



IAC-PE-AW-V1

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

Appeal Numbers: IA/40572/2014
IA/40585/2014
IA/40588/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24th November 2015**

**Decision & Reasons Promulgated
On 10th March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

**J A N (FIRST APPELLANT)
A M N (SECOND APPELLANT)
S E K (THIRD APPELLANT
(ANONYMITY DIRECTION MADE)**

Appellants

DECISION AND REASONS

1. The claimants, the Appellants before the First-tier Tribunal are citizens of Ghana.
2. These proceedings concerned the status and interests of a child. In order to protect the child I make an anonymity direction.

3. The Appellant in the proceedings in the Upper Tribunal is the Secretary of State for the Home Department (SSHD).
4. This appeal came to the Upper Tribunal as an appeal by the SSHD against the determination of First-tier Tribunal Judge Hussain promulgated on 20th February 2015, whereby the judge allowed the Claimants' appeals against the decisions of the SSHD dated 26th September 2014. The decisions by the SSHD were to refuse each of the Claimants further leave to remain in the United Kingdom and thereupon to remove each of them from the United Kingdom to their country of nationality.
5. By decision dated 21st July 2015 I ruled that there was a material error of law in the original judge's determination and set that decision aside and directed that the matter be reheard before me. Thus the matter came before me on 24th November 2015 to hear the appeal afresh.
6. For the purposes of the present proceedings in order to avoid confusion I will refer to the Secretary of State for the Home Department as the SSHD and the "Appellants" in the First-tier as the Claimants.
7. The Claimants constitute a father, mother and child of a single family unit. The father of the family, the first Claimant, came to the United Kingdom as a student in 2005. He has undertaken a number of courses of study ultimately studying a Masters Degree in Business Administration. In 2006 the mother of the family, the second claimant, joined the first Claimant as his dependant. She entered on the 10th June 2006. The child of the family, the third Claimant, was born on 11th August 2007. Since coming to the United Kingdom the family have lived and remained here.
8. There was reference in the evidence given before me to the fact that the first Claimant had returned to Ghana on three or four occasions. He had returned to Ghana in July 2008 for three weeks, in 2009 for two weeks and for ten days in March 2012 and possibly on one further occasion. The reasons for returning to Ghana are variously given as the death of an uncle and the death of a stepmother and to settle affairs there.
9. It appears that throughout the first and second Claimants have had leave and have always made application to remain in time. The present applications by the Claimants were made in August 2013. By decisions made by the SSHD in or about August 2013 the applications by the Claimants were refused. The decisions were to refuse to vary leave to remain and to remove the Claimants to Ghana. The Claimants appealed against those decisions.
10. The appeals were first heard by Immigration Judge Traynor on 11th June 2014. The judge ruled that the decisions were not in accordance with the law by reason of the failure of the SSHD to consider the Article 8 rights of the parties and by reason of the failure of the SSHD to take account of Section 55 of the Borders, Citizenship and Immigration Act 2009, relating to taking account of the best interests of children. The appeals were allowed and it was held that there was an application before the SSHD which required a lawful decision.

11. In consequence of the decision of Judge Traynor the SSHD reconsidered the application and made further decisions on 30th September 2014 in respect of all the Claimants. It was decided again to refuse them leave to remain in the United Kingdom and to remove the Claimants from the United Kingdom.
12. The Claimants appealed against those decisions and as indicated above the appeals were first heard by Judge Hussain. Judge Hussain as stated allowed the appeals. I have set Judge Hussain's decisions aside. The appeals were to be heard afresh.
13. Given the passage of time since the first hearing before Judge Hussain the basis of the appeals had developed. Whilst section 85 of the 2002 Nationality, Immigration and Asylum Act would preclude the introduction of a new matter without the consent of the SSHD, at the hearing before me it was accepted that the full circumstances as a man should be considered.
14. According to the Claimants' representatives the basis of the Claimants' case was:-
 - (a) that the first Claimant now met the requirements of paragraph 276B;
 - (b) that the third Claimant satisfied the requirements of paragraphs 276ADE(iv);
 - (c) that otherwise consideration had to be given to the Article 8 rights of the Claimants, given the length of time that they had been in the United Kingdom; and
 - (d) that the third Claimant having been born in the UK would within a relatively short space of time be entitled to British citizenship.
15. The SSHD in response indicated that the grounds under the Rules had to be considered at the date of application. As the applications had to be considered in principle at the date of application the Claimants could not rely upon the majority of the Immigration Rules but had to rely upon Article 8 outside the Rules.

