Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/10129/2016
HU/14170/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31st August 2017	**On 19th September 2017**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

KA-D (FIRST APPELLANT)
FJ (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants Mr A Malik, Counsel, instructed by Solomon Shepherd Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant is KA-D. The second appellant is his partner FJ. Both are nationals of Ghana. They have two children, P born on [ ] 2012 and N born on [ ] 2009.

2. Both appellants applied for leave to remain in the United Kingdom based on their private and family life. Such leave was refused by the respondent in decisions dated 23rd March 2016 and 16th May 2016 respectively.

3. The appellants sought to appeal against those decisions, which appeal came before First-tier Tribunal Judge Obhi on 2nd May 2017. By a decision of 23rd May 2017 the appeals were dismissed.

4. Subsequently leave to appeal to the Upper Tribunal against that Judge's decision was granted on 14th July 2017. Thus it is that the matter comes before me to determine the issues under challenge.

5. The first appellant entered the United Kingdom illegally in 2006 and has remained. He came having been refused permission to remain when he was a working holidaymaker and he decided to enter without having to pay the associated fees.

6. The second appellant entered the United Kingdom on 19th June 2008 with leave to enter as a visitor but subsequently remained unlawfully. Subsequently she was granted leave to remain on 10th September 2013 until 9th March 2016 on the basis of being a parent to British children.

7. That citizenship for her children had been obtained by a claim made by the appellants that the children were in fact the children of the second appellant's former husband who was a British subject. It subsequently transpired that the first appellant was in fact the natural father of both children. It was considered that deception had been exercised by both appellants to mislead the authorities as to the citizenship of their children. Accordingly the citizenship of the children was revoked.

8. The First-tier Tribunal Judge considered the circumstances in which the application for citizenship had been made and concluded that both appellants were dishonest in that regard. The best interests of the children were considered, it being found by the Judge that it was reasonable for them to return to Ghana with their parents.

9. Challenge has been made both as to the findings of fact by the Judge as to the behaviour of the appellants and also it is also contended that the Judge failed to give proper consideration to the various principles relating to the children.

10. Permission to appeal to the Upper Tribunal was granted on a limited basis, namely an absence of fact-finding with reference to the appellants and a lack of consideration of their position under the Immigration Rules.

11. Thus it fell to me to determine these issues.

12. Mr Malik, on behalf of the appellants, submitted that the Judge failed to give proper consideration to paragraph 276ADE and to the issue as to whether there were very significant obstacles to family life continuing in Ghana. It is also said that there had been a failure to engage with Section 117A-D – particularly to the positive factors that should be held in favour of the appellants in the consideration of proportionality. The first appellant was a former teacher and seemingly able to pick up work in the United Kingdom. The second appellant was also working and seemingly the breadwinner of the family, so therefore that they were not financially dependent upon the state and that they had integrated well within the community in terms of family life and also church life. Both spoke English. It is said that those matters were not articulated and that there was in essence, therefore, an imbalance in the proper consideration of removal. It is said that inadequate consideration was given to their circumstances.

13. So far as the issue of very significant obstacles to integration, although that matter was not specifically considered by the Judge it is clear from paragraph 29 of the determination that the reasonableness of return was very much a matter that was considered. It was noted in particular by the Judge that there was an extended family in Ghana and that the links with the family were strong. The first appellant was a teacher who had worked in Ghana and well aware of the education system and would be able to assist the children particularly in settling into schools in Ghana. The Judge noted also that the family as a whole had been on holiday to visit the family in Ghana, particularly in 2014.

14. Given the strong family links that the appellants have with family in Ghana it is difficult to conclude otherwise than that there were no very significant obstacles to return. I invited Mr Malik, on behalf of the appellants, to identify to me what factors were relied upon as creating very significant obstacles to return but the only matter that was prayed in aid was the length of their residence in the United Kingdom. I recognise of course that the Judge should have articulated the issue of insurmountable/very significant obstacles as part of the consideration for return. However, it is perfectly apparent that there is nothing to found any basis for that matter on the facts as were found or presented. In that connection I have had regard to the two witness statements of both appellants and find nothing that indicates that return was not otherwise than possible.

