IAC-AH-DN-V2

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/49593/2014
IA/49596/2014
IA/49604/2014
IA/49608/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th January 2016	**On 17th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MS WINIFRED AHENKAN – FIRST APPELLANT
MR EMMANUEL NANA APPIAGYEI – SECOND APPELLANT
K A – THIRD APPELLANT
J A – FOURTH APPELLANT
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Doyle, Counsel
For the Respondent: Mr Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Ghana. The first Appellant was born on 23rd July 1988. The second Appellant who was born on 29th September 1981 is her partner and the third and fourth Appellants are their minor children.

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The first Appellant applied in March 2004 for an EEA residence document as a non-EEA dependant and this was issued and valid until 20th May 2009. An application by the first Appellant for an EEA residence card was refused on two subsequent applications and on 3rd June 2013 a further application was made by the first Appellant for leave to remain on the basis of her family and private life with the second to fourth Appellants. This was refused on 16th July 2013 and following a reconsideration of the application the original decision to refuse was maintained by Notice of Refusal dated 20th October 2014.

2. The Appellants appealed and the appeal came before Immigration Judge Majid at Taylor House on 12th June 2015. In a determination promulgated on 17th June 2015 the Appellants' appeal was allowed under Article 8 of the European Convention of Human Rights.

3. On 1st July 2015 the Secretary of State lodged Grounds to Appeal to the Upper Tribunal. On 15th September 2015 First-tier Tribunal Judge Davies granted permission to appeal. Judge Davies stated that the decision was wholly inadequate and that the judge appeared to have totally ignored "the legal requirements stipulated by immigration law" that he makes reference to in paragraph 22 of his decision. Further the judge had not addressed his mind to Article 8 whatsoever and has made no reference to the public interest considerations set out in Section 117B of the Nationality, Immigration and Asylum Act 2002. Further the judge fails, he contends, to make it clear what law he is applying or on what evidence he has made his findings. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. A lengthy Rule 24 response appears to have been lodged by the Appellants' solicitors. I note that this is an appeal by the Secretary of State but for the purpose of continuity throughout the appeal process Ms Ahenkan and her family are referred to herein as the Appellants and the Secretary of State is the Respondent.

Submissions/Discussion

4. I am considerably assisted in this matter by the concessions made both by Mr Doyle and by the Appellants' instructed solicitors in their detailed Rule 24 response. It is accepted that the Appellants cannot succeed in their appeals under the provisions of Appendix FM. I am referred to paragraphs 25 and 26 of the Rule 24 response. They invite the Tribunal that if it is not in agreement with the submissions to consideration of Article 8 outside the Immigration Rules then the Tribunal is invited to consider remitting the matter back to the First-tier Tribunal to be heard afresh.

The Law

5. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational

conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

6. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

7. I concur with the views expressed by both legal representatives that there can be no dispute that the judge at the First-tier Tribunal has materially erred in law in allowing the Respondent's appeal by not first considering their cases thoroughly through the provisions of the relevant Immigration Rules and then under Section 117B of the Immigration Act. The decision lacks any constructive analysis and quite simply fails to address the relevant necessary considerations. In such circumstances it is quite clear that the errors are material and I endorse the view that the appropriate step is to remit the matter back to the First-tier Tribunal for re-hearing and directions relating thereto are given below.

Decision

8. The decision of the First-tier Tribunal contains material errors of law and is set aside. Directions for the re-hearing of this matter are given below.

   (1) A finding is made that there is a material error of law in the decision of the First-tier Tribunal Judge. The decision is set aside and none of the findings of fact are to stand.

   (2) The matter is remitted back to the First-tier Tribunal for re-hearing of the Appellants' appeal under Article 8 of the European Convention on Human Rights.

   (3) The matter be remitted to Taylor House to be re-heard on the first available date 28 days hence with an ELH of two hours.

(4) That the re-hearing of the appeal be before any Immigration Judge other than Dr Majid.

(5) That there be leave to either party to serve and file an up-to-date bundle of evidence upon which they intend to rely at the Tribunal at least fourteen days prior to the restored hearing.

(6) That it is recorded that no interpreter is required.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris