Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/34329/2014

THE IMMIGRATION ACTS

Heard at: Field House	**Decision & Reasons Promulgated**
On: 6 November 2015	**On: 11 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

MS BEATRICE ADU DARKO
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Just and Brown Solicitors
For the Respondent: Miss Fujiwala Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana born on 28 October 1976. She appeals against the decision of the respondent dated 12 August 2011 for leave to remain in the United Kingdom pursuant to Article 8 of the European Convention on Human Rights. First-tier Tribunal Judge R Chowdhury in a decision dated 19 June 2015 dismissed the appellant's appeal under the Immigration Rules and Article 8 of the European Convention on Human Rights. Permission to appeal was granted by first-tier Tribunal Judge Robertson on 23 September 2015 saying that it is arguable that the Judge's assessment of proportionality under Article 8 where the Judge does not refer to section 117B (6) and has not explicitly applied its provisions to the appellant's eldest daughter and permission is granted on that basis.

First-tier Tribunal's findings

2. The Judge made the following findings in his determination which I summarise. The appellant does not satisfy the Immigration Rules under Appendix FM in paragraph 276 ADE. She was 29 years old when she came to the United Kingdom and had previously worked in Ghana. Judicial notice is taken of the fact that the appellant must have come from comfortable circumstances in Ghana in order to obtain a multi-entry visit Visa and to secure further extensions to her leave on the basis that she was seeking private medical treatment. This is not a case of a young woman having left the country before establishing herself fully in Ghana.

3. No evidence has been provided that demonstrates there would be very significant obstacles to the appellant's reintegration into Ghana. It is clear from our own evidence that she has no wider family in the United Kingdom and has lived the majority of life in Ghana. She has siblings in that country although she says they have limited resources.

4. The Tribunal was not dealing with any appeals from the appellant's husband and children and therefore he could not consider any appeals under the Immigration Rules. Following the case of **Bekou Betts**, he can only look at the appellant's family life respect to Article 8.

5. The upper Tribunal's decision in refusing the appellant permission to apply for judicial review dated 12 February 2015 is noted. The upper Tribunal noted that the appellant's grounds in that application mirrored the same grounds of the appeal, presented are without arguable merit.

6. The appellant has failed to demonstrate that any member of her family could satisfy the Immigration Rules. Further, the upper Tribunal found that Article 8 does not allow a person to choose the country in which they live. The best interests of the children are to remain with their parents. The family would be returned as one. There is no basis for granting leave outside the Immigration Rules.

7. In respect of Article 8 in a particular section 117B these provisions apply to all appeals heard on or after 28 July 2014 irrespective of when the application or immigration decision was made.

8. The appellant's leave to remain expired on 27 June 2008. The appellant and her family thereafter had a precarious immigration status for nearly 3 years until she made an application for further leave to remain on human rights grounds on 17 June 2011. It was accepted that the appellant and her children and husband are English speakers but that this appellant together with the family

would be a burden on the taxpayer. She has shown a disregard for the immigration controls of this country.

9. The private life of the appellant's eldest child has been considered and regard has been had to the evidence from all the children schools that they are doing well. Maintenance of effective immigration control must be considered and if the daughter was older, it is arguable that a private life would be more entrenched in the United Kingdom so as to make a removal disproportionate. However at this time I find that the removal of the family is proportionate.

Grounds of appeal

10. The grounds of appeal state the following which I summarise. The appellant arrived in the United Kingdom on 22 January 2000. Whilst in the United Kingdom she applied for further leave to remain for medical purposes. She was granted further leave to remain until 27 June 2008. A further application was refused by the Home Office and the appellant has lived in the United Kingdom ever since.

11. While in the United Kingdom she started a relationship and married by way of a ceremonial marriage in Ghana. On 27 October 2006 the appellant gave birth to her daughter and on 31 December 2007 she gave birth to her son and had another son on 23 March 2010. The children are well settled in school and nursery in the United Kingdom. The appellant, her husband and the children live together in the United Kingdom as a family.

12. Whilst in the United Kingdom the appellant submitted an application to the Home Office for leave to remain in the United Kingdom based on human rights and paragraph 276 ADE of the immigration rules. This application was refused.

13. The Judge failed to identify that the eldest daughter was a qualified child having resided in the United Kingdom for over seven years as at the date of the appellant's application. She and her parents enjoy a paternal relationship in the United Kingdom. She also enjoys family life in the United Kingdom with her brothers. Given that the eldest child is well settled in school in the United Kingdom, it would be unreasonable to expect them to leave the United Kingdom. The public interest under Article 8 does not require the appellant's removal from the United Kingdom. In the circumstances the provisions of section 117B (6) of the nationality and immigration act 2002 is irrelevant.

14. The Judge erred in law when he did not appropriately apply paragraph 276ADE of the Immigration Rules. As at the date of the appellant's application, her child was under the age of 18 and has lived in the United Kingdom continuously for at least seven years. She is well settled in school are progressing well therefore it would

have been totally unreasonable to uproot her and relocate her to Ghana. She has never lived in Ghana before does not speak the Guinean dialect. The school and educational situation in Ghana is deplorable.

The hearing

15. At the hearing I heard submissions as to whether there is an error of law in the determination.

Findings on whether there is an error of law

16. Having carefully considered the determination, I find that there is no material error of law in the determination. The Judge found that none of the appellant's family were able to satisfy the Immigration Rules and that the Upper Tribunal found in the appellant's husbands that Article 8 does not allow a person to choose the country in which they live. The Judge further noted that the best interests of the children are to remain with their parents and that the family would be returned as one to Ghana.

17. The Judge found that there is an education system in Ghana which although may not be as good as the United Kingdom took into account the case of **Azmi-Moyed and others [2013] UKUT 00197** which stated that seven years from the age of four is likely to be more significant to a child in the first seven years of life. The Judge found that the appellant's daughter was young enough to adapt to life in education in Ghana. I do not find this is a perverse finding in light of the fact that the entire family would be returned to Ghana with the appellant. A child is not a British citizen and therefore requiring her to leave with her family is more than reasonable in all the circumstances. No error of law has been demonstrated in the determination.

18. At paragraph 22, the Judge considered the appellant's eldest daughters private life in the United Kingdom and accepted that she was doing well. He was entitled to find that effective immigration control dictates that she should accompany her family to Ghana. He also found that a private life would have been more relevant after the age of four.

19. I find that there is no material error of law in the determination and a differently constituted Tribunal would not come to any other decision in light of the fact the appellant or her daughter is not a British citizen and when the appellant's immigration status was precarious in the United Kingdom although I accept that cannot be held against her children.

Decision

Appeal dismissed

Signed by

Deputy Upper Tribunal Judge Chana
This 2nd day of December 2015