



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/16863/2016
HU/16889/2016
HU/16896/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 20 July 2018

Decision and Reasons Promulgated
On: 27 July 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

THEODORA [A]
[C Y]
[E Y]
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Akohene of Afrifa and Partners Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, citizens of Ghana, are a mother and her two children. They have been given permission to appeal against the decision of First-tier Tribunal Judge Carlin dismissing their appeals against the respondent's decision to refuse their human rights claims.

2. The first appellant entered the UK on 22 July 2004 on a visit visa and overstayed. She made a human rights claim eight years later, on 22 July 2012, naming her children as her dependants. On 9 August 2013 her claim was refused with no right of appeal. On 15 April 2015 she made a further human rights claim. By that time she had four children, [CY] born on 20 December 2008, [EY] born on 15 December 2010, [B] born on 16 January 2013 and [P] born on 16 September 2015. The appellant's claim was based on her family life with her partner, [EY], and her four children, as well as her private life in the UK.
3. The respondent refused the appellant's claim in a decision dated 24 June 2016. It was not accepted that she was in a genuine and subsisting relationship with her claimed partner and it was not accepted that she could meet the eligibility requirements in Appendix FM as a parent. It was accepted that the eldest child [CY] had resided in the UK for over seven years but it was not accepted that it would be unreasonable to expect her to leave the UK and return to Ghana with her family. The respondent concluded that the appellant could not meet the requirements of Appendix FM or paragraph 276ADE(1) of the immigration rules on family and private life grounds and considered there to be no exceptional or compelling circumstances justifying a grant of leave outside the rules.
4. The appellant's appeal was heard by First-tier Tribunal Judge Carlin on 20 October 2017 and was dismissed in a decision promulgated on 29 November 2017.
5. The judge did not accept that the appellant was in a genuine and subsisting relationship with [EY] as her own evidence was that she had not lived with him since around November 2012 and that she did not know where he currently lived. The judge did not accept that he was in the UK. The judge considered that there were no very significant obstacles to the appellant's integration in Ghana. The judge considered the eldest child [CY] who had been in the UK for more than ten years by that time but concluded that it would not be unreasonable to expect her to leave the UK. The judge found that the requirements in Appendix FM and paragraph 276ADE(1) were not met and he went on to consider Article 8 outside the rules, concluding that the respondent's decision was proportionate.
6. Permission to appeal to the Upper Tribunal was sought by the appellant on the grounds that the judge had failed to consider the wider implications of the children having to leave the UK, that he had taken into account an illegitimate consideration, namely the cost of the children's education in the UK, and that he had failed to look at the family members individually as well as collectively pursuant to the decision in PD and Others (Article 8 : conjoined family claims) Sri Lanka [2016] UKUT 108.
7. Permission was granted on 1 May 2018 on the grounds that the judge had arguably erred by relying on the cost of education for the children and that the judge had failed to consider the reasonableness of returning the second appellant in the context of her family's circumstances in the round.

Appeal Hearing

8. At the hearing before me, the parties made submissions.

9. Mr Akohene expanded upon the grounds of appeal. He submitted that the judge had taken account of an irrelevant consideration, namely the cost of the children's education. He relied on the decision in MT and ET (child's best interests; ex tempore pilot) Nigeria [2018] UKUT 88 in submitting that the judge had erred by failing to consider the children's situation in the round, beyond the matter of their education, and failed to identify any powerful reasons why the children should have to leave the UK. Mr Akohene submitted that the eldest child satisfied the requirements of paragraph 276ADE(1)(iv) of the immigration rules and that the rest of the family should be granted leave in line with her.

10. Mr Lindsay submitted that the cost of education was found in EV (Philippines) & Ors v Secretary of State for the Home Department [2014] EWCA Civ 874 to be a relevant factor. As regards the second ground, that was a rationality challenge which had not been made out. The judge had regard to all relevant matters. The evidence before the judge was limited and there was nothing to show that the appellants would be without support in Ghana. He referred to the case of MA (Prove Destitution) Jamaica CG [2005] UKIAT 00013 in that regard.

Consideration and findings

11. The appellant's grounds of appeal are, in my view, without any merit.

12. As Mr Lindsay pointed out in his submissions, and which Mr Akohene did not dispute, Lord Justice Lewison specifically referred at [61] of EV (Philippines) to the cost to the public purse of providing education to children as being a relevant consideration. Accordingly the judge did not err in law in taking that into account. Clearly it was a relevant consideration in assessing proportionality and the public interest factors.

13. As for the second ground, it seems to me that the judge's decision in regard to the reasonableness of expecting the qualifying child, [CY], to leave the UK, was not simply confined to a consideration of her access to education in Ghana, as the grounds assert, but took account of all other relevant matters and involved a full and rounded assessment of the family's circumstances. The judge gave careful consideration to the children's circumstances in the UK and on return to Ghana when assessing where their best interests lay and, having found at [33] that it was in the best interests of the children to live with their mother whether that be in the UK or Ghana, he then went on to consider the question of reasonableness of leaving the UK on the basis of a wider consideration of the family's situation as a whole. He considered [CY]'s circumstances in particular at [18] and [36] to [37]. At [38] to [43] the judge considered the other child appellant [EY], the children's health and the appellant's own health concerns. The grounds of appeal do not suggest what other evidence there was before the judge which had not been considered and which could

possibly have suggested that it would be unreasonable for [CY], or for the family as a whole, to return to Ghana.

14. I have considered the decision in MT upon which Mr Akohene relied. The decision in that case came out subsequent to the appellant's appeal and therefore the judge cannot be criticised for failing to expressly address the case. However, and in any event, I see nothing in that case to undermine the findings and conclusions reached by the judge. All relevant matters were considered by the judge on the basis of the very limited evidence before him and his approach to the interests and circumstances of the children and the family as a whole was entirely consistent with the relevant caselaw. The judge gave full consideration to the reasons presented as to why the eldest child [CY] should not be required to leave the UK and also considered the reasons why she should be removed and was fully and properly entitled to conclude his proportionality assessment on the basis that he did.

15. For all of these reasons I find no merit in the grounds of appeal. The judge's findings and conclusions took account of all the evidence, were supported by cogent reasoning and were entirely open to him on the evidence before him. Accordingly I find no errors of law in the judge's decision. I uphold the decision.

DECISION

16. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed 
Upper Tribunal Judge Kebede

Dated: 23 July 2018