15. In terms of paragraph 276ADE at the time when the application was made neither child was a qualified child and so the considerations that would otherwise arise in that paragraph did not arise. However it is clear from paragraph 26 of the determination that the Judge has focused upon 276ADE(1)(iv) and Section 117B(6) recognising that by the hearing at least one child is a qualified child. The issue therefore is whether it was reasonable for that child to return to Ghana and the Judge has clearly identified the factors which make it so.

16. The Judge, in paragraph 26 of the determination, highlighted the case of **MA (Pakistan) [2016] EWCA Civ 705**. It was recognised that it was important to consider the best interests of the children before considering whether it was reasonable to expect any child to leave the United Kingdom.

17. In terms of the best interest, the Judge has focused in paragraphs 27, 28, 29 and 30 of the determination upon their situation and circumstances, applying in particular the principles as set out in **EV (Philippines)**. The Judge reached the conclusion that neither child had formed independent links with the community separately from their association with their birth family, the children being 8 and 5 respectively. The overall conclusion of the Judge was that the children's best interests were served with remaining as part of the family, although it may be said in fairness to the appellants' case that the remarks by the Judge were somewhat formulaic as regards the children and did not condescend upon particulars. There is nothing to indicate, however, that they had any particular need or requirement which should have been particularly borne in mind. The generality of their situation and circumstances at church and school and in the community were considered in paragraph 29 as was their extended family in Ghana.

18. Certainly, however, the reasonableness of return was considered and the findings on that matter entirely open to be made by the Judge.

19. In terms of proportionality, my attention was drawn by Mr Tufan to the decision of **Treebhawon and Others (NIAA 2002 Part 5A – compelling circumstances test) [2017] UKUT 13 (IAC)** which recognised that the parliamentary intention underlying Part 5A of the Act of 2002 was to give proper effect to Article 8 of the ECHR. Thus private life developed or established during periods of unlawful precarious residence might be accorded little weight and Section 117B(4) and (5) are to construed and applied accordingly. Mere hardship or difficulty or upheaval or inconvenience is unlikely to satisfy the very significant hurdles test in paragraph 276ADE of the Immigration Rules.

20. In that decision at paragraph 16, the Tribunal indicated that the effect of Section 117A(2)(a) is that the court or Tribunal must have regard to everything contained in Section 117B. The ability to speak English and financial independence and integration in society are relevant factors in that regard. However deception had been applied to facilitate continuing residence and presumably employment.

21. Even if the Judge had fallen into error in failing to articulate clearly the matters that were potentially in favour of the appellants, it is clear that the finding that it was proportionate to expect them to return, was a proper one in all the circumstances and inevitable in light of their immigration behaviour as found by the Judge.

22. In terms of **MA (Pakistan)** the court had articulated in paragraph 54 of the judgment that there is nothing intrinsically illogical in the notion that whilst the child's best interests are for him or her to stay, it is not unreasonable to expect him or her to go. That is so even if the reasonableness test should be applied so as to exclude public interest considerations bearing upon the parents.

23. In relation to the challenges made therefore. So far as the failure to take the positive factors in favour of the appellants are concerned, as set out in 117A to D, it is abundantly clear that those factors would, in the circumstances of this particular case, have made no material difference to the weight to be given to the public interest considerations. It was entirely proper for the Judge to conclude that proportionality did indeed support removal. There was no basis to conclude that there would be any very significant obstacles to removal or to integration in Ghana.

24. The proper interests of the children were considered and particularly in terms of the reasonableness of their return as a family unit as a whole.

25. In all the circumstances therefore, the appeal before the Upper Tribunal is dismissed. The decision of the First-tier Tribunal Judge dismissing the appeals in respect of family/private life shall stand.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 18 September 2017

Upper Tribunal Judge King TD