



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2022-003471
UI-2022-003472, UI-2022-
003473

First-tier Tribunal Nos:
HU/05127/2020
HU/05129/2020, HU/05130/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 22 March 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS HANNA GYAMFI (FIRST RESPONDENT)
MR GABRIEL APENTENG (SECOND RESPONDENT)
MISS ERICA AKUA SERWAN APENTENG (THIRD APPELLANT)
(NO ANONYMITY ORDER MADE)

Respondents

Representation:

For the Appellant: Ms S Lecointe, Senior Presenting Officer

For the Respondent: Mr J Plowright, Counsel, instructed by Nandy and Co

Heard at Field House on 21 December 2022

EXTEMPORE DECISION AND REASONS

Introduction

1. For the sake of clarity I shall refer to the parties as they were before the First-tier Tribunal and therefore the Secretary of State is once more “the Respondent” and Mrs Gyamfi, Mr Apenteng and Ms Apenteng are “the Appellants”.

Decision of the First-tier Tribunal

2. The Respondent appeals against the decision of First-tier Tribunal Judge G J Ferguson (“the judge”), promulgated on 15 March 2022, by which he allowed the Appellants’ appeals against the Respondent’s refusal of their linked human rights claims. Those claims were made by way of applications for further leave to remain in the United Kingdom.
3. The first Appellant is the mother of the second and third, they are all nationals of Ghana. They entered the United Kingdom on 4 May 2017 with entry clearance as the spouse and dependent children of Mr Joseph Apenteng, a British citizen (“the Sponsor”). The making of the applications for further leave to remain were somewhat complicated by issues surrounding the payment of fees and an initial claim for a fee waiver. Ultimately the relevant fees were paid and an appealable decision issued.
4. The combined appeals came before the judge at a remote hearing on 20 December 2021. I summarise the judge’s findings here. He accepted that there was no issue as regards the English language requirements because the Appellants had shown that they met the relevant standard in respect of their previous entry clearance applications. On my understanding, no issue with that had been taken in the Respondent’s decision letter. In respect of the financial requirements under Appendix FM, the judge found that the Sponsor could not meet the relevant threshold by a figure of just over £1,600. However, the judge went on to find that the second Appellant had a good working record in the United

Kingdom and had only had to cease work because of the effects of the Covid-19 pandemic during the course of which he was laid off. In addition, the complications relating to the making of the applications themselves had had an effect on his ability to work in respect of having permission to do so by the Respondent. In the circumstances of the second Appellant overall, the judge was satisfied that if he had been working - and that he would indeed be working in the future - the shortfall of £1,600 would have been met. The judge took all of these circumstances into account. In addition, he noted that the third Appellant had at that time been undertaking her GCSE course and that her removal from the United Kingdom would have been “particularly harsh”. The judge ultimately concluded that the appeals fell to be allowed with reference to GEN.3.2. of Appendix FM, that being the requirement within the Rules relating to what is in effect an overall proportionality exercise where certain mandatory considerations within Appendix FM are not met and that rather than the five year route being open to the Appellants, it was the ten year route which would be applied by virtue of the decision in the appeals.

Grounds of appeal

5. The Secretary of State appealed on three grounds: first, that the judge erred in respect of the English language requirement because whilst the A1 standard was acceptable in respect of entry clearance applications, the extension of leave to remain within the United Kingdom required a minimum level of A2; second, that the judge erred in respect of the financial requirements because there was a shortfall and if the second Appellant had been working he would not therefore have been dependent on the Sponsor and could not have satisfied the Rules in that respect; third, that the judge erred in respect of his assessment of exceptional circumstances.

6. Permission was granted on all grounds. Post-permission, a rule 24 response was provided.

The hearing

7. Having clearly considered the case with care and having had a discussion with Mr Plowright, Ms Lecointe did not resile from the first two grounds of appeal although she recognised that the Appellants' solicitors themselves had made reference to the ten year route during the course of the making of the applications and it was apparent that there had been a shortfall in terms of the financial requirements. In respect of the third ground of appeal and GEN.3.2, Ms Lecointe accepted that the judge had been entitled on the evidence before him to have concluded that exceptional circumstances did exist at that point in time and notwithstanding any errors in relation to the English language and financial requirements issues. Ms Lecointe, in my view entirely fairly, emphasised the significant impact of the Covid-19 pandemic particularly on the second Appellant and his ability to work.
8. By implication (and I hope I put this fairly), Ms Lecointe accepted that the judge had taken a holistic view of all the relevant circumstances in the case.

Conclusions

9. I am entirely satisfied that Ms Lecointe's position was justified in this particular case.
10. There is always a requirement to exercise caution before interfering with a decision of the First-tier Tribunal, as the Court of Appeal has said on a number of occasions. Here, it may be that there were shortcomings in respect of the English language and financial requirements issues as regards the five year route. However, the judge did not purport to

conclude that all of the mandatory considerations under Appendix FM were satisfied for the purposes of the five year route. Rather, he relied squarely on GEN.3.2. which entailed an overall assessment of all relevant circumstances. Indeed, the engagement of GEN.3.2 necessarily meant that the five year route requirements had not been met.

11. Ms Lecointe was in my view correct to have accepted that the judge did take relevant circumstances into account. It cannot be said that the judge was simply not entitled to conclude as he did. The judge was aware that the strict financial requirements under the five year route not been met. In relation to the English language issue, the judge a to acknowledge that the A2 level had not apparently been satisfied, but his overall assessment of all the factors in the case rendered this as an immaterial error. Of particular note in the proportionality exercise were the factors relating to the second Appellant and his work history and the reasons why he had not been able to work, and the fact that the third Appellant was at the time in the middle of her GCSE exams.

Anonymity

12. There is no basis for an anonymity direction in these cases.

Notice of Decision

In light of the foregoing the judge's decision contains no material errors of law.

The Secretary of State's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal shall stand.

H Norton-Taylor
Judge of the Upper Tribunal

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First-tier Tribunal Numbers: HU/05127/2020
HU/05129/2020, HU/05130/2020

Immigration and Asylum Chamber

Dated: 13 March 2023