



IAC-AH-CJ-V1

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

Appeal Number: IA/29347/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 December 2015**

**Decision & Reasons Promulgated
On 11 January 2016**

Before

**THE RIGHT HONOURABLE LORD BOYD OF DUNCANSBY
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTY UPPER TRIBUNAL JUDGE LATTER**

Between

**MS SYLVESTINA MENSAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, Danbar Solicitors

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is Sylvestina Mensah born on 26 March 1979. She is a national of Ghana. She is the mother of two children a daughter born 25 January 2007 and a younger daughter born 9 March 2006. The children's father is also a Ghanaian national but the appellant told the First-tier Tribunal that he was not supporting her application and wanted nothing to do with her or the children.

2. The appellant appeals against a decision of First-tier Judge Porter promulgated on 1 May 2015 to dismiss an appeal against the decision of the Secretary of State to refuse leave to remain in the UK on the basis of her family life as a parent.
3. The appellant's immigration history is set out in paragraphs 7 to 12 of the determination. Briefly the appellant claims to have entered the United Kingdom via Heathrow Airport in 2004 without an entry visa. Since then a number of applications have been made seeking to regularise her stay in the UK. None of these have been successful and it follows that she has never had any lawful right to remain in the UK.
4. An application for leave to appeal against Judge Porter's decision was refused by First-tier Judge Fisher. A further application was made to the Upper Tribunal with further grounds of appeal. Permission to appeal on all grounds was given by Upper Tribunal Judge Perkins. In his reasons he said he considered it reasonably arguable that the First-tier Tribunal erred by not making clear findings about the best interests and rights of the appellant's oldest child born in January 2007 before determining her mother's appeal.
5. The applicable law is as follows. Paragraph 276ADE(1) of the Immigration Rules set out the requirements to be met by an applicant for leave to remain on the grounds of private life. In respect of a child under the age of 18 the requirement is that they have lived continuously in the UK for at least seven years and it would not be reasonable to expect the applicant to leave the UK.
6. We were also referred to the terms of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 as amended by the Immigration Act 2014. It states:

“(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

 - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.”

Grounds and Submissions for Appellant

7. Mr Karim relied on the grounds of appeal. He referred us to paragraphs 28 onwards in the determination and submitted that the FtT Judge had failed to consider properly the interests of the eldest child. In considering whether it was reasonable to expect the child to go with her mother the judge had taken as the starting point the fact that the mother had no right to stay in the UK. That was putting the cart before the horse. One had to focus on the interests of the child independently of the parent. Secondly he submitted that the FtT Judge had erred in the application of the principles enunciated in **Azimi-Moayed and Others (Decisions**

affecting children: onward appeals) [2013] UKUT 197 (IAC). At paragraph 30 the FtT Judge had referred to the five principles but failed properly to apply them. In particular principle 3 states that lengthy residence in the country other than the state of origin can lead to development of social and educational ties that it would be inappropriate to disrupt in the absence of compelling reasons to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period. Mr Karim submitted that in respect of the eldest child that could only mean the UK. She had spent her entire life in the UK and that had led to the development of social, cultural and educational ties. In that regard the FtT Judge had failed to identify the compelling reason for disrupting these ties.

8. Thirdly he submitted that at paragraph 33 of the determination the FtT Judge had said that he was not persuaded that the appellant or her daughter had established a private life in the UK. He had gone on to say in the same paragraph that no evidence had been produced of any private life having been established in respect of the eldest child apart from an assertion in the grounds of appeal that the child had made friends in school and is known to her teachers. Mr Karim submitted that this was simply perverse. The child was 8 years old. At paragraph 16 of the determination the judge recorded the evidence of the appellant to the effect that both the children were now at school and that her eldest daughter was doing very well.
9. Fourthly he referred us to the terms of Section 117B(6) of the 2002 Act. He said that this allowed the parent to piggyback on the rights of the child. Again while the FtT Judge had mentioned this in the determination its significance had not been properly appreciated.

