IAC-FH-NL-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)**

Appeal Numbers: IA/40757/2014
IA/40761/2014
IA/40762/2014
IA/40763/2014
IA/40764/2014

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 9 February 2016** | **On 3 March 2016** |

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**BBB**
**PAB**
**DF**
**B N F K B**
**K Y A J B**
**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellants: Mr J Collins, Counsel instructed by Kilic & Kilic Solicitors
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

**DECISION AND REASONS**

1. This are appeals against the decisions of Judge of the First-tier Tribunal B A Morris who, in a decision dated 24 July 2015, dismissed the various appeals brought against the decisions of the respondent dated 25 September 2014 refusing the appellants' human rights applications for leave to remain in the United Kingdom.

**Relevant Background**

2. The appellants are nationals of Ghana. The 1st appellant's date of birth is 21 July 1973. His wife, who is identified in the determination as the third appellant, was born on 5 May 1979. The couple have three children, the second, fourth and fifth appellants and they were born in February 2006, February 2010 and February 2007. At the date of the hearing before the First-tier Tribunal they were 5 years old, 8 years old and 9½ years old.

3. The 1st appellant claims that he entered the United Kingdom on 26 May 2001. There was no evidence of his entry. In any event, he remained unlawfully thereafter. The 3rd appellant entered the United Kingdom in 2003 and she remained in the country unlawfully. The 1st and 3rd appellants began a relationship and the three children were born out of this relationship. It is not in dispute that the children have remained in the United Kingdom all their lives and have always lived with their parents.

4. The respondent's decision of 24 September 2014 considered and refused applications made by the appellants for leave to remain under Appendix FM, paragraph 276ADE and on an exceptional basis outside of the Immigration Rules and Article 8.

5. In the appeal before the First-tier the appellants were represented, as they are today, by Mr Collins of Counsel. He provided a skeleton argument to the First-tier Tribunal and there was a bundle running to some 152 pages. Mr Collins called no oral evidence and the hearing proceeded by way of submissions.

6. The thrust of Mr Collins's submissions before the First-tier Tribunal, as recorded at paragraph 7 of the decision, was that it was unreasonable for the two eldest children to leave the United Kingdom bearing in mind their length of residence and their ages. Mr Collins referred the First-tier Tribunal to various school documents demonstrating, according to the First-tier judge, that the children were doing well. Mr Collins referred to the case of **Azimi-Moayed [2013] UKUT 00197**. He submitted that the children only spoke English. They knew nothing of Ghana and knew only the United Kingdom.

7. The judge's reasoning is contained in her decision between paragraphs 12 and 14. At paragraph 12 the judge made the observation that the children were well cared for by their parents. The judge found that there was no evidence that the children were suffering from any ill-health, although there was some evidence that the fourth appellant had been diagnosed with what was referred to as an innocent heart murmur in September 2014. The judge noted the absence of any evidence

that the parents could not or would not continue to provide appropriate care to each child whether it be in the United Kingdom or Ghana. There was no evidence before the First-tier Judge that the children were not aware of their Ghanaian culture and, at the end of paragraph 12, the judge found that it was in the best interests of each child that they should continue to be cared for by their parents, be that in Ghana or in the United Kingdom. At paragraph 13 the judge noted that the oldest children had lived continuously in the United Kingdom for at least seven years and correctly identified that the issue to be decided was whether or not it would be unreasonable to expect them to leave the United Kingdom.

8. At paragraph 14 the judge made reference once again to the nursery and school reports and concluded that the children were making good progress and that they had engaged with their peer group. The judge stated:

> "There was no evidence before me to show that these children would not integrate into the Ghanaian education system with the help and support of their parents. There was also no evidence before me to show that these children would not integrate into Ghanaian society with the help and support of their parents."

9. The judge noted the assertion that the children only spoke English but found, given that the first appellant had used the services of a Twi interpreter, that the parents would be able to provide help and support to the children to enable them to learn the language of the country of which they were nationals. The judge specifically indicated that she had taken into account the case of **Azimi-Moayed** which, amongst other things, noted that seven years residence in a country from the age of 4 was likely to be more significant to a child than the first seven years of his or her life. The judge consequently dismissed the appeal.

