



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

Appeal Number: IA/50624/2014
IA/50510/2014
IA/50511/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 January 2016**

**Decision & Reasons Promulgated
On 14 April 2016**

Before

DEPUTY JUDGE DRABU CBE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS MAUREEN ADJIN-TETTEY

J

I

Respondent

For the Appellant: Mr S Staunton, Senior Presenting Officer
For the Respondent: N Klear of Counsel instructed by Ansah, Solicitors.

DECISION AND REASONS

1. This appeal has been brought by the Secretary of State (referred to as the appellant in this determination) against the decision of the First Tier Tribunal Judge Henderson who following a hearing of the appeal at Taylor House on 2 July 2015 allowed the appeals of the respondents, nationals of Ghana against the appellant's decision of 1 December 2014 refusing them leave to remain on human rights ground and requiring their removal under Section 10 of the Immigration and Asylum Act 1999.

2. It is worthy of note that the Secretary of State was not represented before the First Tier Tribunal. The same Counsel who appeared before me represented the respondents before Judge Henderson. Judge Henderson heard oral evidence from the respondent and two witnesses who supported the appeals. Judge Henderson said in Paragraph 23 of his determination that he “found the first appellant to be a credible witness generally, although I did find some parts of her evidence to lack plausibility.
3. Permission to appeal was granted by Judge V P McDade, a Judge of the First Tier Tribunal.
4. In his decision dated 19 November 2015 Judge McDade stated “The grounds of application for permission to appeal asserts that the judge failed to take account of the fact that the Appellant had conceded that paragraph 276ADE of the Immigration Rules could not be satisfied and accepted that there were no insurmountable obstacles to the main Appellant returning to Ghana,
5. Secondly it is asserted that the Judge failed to have proper regard to Section 117B of the Nationality Immigration and Asylum Act 2002 by failing to take account of all the relevant factors, for example the little weight that should be given to an Appellant who has been in the United Kingdom illegally for a considerable period of time. It is arguable that the judge fell into error in respect of these points. There is an arguable error of law.”
6. On behalf of the respondents a response under Rule 24 was filed, contending for reasons advanced that the grounds for permission were misconceived.
7. At the hearing before me I raised with Mr Staunton whether it was his view that the decision purporting to grant permission was a valid decision as the Judge granting permission had failed to apply the correct legal criteria for grant of permission ie that in his view the grounds raised an arguable error of law which was material to the decision. Arguable error of law in itself was not enough to grant permission. Mr Staunton said that he wished to make no submissions on this point. He asked me to look at paragraphs 9 and 29 of the determination and argued that as the Judge had clearly found that the respondents did not meet the Rules, he should have dismissed the appeals. By allowing the appeals despite his clear findings the Judge had made a material error in law.
8. Mr Klear drew my attention to his Rule 24 response and said that the Secretary of State having failed to appear before the First Tier was now attempting to argue her decision to refuse. He described the appeal to the Upper Tribunal as an “opportunistic appeal”. He contended that Judge Henderson had made the correct decision on evidence presented and had made the decision which accords with well settled relevant jurisprudence. He relied on the Court of Appeal in Singh and Khalid [2015] EWCA Civ 74 (12 February 2015). The decision in that case had given guidance suggesting the proper way of applying Article 8 to a case which did not meet the requirements under the Immigration Rules. He asked that the appeal be

dismissed drawing my particular attention to paragraphs 37 and 38 of the determination of Judge Henderson.

9. Mr Staunton made no further submissions. I reserved my decision which I now give with reasons.
10. I find no merit in this appeal brought by the Secretary of State. Indeed, I find it most surprising that permission to appeal was granted on the grounds which came nowhere near identifying a material error of law in the decision of Judge Henderson. The determination is crystal clear in the approach the Judge took in appraisal of evidence before him and on the law that the Judge applied. The fact that the respondent children, all born and brought up here in the UK did not meet the requirements under the Immigration Rules for leave to remain did not mean, as Judge Henderson correctly concluded that their rights under Article 8 were engaged and in the balancing exercise that was carried out, weighing all the factors that went against them as opposed to those that were in their favour, the Judge acted properly in concluding for very good reasons that "the removal of the respondents from the UK would not be a proportionate means of maintaining effective immigration control." He took account of the public interest matters arising out of unlawful stay of the respondents but he also took due and proper account of the best interest of the respondents as children.
11. This appeal against the decision of Judge Henderson is dismissed.

K Drabu CBE
Deputy Judge of the Upper Tribunal.
13 February 2016