Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/35701/2014
IA/35709/2014
IA/35704/2014

THE IMMIGRATION ACTS

Heard at Field House
On 13th August 2015

Determination Promulgated
On 25th August 2015

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MRS ESTHER APPIAH
MR HUBERT TETE LABI
MASTER KELVIN NANA YAW AWUKU
(Anonymity Direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M Hayre (H & M Solicitors)
For the Respondents: Mr L Tarlow (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellants with regard to a decision of the First-tier Tribunal (Judge Jerromes) promulgated on 21st January 2015 by which it dismissed the Appellants' appeals against the Secretary of State's decision to refuse them leave to remain, taken on 7th August 2014.

2. The Appellants are husband and wife and their 8 year-old son. All are Ghanaian nationals. The first Appellant first entered the UK in 2001 with entry clearance for six months as a visitor. She again entered as a visitor in October 2003 and again in September 2004. She overstayed on the last occasion, she says, because she wanted to go to school in the UK.

3. The second Appellant entered the UK on a date which is unknown; he says in May 2001, although his wife suggested it was in 2003. They met in either 2003 or 2005 (the evidence differed) and started to live together. The 3rd Appellant was born in the UK on 4th January 2007 and is now eight years of age. The family live together in High Wycombe in a flat for which they pay £200 per month rent.

4. The 1st and 2nd Appellants struggle to maintain themselves financially and have relied on financial support from friends and have not resorted to public funds. The 1st Appellant is trained as a carer but has not been able to work as such due to her lack of status. The 2nd Appellant is a car valeter.

5. The 3rd Appellant initially attended nursery and now primary school in the UK. He is a member of a local football club and also a committed member of the church. He has never been outside the UK.

6. The 1st Appellant's mother was in Ghana but has died since the First-tier Tribunal decided the case. She has an elderly uncle and a cousin in the UK. The 2nd Appellant has a sibling and cousins in the UK. His parents are deceased.

7. The Appellants first made an application for leave to remain in February 2012. However, that was refused without a right of appeal and following judicial review proceedings the Secretary of State agreed to make another decision which did carry a right of appeal and that was the appeal before the First-tier Tribunal.

8. The First-tier Tribunal at page 4 of its decision set out the grounds of appeal which included that the Secretary of State had failed to take into account the fact that the 3rd Appellant is over the age of seven and was born and raised in the UK and has no connections with Ghana.

9. In its decision the First-tier Tribunal considered the situation of the 3rd Appellant but noted that at the date of the application as he was under the age of seven, he had not then been in the UK for 7 years and was not satisfied that he could meet the requirements of 276ADE.

10. Before me it was conceded by Mr Tarlow that that was wrong. At the date of hearing, the relevant date for the purposes of consideration of Article 8 and the Rules, the child had been in the UK for more than seven years.

11. On that basis it was accepted that the decision should be set aside and redecided on the basis that consideration should be given to the appeal taking into account the fact that Kelvin may be entitled under paragraph 276ADE.

12. With regard to the first two Appellants, there is no error of law in the First-tier Tribunal's decision. They are of Ghanaian nationality, lived there for the majority of their lives and there is nothing to prevent their returning there. They do not meet the requirements of appendix FM nor any of the exceptions. Neither is there anything unusual or compelling about their circumstances to render it disproportionate to remove them.

13. That decision will only be upset if the situation in relation to the child alters things. Mr Tarlow relied on the case of Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197(IAC) which indicated that while seven years has for a significant period of time been taken as a threshold after which a child may not be able to be returned to their home country, it is the time in the child's life that the seven years have occurred that is significant. A child who is aged seven will be less affected than a child who is say, aged 14. That is because during the early years of life the child will be unaware of its surrounding save for his immediate family. Mr Tarlow pointed out that paragraph 276 ADE of the Immigration Rules, which is the route by which a person can be permitted to remain on private life grounds, requires not only that the child should have been in the UK for a period of seven years but it also must be unreasonable to expect the child to leave the UK. What is required therefore is an assessment of whether it is reasonable to expect the 3rd Appellant to leave the UK.

14. In any case involving children we are required to consider the best interests of the child as a primary consideration. Those best interests however, particularly when the child is not British, are not determinative and can be outweighed by other factors.

15. The best interests of the child in this case are no doubt to live with his parents; to live in a safe and secure environment and to have access to education and health care.

16. Absent other factors, it will be in a child's best interests to maintain the status quo. That is not to say that he would suffer harm if the geography changed provided he continued to be with his family. It is the case that every year many thousands of children are uprooted by their families and moved either to the opposite end of the country or to foreign countries because that is part of general family life when parent's circumstances change and they decide to relocate. It is never suggested, absent serious health problems that that is contra to the children's best interests. It is generally assumed by all that it is in the best interests of the child to be wherever his parents are.

17. In this case the child's parents are Ghanaian, as is he. Both lived in Ghana for most of their lives, his mother until she was 36 and his father until he was approximately 35. Given their links to that country and the skills that they have acquired while in the UK they would easily able to re-establish themselves there.

18. Additionally, in the same way that it is a British child's right to grow up in the UK and enjoy the benefits of British citizenship, it is a Ghanaian child's right to be brought up in the country of his nationality, culture and heritage.

19. The family have been in the UK without leave for a very considerable length of time enjoying the benefits living in the UK brings, including the education of the child, none of which they were entitled to.

20. Taking all matters into consideration it is quite clear even if the child's best interests in this case were to remain in the UK and that is a finely balanced point in itself, those best interests are outweighed by the other factors, one of the most significant being the maintenance of immigration control but also the economic interests of the UK. I therefore conclude that it would not be unreasonable in this case for the 3rd Appellant to leave the United Kingdom.

21. Having set aside the First-tier Tribunal's Decision and Reasons in relation to the question of the 3rd Appellant in redeciding it I find that the 3rd Appellant does not succeed under paragraph 276ADE and the appeals of all three Appellants are dismissed.

Signed Date 24th August 2015

Upper Tribunal Judge Martin

Direction regarding anonymity

I make no anonymity direction.

Signed Date 24th August 2015

Upper Tribunal Judge Martin