Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: IA/53083/2013**

IA/53084/2013

IA/53085/2013

IA/53086/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 14 January 2014	**On 19 January 2015**

.

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

KOJO ASANTE

DIANA KONAD OPOKU ASANTE

CHARAS MAAME YAA ADJEPONG ASANTE

EMMANUELLA NANA AKUA ODRUAA ASANTE

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Richard Singer counsel instructed by Paul John & Co Solicitors

For the Respondent: Mr P Duffy Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of these

Appellants. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Blake promulgated on 3 October 2014 which allowed the Appellants' appeal and held that it was disproportionate and unlawful under Article 8 of the European Convention on Human Rights to remove them to Ghana.

Background

3. The Appellants are a husband and wife and their two children born on 26 March 1983, 10 July 1983, 2 December 2010 and 15 August 2012 respectively. They are all citizens of Ghana.
4. On 18 June 2013 the Appellants applied for leave to remain in the United Kingdom on the basis of Article 8 ECHR.
5. On 22 July 2013 the Secretary of State refused the Appellant's application. The decision was challenged by way of judicial review in essence contending that the refusal to grant further discretionary leave was harsh and unfair and not within the range of reasonable responses open to the Secretary of State because it did not take into account the first Appellant's army service and the ill treatment he received, as well as the breaches of his Article 8 rights. The Secretary of State did not resist the judicial review and withdrew the decision of 22 July 2013 and agreed to reconsider the applications. A fresh decision was made on 26 November 2013 which was the subject of the appeal in this case.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Blake ("the Judge") allowed the appeal against the Respondent's decision under Article 8. The Judge found that the first Appellant was an honest and credible witness; he took into account that the Respondent had conceded that there was a change in the Appellants circumstances since the decision of First-tier Tribunal Judge Talbot who had dismissed an appeal against a refusal of further leave to remain after a hearing on 2 March 2012; he found that but for the actions and negligence of HM Forces the first Appellant would have gone on to complete his army career and achieved indefinite leave to remain; that the first Appellant had no family in

Ghana although his wife did; the fourth Appellant had been born since the decision of Judge Talbot and the third Appellant was in education; that given his treatment by the army and its repercussions the first Appellant was the victim of an historic injustice which had not been fully taken into account; he carried out a Razgar Article 8 assessment against the full factual background and found that the decision to remove was disproportionate to the legitimate aim of immigration control.

7. Grounds of appeal were lodged and on 18 November 2014 First-tier Tribunal Judge Foudy gave permission to appeal stating that it was arguable that the Judge should have remitted the decision back to the Respondent having found the decision was not in accordance with the law; that the judge erred in his assessment under Article 8 and he erred in his consideration of the 2012 and 2013 determinations.

8. At the hearing I heard submissions from Mr Duffy on behalf of the Appellant that:

(a)He relied on the grounds of appeal which raised only two issues as he conceded that the Respondent conceded that the Judge that the Judge had properly directed himself in respect of the previous determinations but was entitled to consider a new factual matrix.

(b)In relation to Ground 1 he suggested that there was a tension between paragraph 108 and 112 in that paragraph 108 appeared to suggest that the decision was not in accordance with the law and therefore it should have been remitted and paragraph 112 which stated that the decision was in accordance with the law.

(c) In relation to Ground 2 he suggested that too much weight had been given to one factor, that of the first Appellant's army service.

9. On behalf of the Respondent Mr Singer submitted that :

(a) The Judge set out his Article 8 determination by reference to Razgar and accepted that the decision was in accordance with the law.

(b) In respect of Ground 2 this challenge largely raised matters of weight which is not an error of law.

(c) The Judge carried out an assessment and took all relevant factors into account coming to a conclusion that was open to him.

(d) The Appellants had never based their case on 'legitimate expectation' but had argued that the historic injustice suffered by the first Appellant was a sufficiently compelling circumstances to enable the Judge to arrive at the decision he made.

Finding on Material Error

10. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

11. This appeal arose out of an application made by these Appellants for further leave to remain on the basis of Article 8 it being conceded that the Appellants could not meet the requirements of the Immigration Rules. The Appellants had made previous applications for leave relying heavily, although not solely , on the fact that the Appellant's service in the British Army which he expected to lead to a grant of indefinite leave had been cut short because he sustained an injury for which the Army had accepted liability. His application in 2008 was refused but his appeal was allowed under Article 8 and led to a grant of 3 years discretionary leave. His application in 2011 was refused and his appeal dismissed in 2012.

12. In relation to Ground 1 the Respondent argues that the Judge found that the refusal decision of 26 November 2013 was not in accordance with the law in paragraph 108 of his decision and therefore should have remitted the case back to the Secretary of State. I am satisfied that this is a misreading of what the Judge has written in that he was simply summarising that the decision was unsustainable because it failed to take into account relevant facts. It is clear that the Judge, against a background that he has set out in detail, then made a structured Article 8 assessment at paragraphs 111- 119 addressing the questions set out in Razgar . He states clearly and explicitly at paragraph 112 that the decision was in accordance with the law.

13. The challenge raised in Ground 2 is I am satisfied merely a challenge as to the weight the Judge gave to the facts underpinning the Article 8 claim. There is no suggestion that the Judge failed to take any relevant factors into account and indeed such a challenge would be doomed to fail as the Judges careful analysis of the factual background to the appeal was accurate, detailed and fair. There is no suggestion that the Judges findings were irrational or perverse. The argument is that in essence the judge gave too much weight to what was categorised as the historic injustice, his unexpected discharge from the army as a result of their negligence. I am satisfied that it is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged which as I have made clear was not argued in this case. Moreover I am satisfied that the judge while giving considerable weight to what he described as a compelling factor (paragraph 102) also took into account in his detailed analysis a number of other matters which led to the decision to allow the appeal including that the Appellant and his family had laid down deep roots in the United Kingdom after the grant of leave in 2008; that they were fully integrated into United Kingdom society; that he had a strong relationship with his mother and sisters who lived in the UK. Taking all of those factors into account I am satisfied that it was open to the Judge to find that the Respondent's decision was not proportionate and allow the appeal under Article 8.

14. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

15. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

16. **The appeal is dismissed.**

Signed Date 14.1.2014

Deputy Upper Tribunal Judge Birrell