Law

16. The Claimants may be able to succeed either in their own right under the Rules or Article 8 or if one of the other Claimants succeeds as a dependant of that claimant.
17. In respect of the Immigration Rules the burden is upon the Claimants to prove that they meet all the requirements of the Immigration Rules, on which reliance is placed. The standard of proof is the balance of probabilities.
18. In respect of Article 8 it is for the Claimants to prove that they have a family and private life in the United Kingdom. It is for the Claimants to prove that the decision so significantly interferes with that family and private life that Article 8 is engaged. Thereafter the decision has to be in accordance with the law and for a purpose set out within the Article itself, in these circumstances the economic wellbeing of the country in the guise of immigration control. Finally it is for the Respondent to prove that the

decision is proportionately justified under Article 8. In considering Article 8 I follow the approach recommended in the case of Razgar 2004 UKHL.

19. In considering the appeals I have also to take account of Section 117 of the 2002 Act as amended in respect of any Article 8 claim either under the rules or outside the rules. I have also to consider as a primary matter section 55 of the 2009 Act and the best interests of any child.
20. In respect of these appeals potentially issues arise under Appendix FM and appendix FM-SE both as a spouse and as a child of a person present and settled in the UK.
21. With regard to the second Claimant none of the suitability or eligibility issues would arise save in respect of the financial requirements and the documents necessary to prove the required level of income at the date of the application. Required documentation has to be provided with the application and has to prove an income of £18,600 for a couple plus £3,800 for the first child or savings of specific level to make up any shortfall in the income levels. [see paragraphs E-LTRP 3.1-3.2 and E-LTRC.2.1-2.2 in conjunction with Appendix FM-SE]. If the first Claimant succeeds, then both the second and third Claimants have to be considered as dependent spouse and child. If the third Claimant succeeds then the first and second Claimants have to be considered as dependent parents.
22. I also draw attention to paragraph EX.1-2. It is to be noted that the Rule stipulates that consideration has to the date of the application. Paragraph EX.1 provides:-

Exception

Section EX: Exception

EX.1. This paragraph applies if

(a) (i) the applicant has a genuine and subsisting parental relationship with a child who-

(aa) is under the age of 18 years, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;

(bb) is in the UK;

(cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application ;and

(ii) it would not be reasonable to expect the child to leave the UK; or

(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.

23. EX.1 excludes an applicant from meeting certain of the requirements of the rules under Appendix FM specifically the financial requirements in certain given circumstances.
24. In respect of the first claimant reliance has been placed on paragraph 276B. The Rule provides:-

“Requirements for indefinite leave to remain on the ground of long residence in the United Kingdom

276B The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:

- (i) (a) he has had at least ten years’ continuous lawful residence in the United Kingdom;
- (ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence taking into account his:
 - (a) age; and
 - (b) strength of connections in the United Kingdom; and
 - (c) personal history, including character, conduct, associations and employment record; and
 - (d) domestic circumstances; and
 - (e) compassionate circumstances; and
 - (f) any representations received on the person’s behalf; and
- (iii) the applicant does not fall for refusal under the general grounds for refusal;
- (iv) the applicant has demonstrated sufficient knowledge of the English language and sufficient knowledge about the life in the United Kingdom, in accordance with Appendix KoLL;
- (v) the applicant must not be in the United Kingdom in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded, as will any period of overstaying between periods of entry clearance, leave to enter or leave to remain of up to 28 days and any period of overstaying pending the determination of an application made within that 28 day period.”

