Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/19876/2014
IA/20145/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 8th December 2014	**On 10th December 2014**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR FRANCIS OBENG ASAMOAH
MRS GEORGINA ASAMOAH OBENG

Respondents

Representation:
For the Appellant: Mr G Harrison (Senior Home Office Presenting Officer)
For the Respondent: Mr S Singh (Greater Manchester Immigration Aid unit)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State, with permission, against a determination of the First-tier Tribunal (Judge Crawford) who in a determination promulgated on 13th August 2014 allowed the Appellants' appeals against the Secretary of State's

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decision to refuse them leave to remain in the UK on the basis of their private and family life.

2. For the sake of continuity and clarity and I will, in this determination, continue to refer to Mr Asamoah and his wife as the Appellants and to the Secretary of State as the Respondent.

3. The grounds upon which permission was granted note that the Judge allowed the appeal on the basis of Article 8 outside the Immigration Rules. The grounds assert that they could not satisfy the requirements of the applicable Immigration Rules in relation to family and private life, namely appendix FM and paragraph 276ADE and that in allowing the appeal the Judge had not considered the guidance of Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC), namely that the Judge ought o have considered whether there were arguably good grounds to justify a grant of leave to remain outside the Immigration Rules and whether there were compelling circumstances not sufficiently recognised under the Rules. The grounds assert that the Judge erred in making no case specific findings as to arguably good grounds and compelling circumstances not sufficiently recognised under the Rules but simply undertook a freestanding Article 8 assessment. The grounds submit that without making any case specific findings as to be arguably good grounds or compelling circumstances not sufficiently recognised under the Rules a Judge cannot undertake an Article 8 assessment. That was the basis on which permission was granted.

4. The Appellants are husband and wife and they have three children all born in the United Kingdom.

5. The Appellants' immigration history is nothing to be proud of in that both entered the UK in 2001 as visitors, clearly with no intention of returning to Ghana and the first Appellant has served a term of imprisonment for a criminal offence. The first Appellant made an unfounded asylum claim only after he came to the attention of the authorities in 2009. Their three children are a son born on 16th June 2005, a daughter born 30th December 2006 and a son born 24th March 2010.

6. In his determination the judge recites the Letter of Refusal noting that in that letter the Secretary of State refers to Appendix FM and paragraph 276ADE and concludes that the Appellants do not meet any of those requirements. So far as the children are concerned the Secretary of State referred to section 55 but said that the family could return together and it was not unreasonable to expect them to do so. The secretary state also took the view that none of the children met the requirements of paragraph 276ADE because at the date of the original application none of the children had resided in the UK for 7 years.

7. Thereafter the Judge set out the applicable law in terms of Appendix FM and paragraph 276ADE. He also referred to section 117B of the Nationality, Immigration and Asylum Act 2002 (inserted by s.19 of the Immigration Act 2014). He set out the evidence he heard from both the Appellants and then his findings and conclusions.

8. What is at the heart of this case is the First-tier Tribunal Judge's finding that it would not be reasonable to expect the two oldest children to go to Ghana. That finding has not been challenged by the Secretary of State. The question then is having made that finding, did the Judge err in allowing the appeal.

9. While it was the case that at the time of the original application, long before the eventual appealable decision was made, none of the children had been in the UK for seven years, by the time the case came before Judge Crawford the two eldest children had both passed that milestone and indeed the eldest had been her almost 10 years.

10. Section 117A obliged the Judge to take into account the matters contained in s.117B. S.117B(6) puts into statute that where a child has been in the UK for seven years and it is not reasonable to expect him to return to his home country, the public interest does not require the removal of his parents. In conducting the balancing exercise therefore, when the public interest is removed from the Secretary of State's side of the balance there is nothing left. Accordingly, which ever way the Judge approached this appeal, whether he had decided the case purely under the Rules and then gone on to consider ECHR; given his finding that the children could not be expected to go to Ghana, statute required him to allow the appeal. In short his unchallenged finding that it would be unreasonable to expect the children to return to Ghana inevitably led to his allowing the appeal. That finding as to the reasonableness of removing the children may not have been one that all Judges would have reached but he did reach that conclusion and it has not been challenged. Accordingly the decision of the First-tier Tribunal is not tainted by error of law and the appeal to the Upper Tribunal is dismissed.

Signed Dated 9th December 2014

Upper Tribunal Judge Martin