Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers:
IA/23180/2014

IA/23186/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4th March 2015	**On 9th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HARRIES

Between

MR RICHARD APPIA-KUBI
MR AGYEMANG YEBOAH
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: In person
For the Respondent: Ms E Savage, Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant was born on 22nd December 1984 and is the brother of the second appellant, born on 13th August 1990. They are nationals of Ghana. They applied under the Immigration EEA Regulations 2006 for a residence card as confirmation of a right to reside in the United Kingdom

as the family member of their mother, a German national, exercising Treaty rights in the United Kingdom. The respondent refused their applications on 9th May 2014. They appealed against the respondent's decision at a hearing before First-tier Tribunal Judge E M M Smith (the Judge) at Nottingham on 29th October 2014.

2. The Judge dismissed the appeals under the EEA Regulations and at paragraph 31 of his determination gave his reasons as follows for not considering any Article 8 issues:

> 31. The grounds of appeal do not raise any article 8 issues. In AS and SS (India) v SSHD [2012] EWCA Civ 229 the Court of Appeal held that the Judge had to address the case that was in fact presented to him. In MB (Article 8 – near miss) Pakistan [2010] UKUT 282 (IAC) Article 8 was not mentioned in the Notice of Appeal or in the grounds, nor was it raised in a section 120 notice. Sedley LJ indicated that, as the issue was not raised before the Judge, he could not be said to have made an error of law.

3. The appellants were granted permission to appeal against the decision of the Judge by First-tier Tribunal Judge Kamara on 2nd February 2015 for the following reasons:

> The lengthy handwritten grounds seeking permission argue, essentially, that the judge failed to apply the law, failed to take relevant evidence into consideration and reached a conclusion against the weight of the evidence. Otherwise, the grounds restate the fact of the case. As the appellants appear to be unrepresented I have read the decision carefully to see if it contains any obvious errors of law.
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> In an otherwise well reasoned determination the judge arguably erred in law in concluding that the grounds of appeal did not raise Article 8 issues, given the contents of the grounds of appeal received by the IAC on 13th August 2014 which made a number of references to Article 8 jurisprudence. Given the judge's clear findings on the credibility of the appellants and their witness, permission is refused in relation to the challenge to the judge's finding that the appellants were not dependent upon the sponsor or vice versa.

4. The matter accordingly came before me to determine whether the making of the Judge's decision involved the making of an error on a point of law. The appellants appeared before me without representation and made oral submissions. They relied on their Upper Tribunal grounds of appeal citing the case of Marckx v Belgium - 6833/74 [1979] ECHR 2 (13 June 1979) holding that "respect for family life" guaranteed by Article 8 paragraph 1 (art. 8-1) of the Convention is not limited to a duty on the part of the State to abstain from certain interferences by the public authorities which might constitute an obstacle to the development of what is considered to belong to "family life"; it also implies that the State has an obligation to prescribe in its domestic legal system rules which allow those concerned to lead a normal family life.

5. The appellants assert that the Judge erred in law by failing to apply these principles to their case; they state that they have clearly made out family life between themselves and their mother, the sponsor in the proceedings. They rely upon R (Mahmood) v SSHD [2001] 1 WLR 840 and state that the issue is whether there are "insurmountable obstacles" to family life continuing outside the United Kingdom. The appellants state that there are such obstacles and rely on the disability of the first appellant who has a congenital condition affecting the use his left arm; the first appellant demonstrated this to me at the hearing and said that his condition has worsened from over-reliance on his right arm. The appellants assert that the Judge failed to mention this factor or its impact on Article 8 and he failed to pursue to a logical conclusion his consideration of the emotional issues in the case.

6. In their grounds of appeal before the First-tier Tribunal the appellants referred to the cases set out above as well as to Sen v Netherlands (2001) 36 EHRR 93 dealing with the difficulty of family life being developed in the country of return; they state their situation is similar and that they have been in a stable relationship with their mother since they joined her in the United Kingdom and they cannot now return to Ghana. The appellants state that their mother is a single parent in need of their support. They cite further case law in additional First-tier grounds of appeal, including the case of Beoku-Betts. Their submissions in their grounds of appeal revolve around family life between parents and children.

7. In their oral submissions to me the appellants addressed the merits of their Article 8 case on the basis of their emotional and physical dependency upon their mother and hers upon them. They claim that it is impossible to resume their lives in Ghana where there is nothing for them. They stated respectively that a decision to return them there would cause them to die or to commit suicide. With every respect to the appellants and making every allowance for their lack of representation I find that their submissions challenging the decision of the Judge go considerably beyond the issue of an error of law and amount to a continuing disagreement with his factual findings. Taking account of all the submissions, if the Judge has erred by failing to consider Article 8 issues, or case law referred to in the grounds of appeal, I find that such an error was not material for all the following reasons.

