



**Upper Tribunal
(Immigration and Asylum Chamber)
Numbers: HU/12229/2015**

Appeal

**HU/18135/2016
HU/13015/2015
HU/13017/2015
HU/13028/2015**

THE IMMIGRATION ACTS

Heard at Stoke-on-Trent

Decision & Reasons

On 17 October 2017

Promulgated

On 24 November 2017

Before

UPPER TRIBUNAL JUDGE LANE

Between

**EK (FIRST APPELLANT)
LO (SECOND APPELLANT)
EO (THIRD APPELLANT)
HO (FOURTH APPELLANT)
KO (FIFTH APPELLANT)
(ANONYMITY DIRECTIONS MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Sarwar, instructed by Sanctuary Law

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Ghana. The first appellant was born in 1971 and the second appellant in 1980. The third, fourth and fifth appellants are the children of the first and second appellants who were born respectively in 2008, 2009 and 2015. Because this decision of the Upper Tribunal will be published and the third, fourth and fifth appellants are children, it is appropriate to anonymise the decision.
2. The first appellant entered the United Kingdom lawfully in July 2004. The second appellant joined the first appellant in September 2007. The third, fourth and fifth appellants were all born in the United Kingdom. In August 2015, the appellants applied for leave to remain on the basis of their private and family life in the United Kingdom. The applications were refused by a decision of the Secretary of State dated 17 November 2016. The appellants appealed to the First-tier Tribunal (Judge Boylan-Kemp MBE) which, in a decision promulgated on 23 January 2017, dismissed the appeal. The appellants now appeal, with permission, to the Upper Tribunal.
3. There are several grounds of appeal. In granting permission, Judge Bennett, wrote as follows:

Permission to appeal is granted because it is arguable that the judge erred in respect of the availability of family and church support in Ghana in the light of the evidence about the first and second appellants' families and this arguably vitiated the judge's conclusion that it was reasonable to expect the third and fourth appellants to be removed to Ghana.
4. At [17], the judge commented that "all education in Ghana is taught in the English language". The appellants challenge this on the basis that, whilst most schools teach in English, schooling in villages "tended to be in the local language". I find that the ground has no merit. It is apparent from the evidence which was before the First-tier Tribunal that English is spoken very widely in Ghana. It is an official language of the country. The appellants have not shown any evidence which would indicate that they could not receive education in an English-speaking school. In any event, the ground of appeal does not sit well with the submission made at the Upper Tribunal hearing that the appellants only speak Twi. Before the First-tier Tribunal, the appellants argued that they needed to be able to access schools which were English-speaking. It was submitted to the judge [17] that English was only used in international schools. It was open to the judge to find that that submission had no basis. The evidence before the judge appeared to show that English was more widely spoken.
5. Secondly, the appellants complain that the judge did not have proper regard to the fourth appellant's medical condition. The fourth appellant has an eye problem. I find that the ground of appeal has no merit. The

judge dealt with the fourth appellant's eyesight at [18]. She found that "on the evidence before me, this was not so serious that it is a life threatening condition or that the appellant would be not able to access appropriate care in Ghana and so I find that this argument adds little weight to the appellants' position". The grounds of appeal simply seek to argue with that finding. The grounds assert that medical care would not be obtainable in Ghana but I note that no evidence has been put before the First-tier Tribunal to suggest that that was the case. Furthermore, the mere fact that the problem is being managed whilst the fourth appellant is in the United Kingdom is immaterial; there was no reason why the condition should not be managed in Ghana.

6. Thirdly, the judge found [19-20] that "the appellants would be able to avail themselves of [family members] living in Ghana". The appellants argued that they had no contact with their family members in Ghana. It was, however, open to the judge that, given that the appellants had family members in Ghana, it was not unreasonable to expect them to re-establish contact. There was no evidence before the judge that it was impossible for the appellants to contact their family members or that, if they were contacted, they would refuse to assist. The findings were available to the judge on the evidence.
7. Fourthly, the grounds argue a point to which Judge Bennett specifically refers in his grant of permission. The judge noted that the first appellant is "a qualified man" and would be able to find suitable employment on return to Ghana. The judge heard evidence from a Reverend Fox who currently provides through his church financial support for the family. The judge recorded at [15] that "... Reverend Fox hoped a more limited level of support would still be provided [after the appellants have returned to Ghana] but that further discussions would need to take place within the church before such help could be confirmed". Mr Sarwar submitted that there was no certainty that this financial support would be provided and, in the absence of certainty, the basis for the judge's decision that it was reasonable to expect the family to return was removed. I disagree. The judge has conducted her analysis by reference to the correct standard of proof, namely the balance of probabilities. Such a standard does not require certainty. The judge found that it was more likely than not that some financial support, at least in the short term, would be available from the church in the United Kingdom. It was open to her to reach that finding. Given that the judge also found that the first appellant would find work and would then be able to support the family, it was plainly open to the judge to find that the family would be able to return and had the financial basis for doing so given the (probably short term) assistance from the church and also the likely assistance (in practical terms, if not financially) they might receive from family member in Ghana.
8. At paragraph 50, the appellants assert that the best interests of the children were not taken into account. The third and fourth appellants have

lived in the United Kingdom for more than seven years. The appellants assert that there should be “strong reasons” for removing children in such circumstances and with such a length of residence (see *MA (Pakistan)* [2016] EWCA Civ 705). The judge has approached this aspect of the case through the application of the Immigration Rules, in particular paragraph 276ADE(1)(iv):

(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK

9. The judge relied on *MA (Pakistan)* at [21] for the proposition that “although the best interests of the child should be a primary consideration it did not automatically equate with that child having resided in the UK for over seven years ... remaining in the UK ... as the best interests of the child”. It is clear from the judge’s decision that she could identify no good reason at all why this family should not return to the country of their nationality. They have family living in Ghana, the first appellant has the qualifications to obtain work there and they were likely (on the judge’s analysis) to obtain financial support from the United Kingdom, at least in the short term. The question is whether the judge was required to look for “strong reasons” to justify the removal of the family in the light of the fact that the third and fourth appellants had lived in the United Kingdom for more than seven years and are children. Mr Sarwar submitted that the decision of the judge was perverse; in the light of the long residence of the children, and in the absence of any “strong reasons” she had to allow the appeals of all the appellants. Having read the decision of the judge very carefully, I disagree. In the absence of any obvious obstacles to the family returning to their country of nationality, it was open to the judge, on the particular facts of this case, to conclude that the third and fourth appellants could reasonably be expected to travel to Ghana with the rest of their family unit. It was not perverse of the judge to reach that decision. Whilst there may have been no “strong reason” in favour of the family’s removal there were equally, on the judge’s analysis, no reasons for the family to remain in this country. I accept that a different Tribunal, faced with the same facts, may have reached a different conclusion; however, that is not the point. The judge has reached a conclusion open to her on the evidence and has supported that conclusion by clear and cogent reasoning. She has not given exaggerated weight to certain factors and nor has she given inadequate weight to any factor which may have favoured the family remaining in the United Kingdom. There are no grounds for the Upper Tribunal to interfere with her decision.
10. For the reasons I have given, these appeals are dismissed.

Notice of Decision

11. These appeals are dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 18 November 2017

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeals and therefore there can be no fee award.

Signed

Date 18 November 2017

Upper Tribunal Judge Lane