Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/03939/2016**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 4 July 2019	**On 10 September 2019**

Before

Mr C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN

Between

Cynthia ACHEAMPONG

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Bryce, Advocate, instructed by D Duheric & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals to the Upper Tribunal against the decision of FtT Judge J C Grant-Hutchison, promulgated on 7 April 2017.

2. The appellant's case turned on whether it was reasonable to expect her child, A, to leave the UK.

3. At paragraph 47, the judge said, "A [is] not a qualifying child"; but by the date of the hearing, A had become a qualifying child in terms of part 5A of the 2002 Act, and the question arose in terms of section 117B(6) whether it would be reasonable to expect her to leave the UK. The error requires the decision to be set aside and remade.

4. The grounds on which permission was granted are based on *MA (Pakistan) v SSHD* [2016] 1 WLR 5093, although binding in England & Wales, not being so in Scotland, regarding the correct approach to section 117B(6).

5. We think that only very exceptionally, if ever, might the Upper Tribunal decline to follow a decision of the Court of Appeal or of the Inner House of the Court of Session, irrespective of where in the UK the Upper Tribunal sits. There would be a problem if those Courts had made conflicting decisions, but that is not so.

6. We need not examine that issue any further, because the correct approach to section 117B(6) has been settled by *KO (Nigeria) and others v SSHD* [2018] UKSC 53.

7. At paragraph 18, *KO* confirms that the question whether it is reasonable to expect a child to leave the UK is to be assessed in the context of parents having no right to remain, and being expected to leave as expressed by Lord Boyd in *SA (Bangladesh) v SSHD* [2017] SLT 1245. At paragraph 19 it confirms also that as Lewison LJ said in *EV (Philippines) v SSHD* [2014] EWCA civ 874, the ultimate question is whether it is "reasonable to expect the child to follow the parent with no right to remain to the country of origin".

8. *KO* does not deal expressly with the situation where one parent has a right to remain in the UK and the other does not, but we do not doubt that such cases depend on their circumstances.

9. The appellant raised no criticism of the FtT's factual findings. On those findings, and on the underlying evidence, there was nothing to show, leaving aside the position of the appellant's father, that it would be anything but reasonable to expect the child to go with her mother to Ghana.

10. The appellant's father is also a citizen of Ghana. There was before the FtT a copy of his residence permit as the family member of an EEA national, valid until 26 October 2021. Mr Bryce accepted that the status of the appellant's father depended on the ongoing reality of such a relationship, to be proved by evidence, and that there was before the FtT no evidence of that family (or extended family) relationship. There was no application to provide such evidence to the Upper Tribunal in connection with remaking the decision, and no such evidence had been obtained by the appellant's representatives. There had been no application to amend the grounds of appeal, although *KO* was published on 24 October 2018, when it must have become apparent that the line of argument in the grounds had no prospects of success.

11. The FtT found the relationship between the child and her father "a long distance one at best" (paragraph 39); even if he did see her, that was "at best … only for a short period of time" (paragraph 40); the appellant had sought to embellish his role, there was no reason not to keep in touch if the child moved to Ghana, his role could continue, and quality time might even be more (paragraph 42).

12. There is nothing in the unimpeached findings of the FtT, or in the underlying evidence, by which it might be held that the child's vestigial relationship with her father rendered it unreasonable to expect her to leave the UK.

13. The appellant's appeal, as brought to the FtT, is dismissed.

14. No anonymity direction has been requested or made.

9 September 2019
Upper Tribunal Judge Macleman