



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

Appeal Number: HU/14882/2018

THE IMMIGRATION ACTS

Heard at Field House

On 30 January and 1 April 2019

**Decision & Reasons
Promulgated
On 5 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MS ESTHER QUARTY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Wilcox, Counsel, instructed by Blackrock Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

REMAKING DECISION AND REASONS

1. This is the remaking of the decision in the Appellant's appeal following my previous decision, promulgated on 21 February 2019, in which I concluded that the First-tier Tribunal had materially erred in law when dismissing her appeal against the Respondent's decision to refuse her human rights claim (my error of law decision is annexed, below).
2. This case is somewhat unusual in that the Appellant's appeal was heard at the same time as that of her husband, Mr Adjar. His appeal was allowed

by the First-tier Tribunal Judge on the basis that he had resided in the United Kingdom on a continuous basis for over twenty years and that as a result succeeded in his appeal by under paragraph 276ADE(1)(iii) of the Immigration Rules (“the Rules”) (whilst this provision was not expressly stated, it is clear that it applied and Mr Wilcox has not suggested that some other basis for success had been envisaged).

3. In adjourning the case following my decision of error of law, I indicated that the core issues for consideration at the resumed hearing were:
 - (i) would it be proportionate to separate this couple of very long-standing marriage, either permanently or temporarily?
 - (ii) would it be proportionate for the couple to continue their family life together in Ghana by both of them leaving the United Kingdom notwithstanding Mr Adjar’s success in his appeal and subsequent grant of limited leave to remain in this country.

The hearing before me

4. In remaking the decision in this appeal I have had regard to the Respondent’s bundle together with the Appellant’s First-tier Tribunal bundle, a bundle provided by her in respect of the previous hearing before me in January 2019, and up-to-date statements from herself and her husband.
5. The Appellant and her husband were both called to give oral evidence, a full note of which is contained in the Record of Proceedings.
6. The Appellant adopted her new statement and was then cross-examined. She gave details of her seven children who live in Ghana and she confirmed that it would not be right for her and her husband to be separated.
7. Mr Adjar adopted his new witness statement and was also cross-examined. He indicated that he would wish to remain in the United Kingdom even if his wife had to return to Ghana.

Submissions of the parties

8. Mr Whitwell relied on the reasons for refusal letter. He suggested that the Respondent’s strongest argument was that both the Appellant and her husband could return to Ghana together. He submitted that there were no very significant obstacles to the Appellant returning to Ghana and reintegrating into the society of that country. Outside the context of the Rules there was nothing exceptional in this case. Notwithstanding his grant for limited leave to remain Mr Adjar could go to Ghana as well. He has spent his formative years there, his children were there and he clearly

had strong ties to the country. There were no significant health issues. Mr Whitwell acknowledged, although he certainly did not concede the point, that Mr Adjar's limited leave to remain might preclude the Appellant from being able to make an entry clearance application from Ghana in order to re-join her husband in this country.

9. Mr Wilcox put his case in clear terms. He submitted that as a result of Mr Adjar succeeding in his appeal it would, for that reason alone, be disproportionate to expect him to return to Ghana with his wife. The decision of the First-tier Tribunal to allow his appeal was effectively dispositive of the issue of the couple returning together. Mr Wilcox then submitted that it would be disproportionate to separate this couple. They had a very strong family life together as evidenced by their extremely long marriage. He also relied on the fact that an entry clearance application would be impossible.

Findings of relevant facts and conclusions

The facts

10. There is no real factual dispute in this appeal. I find that the Appellant and Mr Adjar have indeed been married for thirty-five years or so. I find that they lived together in Ghana before Mr Adjar came to this country in approximately 1993.
11. I find that the Appellant entered this country in 2003 and had resided here with her husband ever since.
12. On the basis of the evidence before me I find that the couple have seven adult children living in Ghana. I am willing to accept that their circumstances may not be ideal in terms of economic activity, but it is much more likely than not that they earn their livings in various respects. It is also the case, as found by the First-tier Tribunal and recognised by me in my error of law decision, that at least one but probably more of the couple's children would be in a position to provide meaningful support to their parents on return to Ghana, if that scenario came to pass.
13. I find that Mr Adjar is a pensioner and is likely to suffer from diabetes and high blood pressure. However, there is no evidence before me, and indeed no suggestion, that his health problems are significant in any way. There is certainly no indication that relevant treatment for diabetes and/or high blood pressure are simply not available in Ghana.
14. I readily acknowledge that Mr Adjar, purely from a subjective perspective, would wish to remain in the United Kingdom and that the Appellant would want to continue living with her husband.

