



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/07663/2015
HU/07654/2015

THE IMMIGRATION ACTS

Heard at Field House
On 21 April 2017

Decision & Reasons Promulgated
On 9 May 2017

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

GEORGINA KYEREMEH
STEPHEN KESEH NTIM
(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr G Olphert instructed by Dias Solicitors
For the Respondent: Mr K Norton, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are a mother and son, both Ghanaian citizens. The mother came to the United Kingdom in December 2004 on a visit visa which expired in May 2005 but the principal appellant did not embark. She overstayed and in March 2006 she met another Ghanaian national who was also unlawfully in the United Kingdom and became pregnant by him. The parties never cohabited, but some sort of a relationship continued until 2009 when they separated.

2. The child was born in 2007 in the United Kingdom and is now four months over the age of 9 and has been at school for five-and-half years. There was evidence before the First-tier Tribunal from the school in the form of school reports showing that he had done well at school, that he took part in football and drama and had won a children's university award, but that there had been some concerns because he seemed to be a very quiet child. When tested by speech and language therapists he was not found to be suffering from any learning development difficulties, he was simply naturally quiet.
3. There are also reports from his church where he is an altar boy and certificates regarding his participation in extra-curriculum activities as well as some letters from neighbours and churchgoers.
4. On 5th June 2015, when making her application for leave to remain on human rights grounds, the principal appellant said that the child's father was seeing the child fortnightly. By 9th August 2016, when she was giving evidence in the First-tier Tribunal, the principal appellant said that she no longer knew where the child's father was, although she thought he was probably still in the United Kingdom, and that the boy had not seen his father for many years. There is a discrepancy there which is pointed out at [11] in the First-tier Tribunal. On any view, this is not a situation where the Ghanaian father is strongly involved in the upbringing of his child. The relevant family life is that between the mother and the child.

First-tier Tribunal decision

5. The First-tier Tribunal Judge accepted, though not expressly, that this was a qualifying child and that the principal appellant had a genuine and subsisting parental relationship with him. It is not suggested that the principal appellant can succeed if the child appellant does not.
6. The appeal turned, pursuant to paragraph 117B(6)(a) and (b) of the Nationality, Immigration and Asylum Act 2002 (as amended), on whether it is reasonable to expect the child to leave the United Kingdom. The reasonableness part of the judge's findings begins at [9] and the following facts and matters are recorded:-
 - (a) The mother and child live together as a family unit. Two languages are spoken at home, English and Akan/Twi-Fante, a Ghanaian language.
 - (b) It is in the child's best interests (see Section 55) to remain with his mother because he has always lived with her and has no other near relative in the United Kingdom apart from his absent father. There is no real contact between the boy and his father and has not been "for many years".
 - (c) There is contact between the principal appellant and her son and their family in Ghana because she is sending money to support them. The principal appellant's parents, the child's grandparents, are still in Ghana and, out of the very small charity support she receives from her church, £450 a month, of which she pays

£350 a month rent, she manages to send them some money. She also has siblings in Ghana.

- (d) The child has private life in the United Kingdom, as he had been attending school for about four years at the date of decision and would no doubt be upset to leave his friends but all his family, apart from his mother, are in Ghana, uncles, aunts and grandparents. He has never visited Ghana.
- (e) The child has attended the same school since he was 4, he is an altar boy and has a keen interest in natural Tontine football, "with many friends". Ghana has a functioning educational system and medical system.

7. At [14] in her decision, the First-tier Tribunal Judge said this:-

"14. I accept that the test of reasonableness is a low test and that his mother's complete failure to abide by the Immigration Rules does not affect his position. However, I can find no reason why it would not be reasonable to expect him to leave the United Kingdom. His relationship with his father is not relied on and he has no family life in the United Kingdom save with his mother. He clearly has a private life as he has been attending school for some four years and he would no doubt be upset to leave his friends. However, all his family save for his mother remain in Ghana. It appears that he has uncles and aunts there as well as his grandparents and he clearly has contact with them as his mother says she supports them."

8. The First-tier Tribunal Judge considered that there was nothing unusual about a child of this age moving school or moving area, when the needs of the parents require it: that is a normal part of growing up, losing old friends and making new ones. The Judge summarised her findings as follows:

"In light of his young age [and his dependence upon his mother] it is no more unreasonable for him to go to Ghana with her than it would and it would be unreasonable for her to move to another part of the United Kingdom with him were, for example, she were to obtain employment in a different town. All his needs can be met in Ghana where he will have family to grow up with as well as his mother".

On that basis the First-tier Tribunal found that it was not unreasonable to expect the child appellant to accompany the principal appellant to Ghana.