25. Appendix KoLL provides for knowledge of language and life. As set out within Part 1: General, the purpose is to ensure that an applicant has sufficient knowledge of English language and about life in the United Kingdom where it is a requirement of the Rules to demonstrate such. As Part 2: Knowledge of Language and Life, subparagraph 2.2:-

“(iv) acknowledges that an academic qualification obtained in the United Kingdom and recognised by UK NARIC to meet the recognised standard of a bachelors or masters degree or PhD in the UK; and

(1) provides the specified documentary evidence to show he has the qualification; and

(2) UK NARIC has confirmed that the qualification was taught and researched in English; or

(v) the applicant has obtained an academic qualification which is deemed by UK NARIC to meet the recognised standard of a bachelors or masters degree or PhD in the UK and provides the specified evidence to show:

(1) he has the qualification; and

(2) that the qualification was taught or researched in English ...”

26. Finally the requirements of paragraph 2.3 have also to be met which indicates that a person demonstrates sufficient knowledge about the life in the United Kingdom if:-

“(a) the applicant had passed the test known as the Life in the UK test administered by Learn Direct Ltd.”

27. The third Claimant was seeking to rely upon paragraph 276ADE. In respect of paragraph 276ADE the paragraph provides as follows:-

Requirements to be met by an applicant for leave to remain on the grounds of private life

276ADE. The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

(i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and

(ii) has made a valid application for leave to remain on the grounds of private life in the UK; and

(iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or

(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

(v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or

(vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.

Factual Background

28. The first Claimant as stated is a national of Ghana. Prior to coming to the United Kingdom he was employed as an athletics coach by the National Sports Council in Ghana for eighteen years. He had married the second Claimant in May 2003. He admits however in his statement that he realised that his position as an athletics coach was not paying sufficient salary to sustain a reasonable standard of living and seeing no opportunity for advancement he resigned in 2005. He had made an application to come to the United Kingdom to study to better himself.
29. The Claimant had family in the United Kingdom, who were willing to assist and support him in the United Kingdom whilst he studied. His application to come to the United Kingdom had been granted. He therefore came to study. He came in May 2005 and has been studying since in the United Kingdom finally completing his MBA in July 2013 with the award ceremony in March 2014.
30. As stated the first Claimant made a further application to remain in the United Kingdom on 8th August 2013. The first Claimant suggests that he wanted to study on an ACCA course but whilst he was awaiting the award of his MBA the first Claimant could not make an application to study on the ACCA as he did not have the required MBA qualification. The first Claimant with the second and third Claimants as dependants therefore made an application for a short period of discretionary leave until such times as he could make an application to stay and study (see paragraph 43 of his statement).
31. I would however point out that there may have been problems with regard to the possibility of the first Claimant continuing his leave on the basis of studying in the United Kingdom. The provisions of paragraph 245ZX stipulate that courses at degree level or below must not result in an applicant having spent more than three years in the United Kingdom and that for courses at degree level or above the period is five years in the United Kingdom. The first claimant clearly has spent more time in the United Kingdom than is permitted under paragraph 245ZX(h) and (ha).

32. As stated the first Claimant came to the United Kingdom for the purposes of study in May 2005. He was joined by his wife the second Claimant in 2006. In August 2007 the third Claimant was born.
33. At the date of the applications, August 2013, the third Claimant would have been 5 or 6 years at best.
34. Since coming to the United Kingdom the first Claimant not only has studied but has also acted as a pastor in the Mountain of the Fire and Miracle Ministry. It appears also that he has permanent employment with Nationwide Security. It appears that he has had that employment since 2nd March 2006.
35. Again I draw attention to paragraph 245ZY (iii) and the provisions that preceded it of the rules, which prescribed that a student may not be employed save for limited number of hours per week. It may be that the first Claimant worked within the terms of the rules but the suggestion appears in the letter from the employer that he was working full-time.
36. There are letters confirming that the first Claimant has been a pastor and mentor at the Mountain of the Fire and Miracle Ministry for over seven years as of 2014. He is active as a teacher, preacher and counsellor in the church and is part of the management team. The church is a charitable institution. The experience and qualifications of the first Claimant are held to be highly useful in the church.
37. There are other letters confirming the employment of not only the first Claimant but also the second Claimant. There was no limitation on the work of the second Claimant. There is a letter from Nationwide Security confirming that the first Claimant has been employed on a permanent basis since March 2006. Whilst questions were asked as to whether or not he had been vetted for the purposes of acting as a security guard, it appears that the first Claimant has never had any troubles with the police and he believes that he has all the qualifications necessary to continue in his employment.
38. The income of the Claimants has not been disclosed or supported by documentary evidence.
39. With regard to the second Claimant it appears that she was employed by a Mr Parry as a carer and had been from 2nd January 2007. The second Claimant remained a carer for Mr Parry until Mr Parry's death on 23rd June 2014. In the documents submitted is a letter from Mr Parry. Mr Parry submitted a glowing reference on behalf of the second Claimant.
40. As stated when the first Claimant came to the United Kingdom he was supported by his brother and sister. It appears that his brother came to the United Kingdom and qualified as a pharmacist and has become a British citizen. With regard to the first Claimant's sister she came to study nursing, she also is qualified and is now a British citizen. The first Claimant himself came to the United Kingdom as a mature student at the age of 44.