**The Grounds of Appeal**

10. The grounds, also settled by Mr Collins, indicated that, given the ages of the children, and in particular the oldest two children, their length of residence in the United Kingdom and the supporting documentation relating to their education and their social and cultural ties, it was manifestly unreasonable to expect them to leave the United Kingdom and that the judge had acted unreasonably in so concluding. At paragraphs 9 to 11 the grounds contend that the judge's conclusions were effectively bereft of adequate reasoning. The grounds maintain that the First-tier Tribunal Judge failed adequately to engage with or to consider the effect of uprooting the children from a settled life in the United Kingdom and removing them to a country with which they were entirely unfamiliar and did not even know the language. I pause at this point to take judicial notice of the fact that English is the official language of Ghana and is in fact the *linga franca* in Ghana. It was also argued that the judge failed to adequately apply Section 55 of the Borders, Citizenship and Immigration Act 2009 and the principles enunciated in the case of **Azimi-Moayed**.

11. Mr Collins, in admirably brief and focused submissions, indicated that the principal issue before the judge was the effect of uprooting the children and, to this extent, the determination did not adequately take into account their various ties including education, cultural and social ties. It was submitted that if one had regard to the educational reports these were sufficient to show, albeit in an indirect manner, the negative impact on the children.

**Discussion**

12. The essential heart of the challenge to the lawfulness of the First-tier Tribunal decision is that the judge was not lawfully entitled to conclude that it was reasonable for the two eldest children, who had lived in the United Kingdom in excess of seven years, to be expected to relocate having regard to their personal circumstances. It is said that the judge failed to provide adequate reasoning or failed to take into account relevant circumstances or apply relevant authority, and so reach a decision that was irrational. I remind myself of the scope for intervention of an Appellate Tribunal in cases of this kind. It has not been suggested that the judge failed to ask herself the correct question. One can see from paragraph 13 of the determination that the judge had well in mind the principal issue in the proceedings before the First-tier Tribunal and the Upper Tribunal i.e. the reasonableness of the children having to leave the United Kingdom.

13. The test for perversity or irrationality is whether the decision under appeal is one which no person acting judicially or properly instructed on the relevant law could reasonably have made. I additionally remind myself that decisions in human rights cases are about the outcome rather than the anterior decision-making process. It is argued that the judge had not made adequate findings on the impact of the removal. But there was little probative evidence of the impact of the removal on the children before the First-tier Tribunal. The grounds do not identify any particularised impact or consequence on the children that the First-tier Tribunal judge failed to consider, or in respect of which she failed to refer. The skeleton argument that was before the First-tier Tribunal judge was, with respect, equally bare. None of the statements that were before the First-tier Tribunal judge described the impact on the children other than to assert that removal would amount to a great interruption. There was I find, a fatal lack of particularisation or detail in respect of the impact that removal would actually have on the children. Nor was any oral evidence called at the hearing. There was therefore very limited information before the judge to enable her to consider the impact and consequences of removal. There were letters of support contained in the appellant's bundle from, *inter alia*, GF, who was the children's uncle, from a JN and from PF, CF and RF, and from other friends, but none of those spoke of the impact on the children of removal.

14. The evidence of education consisted of awards, certificates and school reports, and Mr Collins drew my attention today to the school reports. The First-tier Tribunal

Judge did take into account this evidence. This is clear from paragraph 14 of the decision. The judge also took into account the relevant medical evidence relating to the fourth appellant. In any event, the judge was fully entitled to find that the appellants would be able to ease their children's integration into Ghanaian society. The judge made a decision on the basis of the evidence that was presented to her. She was rationally entitled to her conclusion. The judge clearly stated that she took account of the best interests of the children under Section 55 of the Borders, Citizenship and Immigration Act 2009 and this is clear from paragraph 9 of the decision. At the end of paragraph 12 the judge found that the best interests of the children were to remain with their parents. In so doing, the judge also correctly applied the principles enunciated in **Azimi-Moayed,** contrary to the settled grounds. The first head note of **Azimi-Moayed** reads, "*As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary*." The judge was entitled to find that this applied squarely to the appellants. Headnote (iv) of the same case indicates, "*Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child that the first seven years of life*." The two oldest children had not lived in the United Kingdom for 7 years from the age of 4.

15. In the absence of any particularised or cogent evidence describing the adverse impact on the children of their proposed removal, and given the support that the children's parents would undoubtedly provide to them, I am satisfied that the decision was one that the First-tier Tribunal was reasonably entitled to reach and that it is not infected by any material error of law.

**Notice of Decision**

16. **The 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 appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

01 March 2016

Signed Date

Upper Tribunal Judge Blum

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

01 March 2016

Signed Date

Upper Tribunal Judge Blum