the appellants have not met all the requirements of paragraph 276ADE either. In the circumstances the decisions of the respondent appealed against are in accordance with the law and the applicable Immigration Rules.*

31. *There have been no reasons given as to why the appellants should be allowed to stay in the UK apart from the fact that life in Ghana will be harder financially – the first appellant does not expect to receive any support from her church if she leave the UK on the basis of 'out of sight out of mind'; the education system is not of the same standard as that in the UK, disease and poverty are rife and they have established a life here. None of those are good grounds for granting leave to remain outside the rules. The first appellant came here for economic reasons as admitted in cross examination today. She entered illegally, worked illegally, brought her daughter in to the world when she knew she had no right to be in the UK, given her daughter false expectation that she would be allowed to stay here by enrolling her in school and forming friendships here and has continued to stay here even after her application was refused in 2012 and she was served with a notice warning her that she would be removed in 2012.*

32. *There are no good grounds for granting leave to remain outside the rules and there are no compelling circumstances in this case which have not been recognised by those rules. I find therefore that the decisions of the respondent appealed against will not place the UK in breach of its obligations under the 1950 Human Rights Convention*."

10. In reaching her decision the judge applied the case law in **Shahzad**, **Gulshan** and **Nagre**.

11. Counsel submitted that the First-tier judge erred in law in not considering the child's relationship with her father. There was evidence in the appellant's bundle which was before the judge in the form of a letter from the school dated 8 May 2014 that the child's father went to see her at school. His interest in the child was not considered by the First-tier Judge. If the child is removed she will be denied the chance to get to know her father.

12. Counsel submitted that the child's father was born in the UK. He was named on the birth certificate as was his nationality, British, also on the birth certificate. Therefore he must be British. Therefore removing the second appellant would be equivalent to deporting a British national child.

13. Counsel submitted that the Secretary of State was under an obligation to investigate information about the child's father in her consideration of Section 55. The Secretary of State did not do this. I rejected Counsel's submission as the obligation on the Secretary of State under section 55 is to have regard for the need to safeguard and promote the welfare of the child in her consideration of Article 8. I find that the Secretary of State carried out her duty in her letter of 20 March 2014.

14. Having heard from Mr Kandola, I agreed entirely with his submissions. The judge at paragraph 25 analysed the father's relationship with the second appellant. The judge considered paragraph EX.1 of Appendix A as to how a child who has been in the UK for seven years may succeed under Appendix FM. It was in that context that the judge considered the father's relationship with the second appellant.

15. In that same paragraph the judge found that there was nothing from the child's father to say that he was supporting their application and no evidence that he is a British citizen and nothing from him to say that he is in the slightest bit bothered about the appellants and the fact that they will have to go back to Ghana. I find that the judge based her findings on the first appellant's evidence at paragraph 17 as to when she last had contact with the child's father. I accept Mr Kandola's submission that he has not sought custody or frequent contact or access to the child. All we have is the school letter indicating his first and only visit to the child at the school.

16. Mr Kandola said that it has been said that the child's father is a British citizen but it has still not been proved that he is indeed a British citizen.

17. I find that the judge gave consideration to the best interests of the child at paragraph 26. The judge considered the case of **Azimi Moayed** and was satisfied on the evidence that it is reasonable to expect the second appellant to leave the UK with her mother.

18. I find that the judge considered all the matters before her and the matters relied on by Counsel in her arguments before me. I find that the judge did not err in law.

19. The judge's decision dismissing the appeals of the appellants shall stand.

Signed Date **22 December 2014**

Upper Tribunal Judge Eshun