



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/24987/2012

THE IMMIGRATION ACTS

Heard at Field House
On 17th February 2014

Determination Promulgated
On 19th February 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR BOSSMAN MANTE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Kouma (Afro-Asian Advisory Service)

For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Miller) by which, in a determination promulgated on 27th November 2013, he dismissed his appeal against the Entry Clearance Officer's decision to refuse him leave to enter the UK as the spouse of a person present and settled in the UK.

2. The background facts to this appeal are that the Appellant, a citizen of Ghana, came to the UK as a student in September 2003 with leave until 2007. The Sponsor, who was a citizen of the Ivory Coast came to the UK in May 2005 and claimed asylum. Her asylum application was refused but she remained in the UK.
3. In July 2006 the Appellant the Sponsor met and in September 2007 their daughter was born in the UK. They lived together from October 2007. The Appellant was then granted further leave to remain under the International graduate scheme but an extension of that leave was refused in May 2009. The Appellant thereafter returned to Ghana (August 2009). The couple's son was born in January 2010 in the UK. In December 2010 the Sponsor was granted indefinite leave to remain under the legacy policy. In November 2011 the children were registered as British citizens and in September 2012 the Sponsor became a British citizen.
4. Since 2009 when the Appellant returned to Ghana he has returned once to the UK as a visitor during which time the couple married. The Sponsor and the children have visited Ghana once.
5. The Appellant sought entry to the UK as a spouse. That application was refused in November 2012 and it is the appeal against that decision that was before the First-tier Tribunal.
6. The Sponsor had put forward various documents claiming that she had sufficient income to support the Appellant as well as herself and the children but that was found to be without substance or credibility by the First-tier Tribunal. The application was refused by the Entry Clearance Officer on the basis of finance and the Judge similarly found that they could not meet the financial requirements of the Rules.
7. Before me there was no challenge to that finding.
8. The First-tier Tribunal considered Article 8 and dismissed the appeal on that ground also and it was that decision that was challenged before me. The sole basis of the challenge was that the Judge had failed to give adequate consideration to the best interests of the two British children in this case.
9. I find that the First-tier Tribunal did not make a material error of law in its consideration. The Judge clearly had in mind the importance of the children's best interests and the fact that they were British children. He said in terms at paragraph 30 that if the family unit in this case consisted simply of the Appellant and his Sponsor he would have had no difficulty at all in concluding that this claim failed under the Immigration Rules and that there were no exceptional circumstances which warranted it being allowed outside the Rules. The Judge noted the Appellant's claim to be managing director of a company involved in the publication of marketing magazines and event management in Ghana and noted that he appeared to be well settled there. He noted that as far as the Sponsor was concerned she had originally come from the Ivory Coast and in relation to that country her asylum claim was rejected. She was granted ILR and thereafter British citizenship under the legacy

provisions and the Judge therefore did not accept that she would not be able to return to the Ivory Coast or Ghana. The Sponsor's status was precarious when she entered the relationship with the Appellant.

10. However, the Judge recognised at paragraph 31 that there were two children in the case whose interests must be considered. He noted that they were aged respectively six and three years and were now British. He said that he had no reason to doubt having read the school letters and reports that they enjoy school and have friends as most children of their ages do. However, the Judge noted that what is by far and away the most important matter to them is that they should be with their parents. This could be achieved if the Sponsor decided to go to Ghana and join the Appellant. The judge also noted that the Appellant returned to Ghana as long ago as 2009 returning only once as a visitor in 2012 when he married the Sponsor. The couple then spent time together in Ghana in 2012 and the judge noted that as a result the contact that the children had had with their father had been strictly limited. The Judge found that should the Sponsor decide not to join the Appellant in Ghana then the relationship the children had with their father would continue as it has thus far and he concluded, even recognising the fact that the children are now British, the circumstances were such that the Respondent's decision was not disproportionate.
11. It is quite clear that the Judge gave significant importance to the fact that there are two children in the case and what is more that the children are British. He made a finding as to the children's best interests being that they should be with both their parents and that this could be achieved by the Sponsor moving to Ghana. If she chose not to that then the family life enjoyed with the father would continue in future as it has done thus far. The fact remains in this case that the Appellant and Sponsor are a very long way from meeting the requirements of the Rules. This is an entry clearance case. As soon as the Appellant can bring himself within the requirements of the Immigration Rules he can enter the UK to join his family.
12. I can discern no error of law in the First-tier Tribunal's reasoning. The appeal to the Upper Tribunal is dismissed.

Signed

Date 17th February 2014

Upper Tribunal Judge Martin