



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/48040/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
Reasons Promulgated
On 11 December 2015
December 2015**

**Decision and
On 23**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MRS COMFORT AGYEIMAAH ARTHUR
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer
For the Respondent: Mr M Rashid, counsel instructed by David A Grand

DECISION AND REASONS

1. This is an appeal against a decision of FTTJ R G Walters, promulgated on 3 July 2015.

Background

2. The respondent, her partner and three minor children sought leave to remain in the United Kingdom on the basis of their private and family lives which had been mainly or wholly established while none of them had leave to remain. That application was refused on 21 November 2014 because the respondent considered that the requirements of the Rules relating to partners, parents and EX.1 could not be met. In relation to paragraph 276ADE, the respondent accepted that only the middle of the three children had lived in the United Kingdom for 7 years, however it was not considered unreasonable for her to leave with her parents and siblings. It was not accepted that there were very significant obstacles to the integration of the respondent and her family in Ghana. It was

also considered there were no exceptional circumstances involved.

The hearing before the FTTJ

3. The FTTJ allowed the respondent's appeal on the basis that the appellant's eldest child, E, born in October 2003, may meet the requirements of paragraph 276ADE (1)(iv) in terms of living continuously in the United Kingdom for at least seven years. Indeed the FTTJ saw evidence indicating that by the time of the hearing this child may well have been residing in the United Kingdom for close to ten years. The FTTJ noted that the Secretary of State had not considered the circumstances of E under the relevant paragraph of the Rules or under EX.1 of Appendix FM.

Error of law

4. The grounds of appeal argue that the FTTJ "*erred by not giving adequate reason (sic) why he allowed the appeal under the Immigration rules (sic).*"
5. FTTJ Garratt granted permission, finding that it was arguable that the FTTJ's decision was inadequate because it gives no reasons for concluding that the appellant can meet the provisions of paragraph 276ADE. In addition, it was noted that at [7] of the decision, it appears to have been suggested that the burden of proving that it would not be reasonable to expect the child to leave the United Kingdom rested on the respondent. It was said that [9] of the decision allowed for a similar arguable conclusion.

The hearing

6. Mr Walker was perplexed as to why the Secretary of State had challenged a decision, which allowed the appeal only to the extent of remitting the case for further consideration. He was of the view that the challenge was a waste of time.
7. Mr Rashid advised me that the error found by the FTTJ was that the Secretary of State had not considered paragraph 276ADE in relation to E. Furthermore, there had been no scrupulous analysis in respect of section 55, as required by the case of JO and Others (section 55 duty) Nigeria (2014) UKUT 00517 (IAC).
8. Ultimately, Mr Walker conceded that he was unable to maintain that there is an error of law.
9. The FTTJ concluded only that the respondent's decision was not in accordance with the law. Notwithstanding a mention of the Immigration Rules at [13], it is clear from a reading of the entire paragraph that the appeal was allowed only to that limited extent. In view of Mr Walker's concession, with which I consider to be rightly made, I conclude that the FTTJ made no error of law and accordingly uphold his decision.

Conclusion

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I uphold the decision of the FTTJ.

No anonymity direction was made by the FTTJ and I am aware of no reasons for making such a direction now.

Signed

Date: 13 December 2015

Deputy Upper Tribunal Judge Kamara