8. The appellants are now 30 and 24 years of age respectively. Much of the case law on which they rely does not reflect their situation. Much of it considers family life between parents and minor children but the appellants are clearly not minors. The case of Sen on which they rely considered the position of children who had spent their entire life in the Netherlands, which is far from the position of these appellants in relation to the United Kingdom. The findings of the Judge in my view show that any consideration he might have undertaken of Article 8 family life under the ECHR would not have shown family life to exist. He made clear findings about the relationships between the appellants and their mother

in relation to which permission to appeal is explicitly refused. Those findings are in my view sound and I have no reason to go behind them in considering the matters before me.

9. The Judge took into account that the appellants' mother left them in Ghana shortly after the birth of the second appellant, in 1990, when she travelled to Germany where it took her several years to achieve refugee status. Neither appellant saw her thereafter until 2005 when they lived with her in the United Kingdom. Each of the appellants subsequently attended universities in different parts of the United Kingdom; one works and the other claims disability allowance. The Judge found each appellant to be an "unhelpful historian"; they gave differing accounts of key dates in their claim.

10. The Judge in my view took full account of the disability of the first appellant in paragraph 27 of the determination where he found that he had coped remarkably well with it. The Judge found that this appellant had no more of a relationship with his mother than that to be expected between an adult child and parent. He took account of the voluntary years of separation between the family members and he fully directed himself in law about the meaning of dependency for the purposes of the issues before him under the EEA Regulations.

11. Having considered all the evidence before him the Judge clearly concluded as follows in paragraph 30 of his determination:

> 30. I am satisfied that neither appellant has established that they are dependent upon the sponsor either financially, physically, or emotionally. I do not accept from the evidence before me that the sponsor is dependent upon the appellants other than the normal emotional dependence a mother has for her child.

12. I find that the appellants' challenge to the Judge's decision in relation to Article 8 depends entirely on their continuing claim to have family life with their mother in the United Kingdom, notwithstanding their adult ages. The findings of the Judge are to the contrary and show that an explicit consideration of Article 8 by him could not have led to a finding that family life exists. I find that the appeal could not have succeeded under Article 8 on the basis of the evidence before the Judge so that any failure by him to undertake such a consideration was not material to the outcome of the appeal.

13. There is no medical evidence to support any health aspect of the appeal under Article 8 and it was not apparently argued on such grounds before the Judge. My finding that there is no material error of law is endorsed by case law submitted and relied upon before me by Ms Savage on behalf of the respondent. She relies on the case of Sarkar v Secretary of State for the Home Department [2014] EWCA Civ 195 (26 February 2014), at paragraph 13 in particular as follows:

> 13 … an appellant before the First-tier Tribunal is entitled to abandon any grounds of appeal that he does not wish to pursue. If he does abandon a ground of appeal, the tribunal cannot be criticised for failing to deal with it. In this case the third appellant's argument that the Secretary of State had failed to consider his welfare as required by section 55 of the 2009 Act was not pursued and it was not subsequently argued that the tribunal should have dealt with it. Presumably it was accepted that it had been abandoned. The article 8 claim was handled in the same way. No evidence or argument was placed before the First-tier Tribunal in support of it and in my view the tribunal was entitled to treat it as having been abandoned, although it did not formally do so. Even if that were not the case, however, there was no evidential basis on which the First-tier Tribunal could have found that that ground of appeal had been made out. It follows that if there were an error of law in failing formally to dispose of it, it was not material and the Upper Tribunal was right to refuse permission to appeal in respect of it.

14. I find the case of Sarkar to be of direct relevance in this case. Taking account of the Judge's findings, there was no evidential basis on which the First-tier Tribunal could have found an Article 8 ground of appeal to be made out. It follows that if there was an error of law in failing formally to dispose of it, it was not material. I find that making of the Judge's decision did not involve the making of a material error on a point of law and it follows that his decision stands and this appeal in the Upper Tribunal is dismissed.

Notice of Decision

15. I find that making of the Judge's decision did not involve the making of a material error on a point of law. It follows that decision of the First-tier Tribunal stands and this appeal in the Upper Tribunal is dismissed.

Anonymity

The position remains that the First-tier Tribunal made no anonymity order.

Signed: J Harries

Deputy Upper Tribunal Judge
Date: 7th March 2015

Fee Award

The position remains that there is no fee award.

Signed: J Harries

Deputy Upper Tribunal Judge
Date: 7th March 2015