Conclusions

15. On the basis of the facts set out above, I turn to my conclusions on the relevant legal questions.
16. There is clearly family life between the Appellant and her husband. The Appellant has also established a private life in the United Kingdom by virtue of her fairly long residence here and the ties that she will have created. Mr Adjar enjoys his own private life, as indicated by the successful outcome to his appeal before the First-tier Tribunal.
17. The Respondent's refusal of the Appellant's human rights claim constitutes a sufficiently serious interference with the combined family and private lives to engage Article 8.
18. The Respondent's decision is in accordance with the law and it pursues a legitimate aim.
19. I turn to the core issue of proportionality.
20. It is the case that Mr Adjar has been granted thirty months' limited leave to remain as a result of his successful appeal. He is of course not "settled" in the United Kingdom. In consequence of this, there is no basis upon which the Appellant can rely on the provisions on Appendix FM to the Rules relating to leave to remain.
21. In addition, the husband's status means that she could make an entry clearance application from Ghana to re-join her husband in this country. To put it bluntly, she could not even get off first base, as it were. This effectively rules out the question of there being only a temporary separation of the couple if the Appellant were to return to Ghana alone.
22. Next, I conclude that a permanent separation of this particular couple would be disproportionate. They enjoy a marriage of significant longevity and, save for the period 1993 to 2003, have always lived together. To separate them permanently at this stage of their lives would, in my view, lead to unjustifiably harsh consequences for them both.
23. The question remains, could this couple both return to Ghana and enjoy their family life in that country? Taking all relevant matters into account and giving effect to Mr Adjar's rights in line with Beoku-Betts [2008] UKHL 39, I conclude that they could. This is so for the following reasons.
24. First, there is nothing in terms of the Appellant's own particular circumstances (leaving aside for the moment her family life with her husband) which would render a return to Ghana disproportionate in any way. She spent the majority of her life in that country, will still be well aware of the cultural and social mores of its society, has no material health problems, and of course has very strong ties through her seven

adult children there. On any view, there would not be significant obstacles to her reintegration, let alone very significant obstacles. Thus, she cannot satisfy paragraph 276ADE(1)(vi) of the Rules.

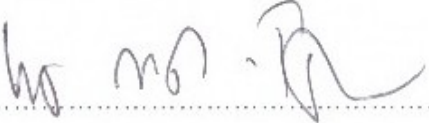
25. Second, I have found there would be meaningful and reliable support for both the Appellant and her husband should they return together.
26. Third, putting Mr Adjar's limited leave to remain in the United Kingdom to one side for the time being, there would not be any significant obstacles to his reintegration into Ghanaian society. Whilst he has been in the United Kingdom from a considerable period of time, he had spent many years in Ghana, will have social, cultural and linguistic ties to that country, has no significant health problems, and has strong familial bonds through his seven children.
27. Fourth, I reject Mr Wilcox's submission that the decision of the First-tier Tribunal to allow his appeal, ostensibly on the basis of paragraph 276ADE(1)(iii) is, *of itself*, dispositive of the question of whether Mr Adjar could be expected to return to Ghana.
28. He succeeded in his appeal on a narrow basis, namely the acquisition of a sufficiently long continuous residence in this country in order to bring himself within the particular provision of the Rules. It was *not* on the basis of there being a risk to his personal safety on return to Ghana or in respect of any significant medical problems. It was, in essence, purely on the basis of his private life and with reference to the arbitrary threshold of twenty years' continuous residence in this country required by the Rule.
29. This set of circumstances, in my view, in no way precludes a conclusion that it would be reasonable, and certainly not disproportionate, for him to choose to return to Ghana with his wife. That is not to say that it would be an easy choice: I accept that it would not. Yet the considerations I have set out in paragraphs 25-26 and 28, above, together with his lack of settled status and the inescapable fact that he and his wife had been in the United Kingdom on an unlawful basis throughout their residence here, have the cumulative effect of significantly outweighing the difficulty in making the choice to return to Ghana.
30. In light of the above I conclude that the Appellant's appeal must be dismissed. The Respondent's refusal of her human rights claim does not represent a disproportionate interference with her family life and is not therefore unlawful under section 6 of the Human Rights Act 1998.

Notice of Decision

The decision of the First-tier Tribunal contained material errors of law and I have set it aside.

I remake the decision by dismissing the Appellant's appeal.

No anonymity direction is made.

Signed 

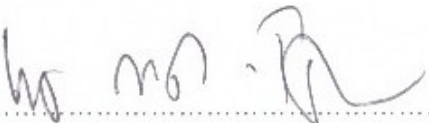
Date: 4 April 2019

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed 

Date: 4 April 2019

Deputy Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION



**Upper Tribunal
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DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MS ESTHER QUARTY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Wilcox, Counsel, instructed by Blackrock Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Freer (the judge), promulgated on 1 November 2018, in which he dismissed her appeal against the Respondent's refusal of her human rights claim.
2. Her appeal had been heard together with that of her husband, Mr Adjar. Their appeals were essentially based upon their long residence in the United Kingdom, albeit virtually all of it on an unlawful basis.

The judge's decision

3. The judge dealt at some length with a previous Tribunal decision in respect of the Appellant and her husband from 2013 and in light of the well-known Devaseelan principles. Having done so he concluded at [34] that the Appellant's husband had in fact been continuously resident in the United Kingdom since 1993. Without stating it in terms, it is fairly clear that the judge had in mind paragraph 276ADE(iii) of the Immigration Rules. He went on to conclude that the husband's appeal should be allowed.
4. He formed a different view in respect of the Appellant's case. Although he accepted that she had been in this country since 2003, the judge found that she could be supported by her adult children should she return to Ghana, that she possessed very strong ties to that country, and that she could, if necessary, return to Ghana and make an entry clearance application to re-join her husband in the United Kingdom (see [36], [47], and [48]). With reference to the judgment of the Supreme Court in Agyarko [2017] UKSC 11 and to the Appellant's private life, the judge concluded that her removal would not be disproportionate and he duly dismissed her appeal.

