Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/44482/2014
IA/44488/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 13 November 2015	**On 20 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A B
P A-K
(ANONYMITY ORDER MADE)

Respondents

Representation:
For the Appellant: Mr S Kandola (Home Office Presenting Officer)
For the Respondent: Mr S Karim (Menson Associates Solicitors)

DECISION AND REASONS

1. These are the appeals of A B (born 3 July 1974) and her daughter P A-K (born 16 September 2006), both citizens of Ghana, against the decisions of 20 October 2014 to make removal directions against them under section 10 of the Immigration and Asylum Act 1999 having refused their applications for leave to remain on human rights grounds.

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2. A is the daughter of P, and the application was made on the basis that the former had lived in the United Kingdom all her life, and was in education here, the country where all her family and social ties were established, given her mother's limited connections in Ghana having coming here on 11 June 2002; her natural father had died before she left the country. They lived here with the First Appellant's mother, stepfather and sister. Their application had been made on 22 April 2014 and was refused on 13 June 2014, without the right of appeal, but subsequently following judicial review proceedings it was agreed by consent that the decisions would be reconsidered. Upon the re-refusal of the applications, removal directions were issued, so ensuring a right of appeal.

3. The First-tier Tribunal assessed the evidence before it, accepting the core facts underlying the human rights claim which were in any event unchallenged by the Secretary of State, and finding that P had progressed well with her schooling, lived in a family unit with various close female relatives, and had no contact with her natural father; there were no immediate relatives living in Ghana and the family owned no property there.

4. Applying the criteria set out in section 117B of the Nationality Immigration and Asylum Act 2002, the First-tier Tribunal noted that A had deliberately overstayed, she and her mother having freely admitted as much, and noted this weighed in the balance, rendering her presence precarious. She spoke English well and her previous work as a care assistant boded well for her prospects of financially supporting herself.

5. Directing itself that sub-section 117B(4) meant that little weight should be afforded A's relationship with her mother who was a British citizen and thus a qualifying partner, it went on to find that there was family life between mother and daughter and that P was a qualifying child, given that her best interests militated against her removal from a settled school environment to more difficult living conditions abroad. There would be a real lack of financial support if mother and daughter had to rely on remittances from their relatives here, because whereas in the United Kingdom the family unit's three salaries were sufficient to ensure they lived together very economically, sharing housing and food costs, it would require significantly greater sums of money to re-establish and maintain them abroad. Thus their removal was contrary to the public interest as expressed in section 117B(6). At the date of application P had lived here for more than seven years, a period of residence which had been identified by Parliament as a substantial and important benchmark of integration here.

6. As A was solely responsible for her child's upbringing and had sole parental responsibility for her, and whilst here in breach of immigration laws was nevertheless the parent of a seven-year resident child whose removal she had found unreasonable, she qualified under the Immigration Rules addressing eligibility for limited leave to remain as a parent.

7. Grounds of appeal contended that the *ratio* of *Azimi-Moayed* had not been fully understood by the First-tier Tribunal, which had cited it without regard to the fact that P had not lived here for seven years after the age of four, and had given inadequate reasons for why the disruption caused to P's education trumped the interests of immigration control. Furthermore it had overlooked the fact that the claim by the adults that they could not support the Appellants abroad amounted to a choice by them as to their relatives' place of residence: the judge should have considered whether it was objectively reasonable for the family here to withhold support. Additionally the decision had not made it clear whether the appeal was being allowed wholly under the Immigration Rules or under Article 8 ECHR beyond those Rules.

Findings and reasons

8. The Immigration Rules provide, materially, that:

> "**Requirements to be met by an applicant for leave to remain on the grounds of private life**
>
> **276ADE**. The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant: …
>
> (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; or ….
>
> **Appendix FM**
>
> **EX.1.** This paragraph applies if
>
> (a) (i) the applicant has a genuine and subsisting parental relationship with a child who-
>
> (aa) is under the age of 18 years, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;
>
> (bb) is in the UK;
>
> (cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application; and
>
> (ii) it would not be reasonable to expect the child to leave the UK; …
>
> **Section E-LTRPT: Eligibility for limited leave to remain as a parent**

E-LTRPT.1.1. To qualify for limited leave to remain as a parent all of the requirements of paragraphs E-LTRPT.2.2. to 5.2. must be met.

