Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers:
IA/34953/2013

IA/34959/2013
IA/33425/2013
IA/34965/2013
IA/34970/2013
IA/34976/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 26th November 2014	**On 8th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

RAYMOND KWAKU DIDO
MARY AKUA ATTA
RICHMOND KOBLA DIDO
JENNIFER MAWUSI DIDO
LORETTA ESINAM DIDO
KELVIN DODZI DIDO

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr S Muquit, instructed by Chris & Co Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are citizens of Ghana born on 17th September 1963, 6th September 1968, 23rd February 1993, 29th July 1997, 16th May 1995 and

16th June 2001, respectively. They appeal against the determination of the First-tier Tribunal dated 24th July 2014 dismissing their appeals against the Respondent's decision of 26th July 2013 refusing to vary leave to remain under Appendix FM of the Immigration Rules.

2. Permission to appeal was granted by First-tier Tribunal Judge Landes on 13th August 2014 on the grounds that the application was made on 19th June 2012 and the new rules were not applicable following Edgehill [2014] EWCA Civ 402. Therefore, the Judge had erred in his approach by considering the new rules and following Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC), rather than conducting a full proportionality analysis, specifically dealing with the best interests of the children. On 26th September 2014, I found that there was an error of law in the determination of the First-Tier Tribunal and I set the decision aside.

3. I shall refer to the First Appellant as the Appellant and the remaining Appellant's by name. At the hearing, the Appellant submitted an additional statement and further documentary evidence. He gave evidence relying on the statement dated 5th November 2014 as evidence in chief. He was cross-examined and re-examined. Submissions were made by both parties. A record of all the evidence and submissions appears on the court file.

4. In summary, the Appellant's posting with the Ghana High Commission [GHC] in the UK finished in March 2011. He bought his house in the UK in April 2011. He did not return to Ghana at the end of his posting because he was offered another post in the GHC. The Appellant returned to Ghana from March to May 2011 to resign from his military post after 23 years service. He qualified for a pension. He did not surrender his diplomatic passport because he was asked to return to the UK to take up a temporary appointment ending in May 2012. He was lead to believe during his interview that the position would be permanent because he was asked to go to Ghana and retire from the army. He served a probationary period of three months and was then told that he was going to be given a permanent position, but he was just given a letter extending his employment for two months.

5. The Appellant's children had been studying in Ghana prior to coming to the UK and made the transition easily, save for Kelvin who was only six at the time and had just started kindergarten. The Appellant and his wife had half-brothers and sisters living in Ghana. Before he came to the UK, he was living in military barracks and working on a project building a house. He had been out of work for some time and was heavily in debt. He would not realise anything from the sale of his house in the UK.

6. The Appellant stated that local staff, in the GHC, were engaged on a permanent basis and were permanent residents in the UK. He accepted

that he did not have permanent residence, but stated that he was still offered a permanent position. He would not have opted for a temporary position because he still had two years left to serve with the military. He was aware that local staff were permanent residents. The Appellant surrendered his passport to the GHC in the UK.

7. In re-examination, the Appellant stated that he had returned to Ghana on his own. His wife and children had remained in the UK since their arrival on 22nd December 2007. Two weeks before he returned there was a change in personnel and the new deputy high commissioner was not properly briefed. The person who sent the letter terminating his employment was not present at his interview.

8. Mr Walker relied on the refusal letter dated 22nd July 2013 and submitted that the Appellant had come to the UK with the expectation that he would return to Ghana in March 2011. There was documentary evidence to show that he was offered temporary employment ending in May 2012. The Appellant gave evidence that locally employed staff were those who had a right to live in the UK permanently. His expectation must have been that when his employment ended, and his leave expired on 6th July 2012, he would return to Ghana. This had always been his expectation and it was now a matter of choice that he wished to remain here.

9. Unfortunately, the Appellant could not succeed under the Immigration Rules; his children had not been here for seven years. The whole family would return together and there was nothing to show that they would suffer extreme hardship on return. They would have funds to re-establish themselves from the sale of their home and it was open to them to resume their working lives in Ghana.

10. Mr Muquit relied on his skeleton argument and submitted that it was accepted that there would be no interference with family life. Interference with private life was only justified under certain public interest grounds and it was not enough to say that the failure to meet the immigration rules was in the public interest. The weight to be attached to the public interest was low because none of the factors identified in section 117B of the Nationality, Immigration and Asylum Act 2002 [NIA] (as amended) applied in this case. The Appellants had been living in the UK lawfully with no recourse to public funds, no criminal convictions and they could all speak English.

11. It was in the best interests of the younger children to remain in the UK. They had been in the UK for almost seven years and were at a critical point in their education. They would have to adapt to a different education system and it would be difficult to find suitable accommodation. The Appellants' removal was not justified in the circumstances.

Discussion and conclusions.