The grounds of appeal and grant of permission

5. The grounds complain that the judge had erred in concluding that the Appellant's children could provide support for her on return to Ghana and that it would have been "unfair and difficult" for the Appellant to leave her husband in this country whilst she returned to Ghana. It is asserted that her husband was "fully reliant" on the Appellant for "love, care and support".
6. Permission to appeal was granted by First-tier Tribunal Judge Povey on 22 November 2018.

The hearing before me

7. Mr Wilcox relied on the grounds. Building on these, he submitted that the judge had not addressed the issue of family life, as opposed to simply private life. In respect of the judge's finding that the Appellant could have been supported by her adult children in Ghana, Mr Wilcox posed the question as to what evidence this had been based on. In respect of the possibility of making an entry clearance application, it was submitted that no proper analysis had been carried out: it may well be that such an application would fail on financial grounds.
8. Mr Bramble accepted that the judge should have dealt expressly with the issue of family life, but he submitted that any error was not material and the judge was entitled to make the findings in relation to the Appellant's private life and was also entitled to conclude that an entry clearance application could be made from Ghana.

Decision on error of law

9. This is a somewhat unusual scenario in that a couple who are clearly in a genuine and subsisting marriage of more than thirty-five years standing face the prospect of being separated as a result of the judge's decision. It is also the case that the judge has, somewhat oddly, failed to expressly deal with the family life aspect of Article 8 as opposed to simply the private life.
10. Beginning with the private life aspect of the Appellant's case, the simple fact that she had been resident in this country since 2003 was never, of itself, going to be sufficient for her to succeed outside the context of the Rules. In my view the judge was entitled to draw what in my view was a perfectly reasonable inference that the Appellant's adult children would financially support her if she returned to Ghana.
11. As far as I can see there was no evidence whatsoever from any of these children and she expressly stated that they would refuse to help their mother: frankly, it would be rather odd if this had been the case. The judge was entitled to find that there were strong familial and cultural links with Ghana (given that the Appellant had resided for the great majority of her life in that country before coming to the United Kingdom) and that a large number of close family members resided in that country.
12. The real issue here is the judge's consideration of the Appellant's relationship with her husband. There is an error in the sense that the judge has failed to expressly address the question of family life. It was clear that such life existed as between the Appellant and her husband and this should have been stated and then dealt with methodically.
13. Importantly, the judge relied heavily on the possibility of the Appellant returning to Ghana and making an entry clearance application, reasoning

that any separation from the husband would potentially have been on a temporary nature only (see [48] and [51]).

14. In principle there is nothing objectionable about his reliance on this point. However, a conclusion that the entry clearance option was properly open to the second Appellant had to be grounded on the particular facts of the case.
15. The problem here is that is that the judge's conclusion on the first Appellant's appeal had the effect of requiring the Respondent to grant him a period of limited leave to remain: he would not be settled in the United Kingdom. That being so, there is, at least on the face of it, no way in which the second Appellant could have made an application with any prospect of success whatsoever. The judge failed to have this significant point in mind when relying on the entry clearance route.
16. Given the obvious importance of the entry clearance issue in the judge's reasoning, the oversight of the first Appellant's status as a result of his successful appeal, discloses a clear error.
17. I consider that the errors identified in the preceding paragraph and in paragraph 13, above, are material. It is right that at [36] the judge suggests that the first Appellant could go and live with his wife in Ghana, thereby rendering the entry clearance application issue irrelevant. The consideration of this scenario is problematic, though. There is virtually no reasoning provided as to why it would be proportionate for the first Appellant to return, given his particular circumstances, including of course the fact that the judge was also concluding that it would *not* be proportionate for him to go.
18. In light of the above, I set the judge's decision aside.

Notice of Decision

The decision of the First-tier Tribunal does contain material errors of law and I set it aside.

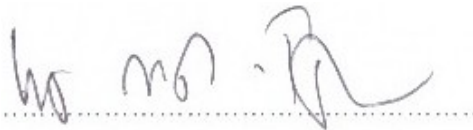
I adjourn this appeal for a resumed hearing in the Upper Tribunal.

No anonymity direction is made.

Direction to the parties

- 1. The two core issues to be addressed at the resumed hearing are:**

- i. **Would it be proportionate to separate the couple, either permanently or temporarily?**
 - ii. **Would it be proportionate for the couple to return to Ghana together?**
2. **Updated witness statements for the second Appellant and her husband shall be provided. These must address the tow issues identified in direction 1;**
3. **Oral evidence will be permitted at the resumed hearing, provided that direction 2 is complied with;**
4. **Any further evidence relied on by either party shall be served on the other side and filed with the Tribunal no later than 10 working days before the resumed hearing;**



Signed
2019

Date: 16 February

Deputy Upper Tribunal Judge Norton-Taylor