Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09989/2017

THE IMMIGRATION ACTS

Heard at Birmingham **Decision & Reasons Promulgated**
On 9 August 2019 **On 23 September 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

ESTHER LOUISE KWATENG KWATENG
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Vokes, instructed by Lawrencia & Co, solicitors
For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated 19 June 2019, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons were as follows:

> "1. The appellant was born on 23 December 1971 and is a female citizen of Ghana. She appealed to the First-tier Tribunal against a decision of the respondent dated 24 August 2017 refusing her leave to remain in the United Kingdom on the basis of her family life (Article 8 ECHR). The First-tier Tribunal, in a decision promulgated on 30 May 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

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2. By a Rule 24 letter dated 14 September 2018, the Secretary of State indicated that he did not oppose the appeal. My reasons, therefore, may be brief. I find that the decision of the First-tier Tribunal is flawed in law such that it should be set aside. First, the judge overlooked evidence before him concerning the nationality of the father of the female child of the appellant. In a bundle of papers before the judge, there was a copy of a British passport of the child's father. The judge was wrong, therefore, at [16] to state that 'there is no other evidence to show what the nationality of Mr Mzondo is.' The error relates to the wider difficulty in this appeal of the nationality of the child. The passport which had been issued to the child had been revoked because the child's birth had been registered more than 12 months after her birth. However, the judge does not seem to have been aware that Mr Mzondo had applied for the registration, a factor he does not consider in his (inconclusive) discussion of paternity [14]. There was written evidence in the file indicating that the Home Office is currently reviewing the revocation of the passport. Again, the judge appears to have overlooked that evidence. He proceeded with his analysis on the basis that the child is not a British citizen. At the present time, it remains difficult to be certain as to her nationality but the judge clearly made a mistake in failing to take into account evidence which had been put before him.

3. The judge was aware that the child, whatever her nationality, had been living in the United Kingdom for eight years (indeed, since her birth.). The Court of Appeal in MA (Pakistan) [2016] EWCA Civ 705 considered that there should be 'powerful reasons' for expecting a child who had been resident in the United Kingdom more than seven years to leave the country. That guidance must now be read in the light of the Supreme Court judgement in KO (Nigeria) 2018 UKSC 53. However, there is nothing in the judge's analysis which indicates that he has taken any particular account of the length of residence of the child in this jurisdiction. The judge took the view that, since the child and the appellant are Ghanaian citizens, they may continue their family life abroad. The parties agree that the analysis is deficient.

4. At the hearing, I asked Mrs Aboni, who appeared for the Secretary of State, to check if steps may be taken to expedite the review of the child's nationality. Understandably, she was reluctant to suggest any particular timescale for the conclusion of that review. The question of the child's nationality is important; it will be necessary to look at the 'real world' situation when assessing this appeal as indicated by the Supreme Court in KO (Nigeria). It is one thing for a child and her mother both of foreign nationality and no right to remain here to leave the United Kingdom, even if the child has been here for more than seven years; it may be quite another for a British child to be expected to leave. I shall, therefore, not list this appeal for a resumed hearing until I have heard from the Secretary of State and would ask that he should do so no later than 15 July 2019. Anything which the appellant's solicitors may also do to expedite the review would also be of assistance."

2. At the resumed hearing at Birmingham on 9 August 2019, Mr Vokes appeared for the appellant and Ms Isherwood appeared for the Secretary of State. The representatives told me that UK Visas and Immigration were not now carrying out a review of the application made to register the child M as a British citizen. I was shown email correspondence confirming that UK Visas and Immigration considers that the

passport of the child M had been revoked for the legitimate reason that the child's birth certificate, bearing the father's details, and been issued more than one year following the child's birth. The correspondence concludes as follows: 'I can confirm that we have not had any further correspondence or received any further evidence and we are not currently reconsidering or reviewing any decision made.' As at the date of the resumed hearing, child M, therefore, is a citizen of Ghana and is not a British citizen nor is there any clear prospect that she will be recognised as a British citizen.