Discussion

9. I have had regard to the decision of the Court of Appeal in *MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor* [2016] EWCA Civ 705. The reasonableness test is discussed in the judgment of Lord Justice Elias, with whom Lady Justice King and Sir Stephen Richards agreed, at [46]-[47]. At [46], the Court considered that there needed to be 'strong reasons' for refusing leave where a child had spent 7 years or longer in the United Kingdom. At [47], the Court said this:-

“Applying the reasonableness test ...

47. Even if we were applying the narrow reasonableness test where the focus is on the child alone, it would not in my view follow that leave must be granted whenever the child's best interests are in favour of remaining. I reject Mr Gill's submission that the best interests assessment automatically resolves the reasonableness question. If Parliament had wanted the child's best interests to dictate the outcome of the leave application, it would have said so. The concept of "best interests" is after all a well established one. Even where the child's best interests are to stay, it may still be not unreasonable to require the child to leave. That will depend upon a careful analysis of the nature and extent of the links in the UK and in the country where it is proposed he should return. What could not be considered, however, would be the conduct and immigration history of the parents.”

10. I find nothing in *MA (Pakistan)* which indicates that on the present facts, the First-tier Tribunal Judge could not properly reach the conclusion that there were no particularly difficult circumstances making it unreasonable for this child to go with his mother to Ghana and live with his extended family there. The family are surviving on charity in the United Kingdom; he has no contact with his father and all his other family members are still in Ghana.
11. The decision in *MA* concerned a number of different appeals: *MA* himself, three linked Sri Lankan appeals, an appellant anonymised as *AZ (Pakistan)* and another as *AP (Sri Lanka)*. Only *AZ's* appeal succeeded outright. *AP's* appeal was allowed and remitted because the Upper Tribunal Judge had erroneously given weight to the fact that the children were in the United Kingdom on a precarious basis and approached the reasonableness test too strictly.
12. The application of *MA* failed, although he had spent more than 7 years in the United Kingdom, the Court considering that the conclusion reached was open to the Judge on the evidence, and '[given] that he was required to have regard to the wider public interest in effective immigration control'. The 3 linked Sri Lankan appeals also failed, for the reasons set out at [86]:

“The judge recognised that the best interests of the child should be a primary consideration: paragraph 189. Looking at it solely from their point of view it is clear that he appreciated that it would be strongly in their best interests to remain in the United Kingdom with their parents where they were happy and settled. The children would be adversely affected by needing to learn a new language, and they would be subject to a different culture and a different level of education. Notwithstanding this, the judge concluded that in all the circumstances the three adult appellants had behaved so badly that it would be ‘outrageous’ for them to be allowed to remain in the UK. They needed to go and their dependants must go with them ...”.

The Court of Appeal held that the judge was entitled to strike the proportionality balance as he did.

13. In relation to *AZ* the situation was more complicated. He was an autistic child with significant problems with language, social interaction and communication and

stereotypical behaviour and mannerisms, which had led to his receiving special educational needs treatment, with regular therapy and specialist teaching, which there would be very little prospect of replicating in Pakistan because the expertise was simply not available. At [102], Elias J said this:-

“102. With all due respect to the careful analysis of the judge [concluding that it would not be unreasonable to require the child to return to Pakistan], in my judgment this was not a conclusion open to him given the overwhelming and permanent harm which would be caused to this child’s way of life if he were to return to Pakistan. I recognize that the child is relatively young and has not developed significant social and cultural ties in the UK, and but for this autism, there would be a strong case for saying that it would not be unreasonable to expect him to leave and live with his parents and younger brother in Pakistan. But the consequences for him would be little short of catastrophic ...

103. In my judgment, the observation of the judge to the effect that people who come on a temporary basis can be expected to leave cannot be true of the child. The purpose underlying the seven year rule is that this kind of reasoning ought not to be adopted in their case. They are not to be blamed for the fact that their parents overstayed illegally, and the starting point is that their status should be legitimized unless there is good reason not to do so. I accept that the position might have been otherwise without the seven years’ residence, but that is a factor which must weigh heavily in this case. The fact that the parents are overstayers and have no right to remain in their own right can thereafter be weighed in the proportionality balance against allowing the child to remain, but that is after a recognition that the child’s seven years of residence is a significant factor pointing the other way. ...”

The decision regarding AZ turns on its particular facts and the harm which would be caused to that particular child. It is not on all fours with the situation of these appellants and there is no evidence of a risk of similar irreversible harm here.

Conclusions

Accordingly, the grounds of appeal do not identify any arguable material error of law in the decision of the First-tier Tribunal and the appeal is dismissed.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Date: 5 May 2017