41. The first Claimant's brother and sister have children of their own. His brother has one child. His sister, although separated from her husband, has twin boys although they are now aged 24.
42. Besides having aunts, uncles and cousins in the United Kingdom the third Claimant has also settled into life at school. There is reference to the fact that he has been good in sports. He has already won medals in school athletics' events. It is suggested in the statement of the first Claimant that the third Claimant does not like traditional African or Ghanaian food and likes local food in the United Kingdom. The child was extremely distraught at the suggestion that he may have to relocate to Ghana with his parents. The child is concerned because he would lose both his friends at school and his friends from the church. The child was upset because he would lose contact with his cousins.
43. The first Claimant in his statement alleges that on return to Ghana they would face uncertainty as to accommodation and do not know where they would find accommodation. He also asserts that the third Claimant would find it difficult at school as he would be an outsider and may face bullying and intimidation. It is alleged that the third Claimant would not be able to speak the local language.
44. The family life in Watford in a maisonette rented with two bedrooms. The third Claimant has his own bedroom. It is submitted that the prospects facing the family on returning to Ghana would be that the first Claimant aged over 50 would have to find employment, accommodation and the prospects for the family would be extremely difficult.
45. Besides having friends in the local Mountain of the Fire and Miracle Ministry Church they also claim to have friends within the wider community in Watford. They attend regularly at the church in Watford. It was accepted however that the church had a division in Ghana although they are not in touch with that division.
46. Again with regard to return to Ghana it is suggested that the third Claimant may have difficulty getting into a school as the first and second Claimants would not have the financial means to pay for the school. That may mean that the third Claimant would have to go to a Government school where the standard of teaching is much below that in a western school.
47. The third Claimant claims that teaching in Ghana is not generally in English, it is likely to be in Ewe, it is suggested therefore that it would not be in the best interests of the child for the child to return to Ghana. It is claimed that the third Claimant enjoys English food and does not like the food that is available in Ghana.
48. In the documentation currently submitted before me is also a copy of the Life in the UK Test pass certificate dated 10th July 2015 in respect of the first Claimant. It appears that the first Claimant has taken and passed the required test. I have also been provided with a copy of the first Claimant's MBA from the Roehampton University awarded in 2014.

Conclusions

49. The first Claimant came to the United Kingdom in 2005. The first Claimant has had leave since his first entry through to the present day. Whilst part of that leave was dependent upon 3C leave after the decision was taken in August 2013 which resulted in the appeal before Judge Traynor, it is correct to say that the Appellant has always had leave throughout the whole of the period. Therefore the first Claimant has had lawful leave for at least ten years.
50. Whilst it has to be accepted that he came to the United Kingdom at the age of 44 and is now aged 54 and over it has to be noted that he has formed substantial and significant connections within the United Kingdom. He has a settled lifestyle. He has not only employment, which he has maintained for a considerable period of time, but he also has work in the community in the form of involvement with a local church and community organisation. There is nothing within the character or conduct of the first Claimant which detracts from him being a suitable candidate to be given indefinite leave in accordance with paragraph 276B. He does not fall for refusal under the general grounds of refusal.
51. The sole issue that appears to arise is whether or not the first Claimant has met the requirements of Appendix KoLL. As is evident from Part 2 paragraphs 2.1 and 2.3 the requirements with regard to that are met where the first Claimant has passed a test known as the Life in the UK test administered by Learn Direct Ltd. The first Claimant has produced the required test certificate. He has otherwise taken an MBA qualification at Roehampton University.
52. Taking those circumstances into account it is correct to say that the first Claimant meets the requirements of the Immigration Rules with regard to 276B. Albeit that that has come about because the appeals process has taken some years to complete it does not detract from the fact that the first Claimant meets the requirements of the Rule.
53. Dealing with the third Claimant, the Claimant's representatives submitted that he would be entitled to be registered as a British citizen once he has completed ten years lawful residence in the United Kingdom. However he was not born until August 2007. He would not be capable of being registered as a British citizen until August 2017. He is not a British citizen and is not entitled to be treated as a British citizen. He has spent nine years in the UK now.
54. With regard to consideration of the third Claimant and of paragraph 276ADE it has to be noted that the paragraph in question specifically imposes an obligation to look at the Rules and situation at the date of the application. Thus in order to achieve the seven years' residence in the United Kingdom to meet the requirements of paragraph 276ADE the third Claimant would have had to have had seven years' lawful residence at the date of application. The application as set out above was made in August 2013 at a time when the third Claimant was only 5 or 6. The third Claimant therefore does not meet the requirements of the Rules in respect of 276ADE.