Response

10. A Rule 24 response had been submitted by the Secretary of State. Mr Kandola submitted that there was no error of law. He strongly disagreed with the submission that section 117B(6) allowed the parents to piggyback on the children where the decision maker had to apply 276ADE. Section 117B was about Article 8 and subsection (6) had to be seen as part of an overall assessment of an Article 8 claim. It was wrong to look at the child in isolation. The child's interests were inextricably linked with the parents' and could not be isolated. In this case the context was that a parent had no right to be in the UK and was to return to Ghana. With regard to paragraph 30 and the reference to the child not having a private life, there had been little evidence before the FtT of a private life in the UK. There was no misdirection in applying the case of **Azimi-Moayed**.

Decision

11. Rule 276ADE provides that for leave to be granted for a child under 18 to remain in the UK on the grounds of private life two things must be established. First the child must have resided continuously in the UK for a

period of at least seven years. Secondly it must not be reasonable to expect the child to leave the UK. The eldest child has been here for seven years and the issue, correctly identified by the FtT Judge is whether it is reasonable to expect the child to leave the UK.

12. In **Azimi-Moayed** the Upper Tribunal set out the principles to be followed in determinations of appeals where children are affected by appealed decisions. The first of these principles is as follows –

“(i) As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary.”

In **EV (Philippines) and Others v Secretary of State for the Home Department [2014] EWCA Civ 874** the Court of Appeal made a similar point in considering the best interests of the children where parents have no right to remain in the UK. The interests of the children are of course a primary consideration; **ZH (Tanzania) (FC) v SSHD [2010] UKSC 4**. The court must also have regard to the duty regarding the welfare of children in terms of Section 55 of the Borders, Citizenship and Immigration Act 2009. At paragraph 58 Lewison LJ said this:

“In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. ... If neither parent has the right to remain then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?”

13. At paragraph 30 the FtT Judge correctly identifies the principles in **Azimi-Moayed** and correctly notes that the starting point is that if the parent is being removed from the United Kingdom then so should the dependent children who form part of the household unless there are reasons to the contrary. We reject the submission by Mr Karim that the starting point must focus on the child independently of the position of the appellant.
14. The FtT Judge has analysed the question of whether or not it would be reasonable to expect the child to leave the UK in paragraphs 28 onwards. He notes that she is part of a family unit that includes her mother and younger sister. There are educational facilities in Ghana. The child speaks English, the official language of Ghana. Accordingly she would not be disadvantaged by any language difficulties. The father has no involvement with the children so there is no caring or involved parent in the United Kingdom. Mr Karim did not point to any factor which might have been ignored or wrongly assessed in the evidence. Accordingly we are satisfied that the FtT Judge was entitled to include that it would be reasonable to expect the eldest child to leave the United Kingdom.
15. So far as paragraph 33 is concerned it is we think necessary to read it in the context in which it is set. The first line reads as follows: “With regard

to paragraph 276ADE, I am not persuaded on the basis of the evidence presented that either the appellant or her eldest daughter has established a private life in the United Kingdom". As a statement of law, that is correct. It addresses the test as to whether a private life has been established for the purposes of 276ADE. She has failed to discharge that onus. Of course in the wider context some private life may well have been established through school and friends but other than knowing that the child attended school and according to the appellant was doing well there, there was no evidence of the extent of the eldest child's private life in the UK outwith her family. There was no prospect of an appeal succeeding on private or family life grounds and the judge was unarguably entitled to find that there were no persuasive reasons requiring a separate article 8 assessment outside the rules.

16. Turning finally to Section 117B(6) that provision could only apply if it was found not to be reasonable to expect the child to leave the United Kingdom. The FtT Judge has found that it would be reasonable to expect the child to leave the UK and accordingly this provision is of no assistance to the appellant.
17. The First-tier Tribunal did not err in law and we dismiss the appeal. No anonymity direction was made by the First-tier Tribunal and no further application was made to the Tribunal.

LORD BOYD OF DUNCANSBY
Sitting as a Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

Date: 8 January 2016