12. My findings and conclusions are set out below. I have taken into account the documentary evidence in the Respondent's and Appellants' bundles, the witness statements and the oral evidence. I have considered the letters from St Joseph's College, dated 8th October 2014, and Harris Academy, dated 29th September 2014.

13. The Appellants lived in Ghana prior to coming to the UK in 2007. The Appellant had started building a house in Ghana, but it was unfinished. His wife's family and his half-brothers and half-sisters lived in Ghana.

14. The Appellant arrived in the UK in August 2007 and his family joined him on 22nd December 2007. His post with the GHC ended in March 2011, but he continued working there on a temporary basis until May 2012. The Appellants applied for leave to remain on 19th June 2012 and their leave expired on 6th July 2012.

15. I do not accept that the Appellant was offered a permanent post with GHC because his evidence was inconsistent and contrary to the documentary evidence he produced. The Appellant claimed that he was offered a permanent position at his interview in February 2011 and he was asked to resign his post in the military. This was inconsistent with his own evidence, that locally employed staff had permanent residence in the UK, and the letters in the Appellants' bundle at pages 23 and 24. On 8th January 2012, the Appellant was informed of his temporary appointment as an executive officer and on 7th March 2012 his temporary appointment was extended by two months to 10th May 2012.

16. Further, the Appellant stated in his oral evidence that he initially served a probationary period of three months and was then told that he would be made permanent. This was inconsistent with his claim to have returned to Ghana soon after his interview to resign from the military and his claim that he was aware of a change in personnel before he returned.

17. At paragraph 6 of his statement the Appellant claimed that he made his application for permission to remain as a family in June 2012 because he honestly and genuinely believed the GHC would honour its promise to continue to keep him employed. This was inconsistent with the letter dated 28th May 2012 terminating his temporary employment.

18. Accordingly, I find that the Appellant and his family came to the UK on a temporary basis with no legitimate expectation that they would be able to remain here beyond their leave, which expired in July 2012. The Appellants could not satisfy the Immigration Rules at the date of application, decision or at the date of hearing. The Appellants were not prejudiced by the Respondent's delay in refusing the application in July 2013.

19. It was agreed by the parties that the Appellants could not satisfy the Immigration Rules. There would be no interference with family life because the Appellants would be returned as a family unit. The minor Appellants had been in the UK for almost seven years and were settled in school. Removal to Ghana would interfere with their private life and I

find that the consequences were of such gravity so as to engage Article 8.

20. The decision to remove the Appellants was in accordance with the law and necessary in a democratic society in the interests of immigration control and the economic well being of the country. I am not persuaded by Mr Muquit's submission that this stage of the Razgar test was not satisfied because the Appellants had not relied on public funds and a failure to satisfy the Immigration Rules did not mean the decision was in accordance with the law. In Shahzad (Article 8: legitimate aim) [2014] UKUT 00085 (IAC), the Tribunal held that immigration control can be assumed to be an aspect of 'economic well being of the country'. The Appellants had been refused leave to remain because they could not satisfy the Immigration Rules and the removal decision was a lawful one.

21. In Nasim (Article 8) [2014] UKUT 00025 (IAC), the Tribunal held that a person's human rights were not enhanced by not committing criminal offences or not relying on public funds. The only significance of such matters concerning a removal from the UK was to preclude the Secretary of State from pointing to any public interest justifying removal, over and above the basic importance of maintaining a firm and coherent system of immigration control.

22. The points raised by Mr Muquit in his submissions are relevant in so far as set out in Nasim. None of the factors identified in Section 117B NIA 2002 applied in this case, save that the maintenance of effective immigration control was in the public interest. The issue in this case is proportionality and I must balance the private life rights of the Appellants with the public interest.

23. I have considered the cases of Azimi-Moayed and others (decisions affecting children: onward appeals) [2013] UKUT 00197 (IAC); Zoumbas v Secretary of State for the Home Department [2013] UKSC 74; and EV (Philippines) and Others v SSHD [2014] EWCA Civ 874. The best interests of the children, Jennifer and Kelvin, are a primary consideration and they must not be blamed for matters for which they are not responsible, such as the conduct of a parent.

24. In Azimi-Moayed, the Tribunal held:
    (i) As a starting point it is in the interests of children to be with both their parents and if both parents are being removed from the UK then the starting point suggests that so should dependant children who form part of their household unless there are reasons to the contrary;
    (ii) It is in the interests of children to have the stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong;
    (iii) Lengthy residence in a country other than the state of origin can leave to the development of social, cultural and educational ties that it would be inappropriate to disrupt, in the absence of a

compelling reason to the contrary. What amounts to lengthy residence is not clear cut, but past and present policies have identified seven years as a relevant period;

(iv) Apart from the terms of published policies and rules, the Tribunal notes that seven years from the age of four is likely to be more significant to child than the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable;

(v) Short periods of residence, particularly ones without leave or with the reasonable expectation of leave to enter or remain, while claims are promptly considered, are unlikely to give rise to private life deserving of respect in the absence of exceptional factors. In any event, protection of the economic well being of society amply justifies removal in such cases.