Relationship requirements

E-LTRPT.2.2. The child of the applicant must be-

(a) under the age of 18 years at the date of application, or where the child has turned 18 years of age since the applicant was first granted entry clearance or leave to remain as a parent under this Appendix, must not have formed an independent family unit or be leading an independent life;

(b) living in the UK; and

(c) a British Citizen or settled in the UK; or

(d) has lived in the UK continuously for at least the 7 years immediately preceding the date of application and paragraph EX.1. applies.

E-LTRPT.2.3. Either-

(a) the applicant must have sole parental responsibility for the child or the child normally lives with the applicant and not their other parent (who is a British Citizen or settled in the UK);or

(b) the parent or carer with whom the child normally lives must be- (i) a British Citizen in the UK or settled in the UK;

(ii) not the partner of the applicant (which here includes a person who has been in a relationship with the applicant for less than two years prior to the date of application); and

(iii) the applicant must not be eligible to apply for leave to remain as a partner under this Appendix.

E-LTRPT.2.4.

(a) The applicant must provide evidence that they have either- (i) sole parental responsibility for the child, or that the child normally lives with them; or

(ii) direct access (in person) to the child, as agreed with the parent or carer with whom the child normally lives or as ordered by a court in the UK; and

(b) The applicant must provide evidence that they are taking, and intend to continue to take, an active role in the child's upbringing."

9. Given the finding by the First-tier Tribunal that P's departure from the United Kingdom would be unreasonable, she satisfies Rule 276ADE(iv).

There is no error of law identifiable within the reasoning of the First-tier Tribunal as to it being unreasonable for her to relocate away from her relatives here. It is true that in *Azimi-Moayed and Others (decisions affecting children; onward appeals)* [2013] UKUT 197 (IAC) the Tribunal stated that “seven years from age four is likely to be more significant to a child than the first seven years of life”, but that must be read in the context of the other guidance found in the headnote, that

> “It is generally in the interests of children to have both 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.
>
> Lengthy residence in a country other than the state of origin can lead to development of social, cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary.”

10. The First-tier Tribunal clearly accepted that the lengthy residence of the child in a family unit composed of several close female relatives, as well as her educational prospects, represented the ties with which interference would be disproportionate so rendering relocation abroad unreasonable. It was entitled to find that the best interests of P pointed strongly in favour of her remaining here in a family unit which could afford to secure her welfare in this country but might well struggle to do so if she and her mother had to sustain a separate household unit abroad. Those findings are perfectly compatible with the guidance given by Christopher Clarke LJ in *EV (Philippines)* [2014] EWCA Civ 874:

> “35. A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.”

11. In this appeal the First-tier Tribunal gave clear reasons for its conclusions, wholly consistent with *EV (Philippines)* in relation to age, length of residence, the stage of education reached and the ties in the United Kingdom and the consequences of breaking those ties; there were no relevant considerations left out of account. It was therefore perfectly appropriate to conclude that P’s removal would be incompatible with Rule 276ADE(iv), and that, in turn, A qualified under the parent route within Appendix FM as the sole parental carer taking an active role in the upbringing of a child to whom the exception in the Appendix (which essentially mirrors the criteria in Rule 276ADE(iv)) applied.

12. True it is that the First-tier Tribunal made reference to the statutory public interest factors found in section 117 of the NIAA 2002, which are apposite to a consideration of a case conducted wholly outside the Rules, but that does not detract from the fact that the findings it made clearly

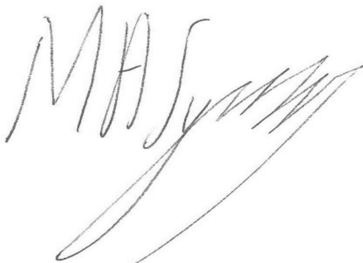
established that both Appellants could succeed within the Rules themselves.

13. I find no error of law in the decision of the First-tier Tribunal which accordingly stands.

Decision:

The making of the decision of the First-tier Tribunal contains no error of law.

The appeal is dismissed.



Signed: Date: 13 November 2015
Deputy Upper Tribunal Judge Symes