55. I would however note that in considering the third Claimant within the Refusal Letter the date adopted by the author of the letter as material appears to be the date of the reconsideration of the application, post the appeal having been allowed by Judge Traynor, not the date of the application itself. It was accepted that the third Claimant had lived in the United Kingdom for at least seven years preceding the date of the reconsideration.
56. Whilst it has to be acknowledged that the refusal letter appears to be concentrating on the relationship of the first Claimant to the third Claimant with a view to whether or not paragraph EX.1 applies to the first Claimant, once it has been established that the first Claimant succeeds, the third claimant has to be considered as a child. Consideration of the requirements set out in Section R-LTRC indicate that the third Claimant appears to meet all of the requirements save and except for the financial requirements. Much though the first and second Claimants have submitted that they were in employment I have no evidence as to what their incomes were.
57. If the first Claimant succeeds as indicated above the third Claimant may have been able to succeed as a child but evidence would have to be produced that the financial requirements of Appendix FM [E-ELTRC2.1] are met. On the basis of the evidence submitted I do not see that the financial requirements have been evidenced.
58. The third Claimant is not a British citizen and at the date of application has not been in the United Kingdom for at least seven years. However if the third Claimant were now to make an application clearly he would have been in the United Kingdom for a period of seven years, the issue then would be whether or not it would be reasonable to expect him to return with his parents to Ghana.
59. In that respect I take account of the evidence that has been presented. I take account of the best interests of the child. The best interests of the child are clearly to remain in a single, stable family unit. That would be with both parents rather than with just one parent. Whilst the child seems to indicate that he does not like Ghanaian food and there is a claim that he may not be able to speak a local language, it has to be noted that English is an official language of Ghana. Whilst again it has to be noted that he is well-established in school, he is reaching an age where he would in any event be changing from a primary school into a secondary school and consideration will have to be given to the fact that there is going to be disruption in any event. It is suggested that he would be going to an alien country and he would be leaving all his friends and family behind.
60. However when questioned with regard to the matter the first Claimant and second Claimant had to admit that there were other family members in Ghana. Whilst it may be he would not have immediate contact with his first cousins, there is evidence that there are other relatives in Ghana with whom he would have contact.
61. If the third Claimant were now to make an application based upon paragraph 276ADE, consideration would have to be given as to whether it would be reasonable to expect him to return to Ghana. I am not however considering such an application.

It would not be a breach of an individual's Human Rights to expect an individual to make an application to the Secretary of State for the Home Department.