3. For the respondent, Ms Isherwood submitted that there was little, if any, evidence of contact between the father of M (who it is claimed is a British citizen) and the child. Indeed, the only evidence of contact is a photograph of a letter. The appellant herself never had legal status within the United Kingdom following the expiry of the visit Visa which appears to have been issued to her in 2003 under a different name. the visit visa expired on 30 March 2004. The appellant had been served with a Form ISI151A as long ago as 25 November 2010. An application in March 2014 made by the appellant to remain on the basis of her family and private life had been refused. A similar application was refused in April 2014 with no right of appeal. The Secretary of State accepts that the child M was born in the United Kingdom and has now lived here for more than 7 years. She is, therefore, a 'qualifying child' for the purposes of section 117 of the 2002 Act (as amended). However, there was no evidence to show that, should a fresh application for a British passport for the child be submitted, that such an application would be successful. Ms Isherwood submitted that this appeal should not be decided on the basis of speculation as to how UK Visas and Immigration would respond to a fresh application. Ms Isherwood also submitted that it was significant that there had been no oral evidence put before the Upper Tribunal at the resumed hearing. Had there been any degree of ongoing contact between the father and M, then it was likely that the appellant would have brought this to the attention of the Upper Tribunal. Further, the school reports for M make no mention of the father whilst was there was little if any evidence that M had established a significant private life of her own in the United Kingdom.

4. For the appellant, Mr Vokes submitted that the appeal turned on the application of section 117B6:

> In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom.

5. He submitted that, whatever the position as regards the registration of M as a British citizen, she is a qualifying child who lives with the appellant. He submitted that M has 'the normal established private life of a child of her age removal would be difficult to explain to her, particularly if she could not see her father.' (see Mr Vokes's skeleton argument).

6. I agree that the appeal does turn upon the application of section 117B6. Mr Vokes is right to point out that the child M is a qualifying child having lived in the United Kingdom from more than 7 years but I had the strong impression that, lying behind his submissions, remained the suggestion that it is still likely that M will be recognised as a British citizen and that she should be treated as such in this appeal. However, M's father figures in the evidence only as a rather shadowy presence and I accept Ms Isherwood's submission that there is no reliable evidence to indicate that there is ongoing contact. I do not find that expecting M to leave the United Kingdom will damage her relationship with her father as I am unable to find that anything properly described as a relationship exists between them. I have to decide the appeal on the basis of the facts as at the date of the resumed hearing; at that date, it is a fact that M is a Ghanaian citizen and that there is no evidence that she is entitled to British nationality. It would be incorrect to apply section 117B6 on the understanding or suggestion that, notwithstanding the facts, I should be assessing the reasonableness of expecting a British child to leave the jurisdiction.

7. Mr Vokes's submission that M has established 'the normal private life of a child of her age' is not a particularly strong one. He was unable to point to any characteristics of M particular to her as evidence of her private life. I acknowledge that, having been in the United Kingdom for more than 7 years, M is likely to have acquired friendships at school which she would be reluctant to relinquish. Beyond that, there is no evidence which would lead me to conclude that her private life here is so strong that it would be unreasonable to interfere with it. The 'real life' question in this appeal is whether the appellant, a Ghanaian citizen with an appalling immigration history and no right to live in this country, should be required to return to Ghana with her Ghanaian 8 old child who does not have a strong relationship with her natural father. Having regard to the observations I have made above and to the evidence as a whole, I have concluded that it would be reasonable in all the circumstances to expect the child M to accompany her mother when she returns to Ghana. Accordingly, I dismiss the appeal of the appellant against the decision of the Secretary of State to refuse her human rights application.

Notice of Decision

I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 24 August 2017 is dismissed.

Signed Date 17 September 2019

Upper Tribunal Judge Lane