25. In EV (Philippines) the Court of Appeal set out the factors to be taken into account and held that the Tribunal was concerned with how emphatic an answer falls to be given to the question: is it in the best interests of the child to remain in the UK? The longer the child has been here, the more advanced or critical the stage of his education, the looser the ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that falls on one side of the scales. If it is overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast, if it is in the child's best interests to remain, but only on balance (with some factors pointing the other way), the result may be the opposite.

26. In the balance on the other side there falls to be taken into account the strong weight to be given to the need to maintain immigration control in pursuit of the economic well being of the country and the fact that the applicants have no entitlement to remain. The immigration history of the parents may also be relevant.

27. Kelvin is 13 years old and has been in the UK almost seven years. He has completed his primary school education and is currently in year 9 at secondary school. He has a good attendance record and is working at a good standard in all subjects. He has a positive attitude to education and is likely to do well in his exams in the future. His head teacher is of the view that he would find it difficult to move schools at this stage and settle in a new environment.

28. Kelvin attended kindergarten in Ghana prior to coming to the UK. He took some time to adapt to the education system in the UK and would have to re-adapt to a new school in Ghana. There would be no linguistic, medical or other difficulties in adapting to life in Ghana. I accept that he would find it difficult to move schools. I find that Kelvin may well take time to re-adjust to school in Ghana, but his educational development, progress and opportunities would not be affected. He is not at a crucial stage of his education such that he could not overcome the disruption to

his current schooling and continue his education in Ghana. It is in his best interests to remain with his parents.

29. Jennifer is 17 years old and has been in the UK since she was 10. She has completed her secondary school education and is currently in her last year of A levels. She has contributed widely to life at Harris Academy and she is respected by her teacher and her peers. She is at a crucial stage of her education. She adapted well to the education system in the UK and there were no linguistic, medical or other difficulties in adapting to life in Ghana. It is in her best interests to remain in the UK to complete her A levels. Once completed she intends to study at university. There is nothing preventing her from doing so in Ghana or elsewhere. Her university education is not dependant on her remaining in the UK after completion of her A levels. She wishes to pursue a career in midwifery. Her educational development and progress would not be affected in the long term. It is also in her best interests to remain with her parents.

30. Richmond was working as an apprentice technician on a three-year fixed term contract until 7th August 2014. The undated letter from Robins & Day stated that he may be offered an extension to his current contract. He wished to study mechanical engineering at university.

31. Loretta was also undergoing an apprenticeship and had been offered a place at Swansea University to study chemical engineering. She has made many friends in the UK and a return to Ghana would have a negative effect on her social life.

32. Mary (their mother) was working as a kitchen associate for Wetherspoons and was supporting the family with the assistance of Richmond because the Appellant was unable to work.

33. The Appellants would have to sell their home in the UK. The Appellant claimed, in his oral evidence, that he was in debt and would not profit from the sale. However, he had started building a house in Ghana and he could seek employment there. He stated that he qualified for an army pension. There was insufficient evidence before me to show that the adult Appellants could not gain employment on return to Ghana and support the family financially. The Appellants had family in Ghana and there was insufficient evidence to show that they could not assist the Appellants in finding accommodation.

34. Looking at all the evidence in the round, I find that it is in the best interests of Jennifer and Kelvin to remain with their parents. I find that it is in Jennifer's best interests to remain in the UK to complete her A levels. Notwithstanding, I find that Jennifer's and Kelvin's best interests are outweighed by the public interest in this case.

35. The Appellants came to the UK on a temporary basis and had no legitimate expectation that they would be able to remain. They did not leave the UK when the Appellant's employment with the GHC ended and

their leave expired. Instead, they made an application for leave to remain, which could not succeed under the Immigration Rules, and subsequently Jennifer started her A level course. The disruption to the education of Kelvin and Jennifer, even at this crucial stage for Jennifer, and the effect on the family as a whole does not outweigh the public interest.

36. Therefore, having regard to all the circumstances of the case, I find that the Appellants can re-establish themselves in Ghana. They have the ability to support themselves financially and to obtain accommodation. Kelvin and Jennifer can continue their education in school or at university. Their parents can seek employment and Richmond and Loretta can pursue their chosen careers.

37. Accordingly, I find that the decision to remove the Appellants to Ghana is proportionate to the legitimate public end sought to be achieved, according to the principles set out in Huang v The Secretary of State for the Home Department [2007] UKHL 11.

38. The decision of the First-tier Tribunal is set aside and remade as follows: The Appellants' appeals against the decisions to remove them to Ghana are dismissed.

Deputy Upper Tribunal Judge Frances
5th December 2014