62. Insofar as the first Claimant would be entitled to remain in the United Kingdom that is not to say that he has to. The issue thereafter is whether or not either the second or third Claimant meet the requirements of the Rules. As far as I can see no effort has been made to show that the second and third Claimants can meet the financial requirements of the Rules.
63. With regard to the requirements for leave to remain as a spouse or as a child, the requirements is that specified evidence has to be provided to show a gross income of £18,600 plus £3,800 for the first child. That evidence has not been put forward. Evidence of the financial circumstances would be needed to enable the child to seek to remain under Appendix FM.
64. For the reasons set out I do not find that the third Claimant meets the requirements of the rules
65. With regard to the second Claimant paragraph EX.1 may assist in a sense with regard to the financial requirements but only either because she is in a relationship with a person that is settled in the United Kingdom, the first Claimant, or the child had succeeded and it would not be reasonable to expect the child to leave the United Kingdom. For the reasons set out I do not find that the child succeeds under the Rules. It may be an issue as to whether or not the child succeeds on Article 8 grounds.
66. However with regard to the second Claimant either evidence of the financial requirements is produced or paragraph EX.1(b) requires that there be insurmountable obstacles to family life continuing outside the United Kingdom. While they have indicated that there may be problems with the child's education and accommodation and finding employment those are not insurmountable obstacles. The first Claimant came at a time when he was already 44 years of age and indicated that he intended to return to Ghana. It may be that a substantial period of time has passed but such are not insurmountable obstacles.
67. Clearly if the child had succeeded then consideration would have also had to have been given to Section 117B(6). Where again the issue would be reasonableness.
68. As set out above, the fact that the first Claimant succeeds on the basis of paragraph 276B does not say that he has to remain in the United Kingdom but merely that he is able to remain in the United Kingdom.
69. Given that no evidence has been adduced of the income of the Claimants and given that the EX.1 does not apply because I find that there are no insurmountable obstacles to the family settling in Ghana, I do not find that the second Claimant meets the requirements of the Rules.

70. With regard to the Claimants, clearly there is a family life which has been developed over a significant period of time. Clearly given the length of time that each of them has been in the United Kingdom they have developed significant aspects of private life both with regard to employment, careers, accommodation, schooling, associations within the local community and other factors constituting a private life.
71. Clearly the decision is such as to interfere with family and/or private life but the decision is in accordance with the law and for the purposes of maintaining immigration control. The issue thereafter is whether or not the decision is proportionately justified.
72. I take account of the length of time that the family has been in the United Kingdom and the fact that the child was born here. I take account of the child's schooling and his personal preferences. I take account of the child's preferences. However they are nationals of Ghana. There is a means by which they could remain provided it could be proved that the Claimants earn sufficient monies to meet the requirements of Appendix FM. However they have not produced the evidence to show that they do meet the requirements of Appendix FM and the required documentary evidence for Appendix FM-SE had not been produced.
73. In the case of EV [Philippines] & Ors v SSHD [2014] EWCA Civ 874 states nationality or a right to remain in the United Kingdom is not a trump card, it is but one factor to take into account. However the Claimants have always lawfully been in the United Kingdom and sought to abide by the laws of the land. They have made applications in order to extend their leave at appropriate times. It is clear that the Claimants are settled in the area of Watford. It is clear that they have accommodation and they have employment.
74. Set against that is the uncertain future that would face the family on return to Ghana. However the Claimants came on a temporary basis and had no expectation that they would be allowed to remain beyond the terms of the existing leave given.
75. The best interests of the child at the moment are to remain with the parents.
76. Taking all the factors into account I find that because of the prospects that would face this family on return to Ghana, because of the age of the child, because of the length of time that the child has now been in the United Kingdom and because of the settled nature of the family unit that the decision to remove the child is not proportionately justified.
77. For the reasons set out above I find that the second Claimant would not meet the requirements of appendix FM because evidence of the income to satisfy the rules has not been submitted.
78. However as I have allowed the appeal of the third Claimant the child the second Claimant could rely upon EX1. There appear to be no other reason to refuse the application under Appendix FM. If I am wrong in that I would in any event have

considered Article 8 and would have found that the decision is not proportionately justified.

79. Accordingly I find that there would be a breach of the second and third Claimants' Article 8 rights by removing them from the United Kingdom. For the reasons set out I allow the appeals of the second and third Claimants.

Decision

I allow the appeal of the first Claimant under the Immigration Rules.

I allow the appeal of the second Claimant under the Immigration Rules and on Article 8 Grounds.

I allow the appeal of the third Claimant on Article 8 Grounds.

I make an anonymity order.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Claimants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Claimants and to the Appellant. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge McClure

TO THE RESPONDENT **FEE AWARD**

I make no fee award.

Signed

Dated

Deputy Upper Tribunal Judge McClure