



**The Upper Tribunal
(Immigration and Asylum Chamber)
IA/51101/2014**

**Appeal number:
IA/51103/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On April 11, 2016**

**Decisions &
Promulgation
On April 14, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
and Appellant

MISS SELINA ANIM ASARE
[D A]
(NO ANONYMITY DIRECTION MADE)
Respondent

Representation:

For the Appellant: Ms Brocklesby-Weller (Home Office Presenting Officer)

For the Respondent: Ms McCarthy, Counsel, instructed by BWF Solicitors

DECISION AND REASONS

1. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they

were in the First-tier Tribunal so that for example reference to the respondent is a reference to the Secretary of State for the Home Department.

2. The Appellants are citizens of Ghana. The first and second-named appellants are mother and daughter. The first-named appellant entered the United Kingdom as a visitor on September 10, 2006 and she became an overstayer after January 2008. The second-named appellant was born in the United Kingdom on [] 2007 and the first-named appellant's evidence was that she was pregnant on arrival in the United Kingdom on September 10, 2006.
3. On July 15, 2014 the first-named appellant applied for both herself and son leave to remain on the basis of family and private life. This was refused with no right of appeal on September 17, 2014. On October 22, 2014 a pre-action protocol letter was sent to the respondent and on November 5, 2014 the respondent agreed to issue a removal direction thereby generating a right of appeal. The respondent refused their applications on December 10, 2014 and gave directions for their removal under section 10 of the Immigration and Asylum Act 1999.
4. The appellants appealed those decisions under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on December 24, 2014. No right of appeal was given to the second-named appellant but on March 2, 2015 a right of appeal was extended as a preliminary issue.
5. The appeals came before Judge of the First-tier Tribunal Shepherd (hereinafter referred to as the Judge) on August 20, 2015 and in a decision promulgated on October 5, 2015 she allowed the appellant's appeal under both the Immigration Rules and article 8 ECHR.
6. The respondent lodged grounds of appeal on October 8, 2015 submitting the Judge had erred by failing to give adequate reasons and applying the test on "reasonableness" incorrectly.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Saffer on March 3, 2016 on the basis the grounds were arguable.
8. The matter came before me on the above date and I heard submissions from both representatives. I reserved my decision.
9. The First-tier Tribunal did not make an anonymity direction. I see no reason to make one now and no submissions were made suggesting that I should.

SUBMISSIONS

10. Ms Brocklesby-Weller submitted the Judge had failed to have regard to the guidance in EV (Philippines) & Ors v Secretary of state for the Home Department [2014] EWCA Civ 874 and she failed to explain why his ties to the United Kingdom outweighed reasonableness of returning to Ghana. The fact the child had been educated here was not a trump card as evidenced by the Tribunal's approach in AM (s.117B) Malawi [2015] UKUT 260 (IAC). The first-named appellant had no status in the United Kingdom and following the guidance in EV and AM it was not unreasonable to require both appellants to relocate to Ghana. The fact the second-named appellant had been here for eight years did not mean the appellants had an automatic right to settlement here. She submitted the Judge had erred and the decision should be set aside and remade.
11. Ms McCarthy submitted the decision was well reasoned and the judge had had regard to all of the evidence and reached findings open to her. The respondent's grounds were a mere disagreement and did not amount to an error in law. The Judge correctly identified the Rules and law and based on her findings the first-named appellant had no family or support in Ghana, her conclusions were open to her. The allowing of the appeals under the Rules was open to the Judge and the respondent's appeal should be dismissed.
12. Having heard the representatives' submissions, I reserved my decision.

DISCUSSION AND FINDINGS

13. The first-named appellant came to the United Kingdom as a visitor but following the expiry of her visa she became an overstayer who did not come to the attention of the authorities until she lodged an application to remain. The Judge, in hearing the evidence, accepted her claim that when she arrived she was already pregnant. She made that finding partly because the respondent had not challenged her claim. The appellant's evidence, unchallenged by the respondent, was that her husband had rejected her when he discovered she was pregnant and she had no maternal family to turn to in Ghana. The only support she now had available to her was in the United Kingdom. These findings of fact were the cornerstone to the Judge's ultimate consideration of the applications before her.
14. The Judge accepted that she was financially supported by her own family who lived her legally because she had no other means of support. She also accepted that the second-named appellant had been brought up by his UK family and in the absence of anything to rebut the first-named appellant's claims about her husband (the child's father) the Judge concluded he would not be interested in

them after all this time. At paragraph [80] of her decision she concluded that this was central to her assessment.

15. The Judge was fully aware of the respondent's position because she set out both the relevant content of the refusal letter and the respondent's submissions earlier in her decision. She noted errors in the respondent's refusal letter and examined all of the documents to ensure she had a full understanding of the pertinent points.
16. The Judge considered the first-named appellant's claim under Section E-LTRPT of Appendix FM and ultimately found the paragraph EX.1 applied. She considered the second-named appellant's claim under paragraph 276ADE HC 395 and allowed his appeal under that Rule.
17. Both EX.1 and 276ADE(iv) have a "reasonableness" test to consider.
18. Paragraph EX.1 required the appellant to show she had a genuine and subsisting relationship with a qualifying child and that it would not be reasonable to expect the child to leave the United Kingdom. Paragraph 276ADE(iv) HC 395 requires the second-named appellant to show that at the date of the application he had lived here for at least seven years and it would not be reasonable for the child to leave the United Kingdom. The child was born on June 3, 2007 and the application was submitted on July 15, 2014 and the respondent was required to consider his appeal under that section.
19. The Judge's decision from paragraph [86] onwards is confusing because she considered all matters at the same time. The case law advanced by Ms Brocklesby-Weller is of course case law in relation to article 8. What has been overlooked by Ms Brocklesby-Weller is that the Judge allowed these appeals under the Rules, first and foremost, and if an error in law is to be demonstrated then it is necessary for Ms Brocklesby-Weller to persuade me that the Judge was wrong to allow the appeals under Section EX.1 of Appendix FM and paragraph 276ADE HC 395 respectively.
20. I accept in considering "reasonableness" it would not be wrong to have regard to the factors set out in EV. Whilst the Judge did not quote this piece of case law I am satisfied that she did have regard to the content of it. In the case of the second-named appellant she was aware of how long he had been here, his age, where and how long he had been educated for, the fact he had been born here and had never been to Ghana and knew only family here as well as the lack of ties there for him in Ghana. She concluded it would not be reasonable for the appellant to be required to go to Ghana. This finding was open to her and consequently there is no error in law in respect of his claim.

21. Having allowed his claim, the Judge also considered the claim first-named appellant's claim under EX.1 and having accepted she had a genuine and subsisting relationship and having already found it would not be reasonable to require her son to go to Ghana she had to allow the appeal under Section EX.1. There can be no error in her approach.
22. Section 117B factors are not matters that came into her consideration under the Rules. In paragraph [94] she allowed both appeals under article 8 ECHR with her reasoning for those decisions being set out in the paragraphs that preceded it. I accept the Judge's conclusion on the article 8 claims and there is therefore no error in this decision.

DECISION

23. 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 original decisions and dismiss the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

No fee award was made and I uphold that decision.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis