



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

Appeal Number: PA/05475/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 16 August 2017**

**Decision Promulgated
On 17 August 2017**

Before

Upper Tribunal Judge Southern

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[F F]

Respondent

Representation:

For the Appellant: Mr S. Staunton, Senior Home Office Presenting Officer

For the Respondent: Ms H. Gore, counsel instructed by R. Spio & Co, solicitors

DECISION

1. The Secretary of State for the Home Department has been granted permission to appeal against the decision of First-tier Tribunal Judge Rodger who, by a determination promulgated on 5 April 2017, allowed [FF]'s appeal against a decision to refuse the human rights claim upon which he relied in seeking revocation of a deportation order that had been made against him, the judge finding that his deportation would bring about an impermissible infringement of rights protected by Article 8 of the ECHR.

2. The high water mark of the challenge pursued by the Secretary of State was to assert that it was not open to the judge, having found that it would *not* be unduly harsh to expect his partner and their two young children, all of whom are British citizens, to move with him to Ghana, yet to find that it *would be* unduly harsh to expect two other children of the appellant by previous relationships, who continue to live with their respective mothers but with whom the appellant maintains genuine and subsisting parental relationships either to move with him to Ghana or to remain in the United Kingdom without him.

3. At the beginning of the hearing Mr Staunton asked if I had formed a provisional view of the likely outcome of the appeal to the Upper Tribunal. I was not surprised to be invited to express such a view because it is not altogether easy to see why permission to appeal had been granted by the First-tier Tribunal and the provisional view I expressed was as follows. In a long determination, written with evident care, the Judge has directed herself correctly in law before carrying out a meticulous examination of the evidence after which she has given clear cogent and legally sufficient reasons for arriving at what are, frankly, unassailable findings of fact that led to her conclusion that the appeal must succeed. The different approach to the positions of the appellant's partner and their two children who live together as a family unit and the two young children from previous relationships with whom the appellant maintains a significant role in their lives has been explained and cogent reasons have been given by the judge for her conclusion that it would be unduly harsh for those children either to move to Ghana or remain in the United Kingdom without their father.

4. It is evident that in reaching that conclusion the reasoning of the judge was fully informed by the public interest arguments that arise in deportation cases and it is not arguable that the judge left out of account any material factor when striking a balance between the competing interests in play.

5. Even if the draftsman of the grounds for seeking permission to appeal considered that this was not the only outcome possible, that does not identify any arguable error. As Lord Carnwath (as he then was) observed at paragraph 40 in *Mukarkar v SSHD* [2006] EWCA Civ 1045:

“Factual judgments of this kind are often not easy, but they are not made easier or better by excessive legal or linguistic analysis. It is of the nature of such judgments that different tribunals, without illegality or irrationality, may reach different conclusions on the same case (as is indeed illustrated by Mr Fountain's decision after the second hearing). The mere fact that one tribunal has reached what may seem an unusually generous view of the facts of a particular case does not mean that it has made an error of law, so as to justify an appeal under the old system, or an order for reconsideration under the new. Nor does it create any precedent, so as to limit the Secretary of State's right to argue for a more restrictive approach on a similar case in the future. However, on the facts of the particular case, the decision of the specialist tribunal should be respected.

6. I do not, in any event, consider this decision by the judge is one that discloses an “unusually generous view of the facts”. It is entirely clear from a reading of the determination as a whole why the judge reached the conclusion she did. It is plainly apparent that she has had regard to all that was material and arrived at conclusions that were rationally open to her and in respect of which she has given ample and sufficient reasons.

7. Understandably, and realistically, Mr Staunton did not seek to offer any submissions in support of the grounds and I am entirely satisfied that those grounds fail to identify any error of law by the judge, material or otherwise.

Summary of decision:

8. First-tier Tribunal Judge Rodger made no material error of law and her decision to dismiss the appeal shall stand.

9. The appeal to the Upper Tribunal is dismissed

Signed



Upper Tribunal Judge Southern

Date: 16 August 2017