



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/12746/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 April 2015**

**Decision & Reasons Promulgated
On 14 May 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**JOYCE AKOSUA ASANTEWAA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mannam, instructed by J Stifford Law Solicitors
For the Respondent: Mr Avery, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Joyce Akosua Asantewaa, was born on 13 March 1966 and is a female citizen of Ghana. She first entered the United Kingdom in 2006 on a visit visa. She returned with her then husband in 2007 but divorced him in November 2011. On 20 July 2013, she married Mr James Finlay, a British citizen. She applied for leave to remain on the basis of family life with Mr Finlay. Her application was refused with no right of appeal. She made further representations to the respondent but her application was refused again on 27 February 2014 but on this occasion with a right

of appeal to the First-tier Tribunal. Her appeal was dismissed by the First-tier Tribunal (Judge Obi) in a determination which is dated 15 August 2014. The appellant now appeals, with permission, to the Upper Tribunal.

2. Granting permission, Judge Rintoul wrote:

“It is arguable that the judge erred in her conclusion that the appellant’s husband was not so dependent on the appellant that he could not cope without her for a ‘short period’, given the evidence that the husband required the appellant to get him out of bed and to get dressed, amongst other matters.”

3. The appeal turned on the question as to whether it was reasonable for the appellant to return to Ghana in order to make an out of country application for entry clearance. Judge Obi described this as a “*Sabir*” case, referring to *Sabir (Appendix FM – EX.1 not free standing)* [2014] UKUT 63 (IAC). In that case, Judge Coker concluded at [33]:

“The public policy of requiring a person to apply under the Immigration Rules from abroad is not the only matter weighing in the SSHD’s side of the balance. There are cogent reasons for requiring the claimant to return to Pakistan to make an application for entry clearance and I conclude it would be proportionate for her to do so. The claimant arrived in the UK as a visitor. She does not meet the requirements of the Rules and it was clear at the time of the marriage that she could not do so; she would be expected to leave the UK and return to Pakistan to make an application for entry clearance absent circumstances such that such a course of action would be unreasonable or harsh, contrary to her right to respect for her family and private life. The likelihood or otherwise of her being able to meet the requirements of the Rules for entry clearance is not a relevant consideration – see *SB (Bangladesh) v SSHD* [2007] EWCA Civ 28. There has been no evidence before me that could lead to a conclusion that the proposed interference (namely her hypothetical removal to Pakistan from where she would make an application for entry clearance to return as a spouse) in the claimant’s right to respect for her family and private life as a woman married to a British citizen living and working in the UK is anything other than proportionate to the competing public interest issues.”

4. For the Upper Tribunal, Mr Mannam, for the appellant, did not seek to challenge the basis of the judge’s assessment of proportionality under Article 8, that is, if it is reasonable for the appellant to return to Ghana to make her application, then her Article 8 appeal should not succeed. However, it is the reasonableness of that course of action with which his client takes issue. The appellant’s argument rests on the assertion that she needs to care on a daily basis for her husband, Mr Finlay. She asserts that it would not be reasonable for her to leave her husband without her assistance even for the relatively brief time it would take for her to make an application for entry clearance from Ghana.

5. The evidence regarding Mr Finlay’s medical condition arose entirely out of examination-in-chief and cross-examination before the First-tier Tribunal; the statements of the appellant and Mr Finlay which were submitted to that Tribunal contained no reference at all to the care needs of Mr Finlay. The judge summarised the appellant’s oral evidence as follows;

"[Mr Finlay] cannot get up easily as he has difficulties with his legs and [the appellant] has to help him on a daily basis. She said she helps him with his dressing after he has had a bath and that she creams him and dresses him and that she collects his medication (*sic*)."

Mr Finlay told the judge that he "suffers from osteoarthritis which affects his knees. He is unable to walk long distances or go up and down the stairs." However, he had recently "fallen off a ladder" and the appellant had had to "help him up" [14]. Mr Finlay subsequently explained that he had been cutting a hedge when he had fallen off the ladder. He also said that he was "aware that he could call Social Services to help him but did not think he could do it at awkward times of the day."

6. In her findings of fact, the judge observed that "despite [Mr Finlay's] health problems he is in full-time work as a sales floor manager." That evidence appears in Mr Finlay's witness statement at [3]:

"I am a sales floor manager with Vaclansa PLC and have worked for this company for about five years. I earn £25,000 a year and also in receipt of a private and state pension."

7. The judge was satisfied that the couple are in a genuine and subsisting relationship but was not satisfied that Mr Finlay would

"... not be able to cope for a short period of time if he had to live on his own whilst the appellant returned to Ghana and made the appropriate application for entry clearance. He told me in his evidence that his wife sometimes helps him to get into his bath but it did not appear to me that he was dependent on her for his personal needs at such a high level that he would not be able to cope without her for a short period of time."

8. The grounds assert that the judge had not considered the evidence before coming to those findings. There had been no discrete credibility assessment of the evidence of the appellant or Mr Finlay.
9. I do not find that the judge has erred in law. The judge noted at [22] that letters written in support of the appellant "all stated that they do not believe that Mr Finlay could leave the UK because of his ties to this country". As I have noted, the witness statements of the appellant and Mr Finlay themselves make absolutely no reference to care needs or disability. That omission is extraordinary; the very strong impression given by the appellant's evidence is that the idea that it would be unreasonable for her to return to Ghana on account of Mr Finlay's care needs had not occurred to her before the First-tier Tribunal hearing. Further, as the judge quite properly observed, Mr Finlay is, despite his claimed disabilities, able to continue working as a sales floor manager; his statement makes no reference at all to any allowances being made by his employers in respect of his claimed disability. It is also clear that the judge had in mind the obvious disconnect between Mr Finlay's evidence that he cannot "go up and down the stairs" and the fact that he had "fallen off a ladder". Moreover, there was absolutely no medical evidence put before the judge which might have provided an objective assessment of any disabilities from which Mr Finlay may suffer. There was also nothing in the evidence before the First-

tier Tribunal to indicate that Mr Finlay is in receipt of any disability benefits; had he required assistance with cooking, dressing or other personal needs it is reasonable to assume that he would have applied for the appropriate state benefits.

10. The judge did not find that Mr Finlay is not disabled or even that he has exaggerated his disabilities; in the light of my observations above, that assessment might be considered generous. However, I have no doubt that the judge did consider all the evidence that was before her and that her finding that Mr Finlay would be able to cope on his own without the appellant's assistance for a "short period of time" was manifestly available to her on the evidence.
11. The second grounds of appeal is wholly without merit. The ground asserts that the judge "did not consider the evidence relating to the appellant's husband at all in her consideration of the balancing exercise [required by Article 8 ECHR]." While it is true that the judge did not make any specific findings as to the nature and extent of Mr Finlay's disabilities she was, as I have noted above, able to conclude that he would be able to cope with living on his own and without the appellant's assistance. Given that she was faced with contradictory evidence regarding Mr Finlay's claimed disabilities and had no medical evidence, I consider that she was required to do no more than that.
12. I find that the judge did not err in law for the reasons asserted in the grounds of appeal or at all. The appeal is dismissed.

DECISION

13. This appeal is dismissed.

Signed

Date 5 May 2015

Upper Tribunal Judge Clive Lane