



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

Appeal Number: IA/00295/2014

THE IMMIGRATION ACTS

Heard at Manchester

On 28th July 2014

Determination

Promulgated

On 9th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MISS BEATRICE AMANAKWH ADOWAH
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Thornhill

For the Respondent: Mr Diwnycz

DETERMINATION AND REASONS

1. The Appellant is a citizen of Ghana born on 2nd May 1958. The Appellant was detained in Manchester on 2nd November 2013. She was reported to have entered into a suspicious marriage with a British citizen Mr George Aitchison and presented a Ghanaian passport issued on 17th January 2005

valid for ten years. During her interview she admitted that she entered the UK in 2003 on a Ghanaian passport which has subsequently been lost and that her leave expired in 2004 and that she did not attempt to regularise her status or leave the UK. She contends that she is in a subsisting relationship akin to marriage with Mr Aitchison since 2004 and that they live at the same address. On 14th November 2013 application was made on her behalf to formalise her status by way of seeking leave to remain in the United Kingdom on the basis of her relationship with Mr Aitchison. By Notice of Refusal dated 12th December 2013 the Secretary of State refused the Appellant's application and issued removal directions from the United Kingdom.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Chambers sitting at Manchester on 14th April 2014. In a determination promulgated on 25th April 2014 the Appellant's appeal was allowed under Article 8 of the European Convention of Human Rights.
3. On 6th May 2014 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended:
 - (1) That the judge had misdirected himself in law by failing to identify compelling grounds not sufficiently recognised under the Rules such that there was an arguable case for considering the appeal outside the Rules.
 - (2) The judge when assessing proportionality failed to consider that the Appellant's family life was formed while her immigration status was precarious.
 - (3) The judge failed to consider the public interest in firm immigration control this being a relevant consideration in any proportionality assessment under Article 8.
4. On 21st May 2014 First-tier Tribunal Judge Kelly granted permission to appeal. In granting permission Judge Kelly noted that the Tribunal did consider the relevant reported decisions but that it was arguable that it did not apply the principles enunciated therein to the facts of the appeal. In particular Judge Kelly considered that it was arguable that it failed to consider whether the Sponsor's age (61 years) was such as to present an insurmountable obstacle from family life taking place outside the United Kingdom, or was otherwise a compelling circumstances that rendered the Appellant's removal unjustifiably harsh and thus disproportionate for the purposes of the Article 8 assessment.
5. It was on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. This is an appeal by the Secretary of State. For the purpose of continuity within proceedings the Secretary of State is referred to herein as the Respondent and Miss Adowah as the Appellant. Miss Adowah appears by her instructed solicitor Mr Thornhill. Mr Thornhill is familiar

with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Diwnycz.

Submissions/Discussions

6. Mr Diwnycz does no more than stand behind the Grounds of Appeal. Mr Thornhill reminds the Tribunal that each case is fact-sensitive and submits that in this case Judge Chambers had identified factors and reached the conclusion that for the Appellant and her partner to return to rural Ghana was untenable. He submits that reasons have been provided and that the judge was entitled to reach those conclusions. He points out that this is not a run-of-the-mill case. He refers me to the relevant case law of *AB (Jamaica) v Secretary of State for the Home Department [2007] EWCA Civ 1302* and points out that at paragraph 19 of the determination whilst not specifically referring to that authority Judge Chambers has given due consideration to the relevant features of the appeal. He submits that it is not disputed if the Sponsor and the Appellant returned as a family unit to Ghana they would have to live in rural Ghana and that the judge has given full and detailed reasons as to why that was not possible nor practical and that having followed the guidance in case law he has made a finding of fact he was entitled to and that the determination does not contain any material error of law. He asked me to dismiss the appeal.

The Law

7. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
8. 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. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

9. The bases of the Grounds of Appeal are set out above. Those Grounds of Appeal amount to little more than disagreement/argument. The judge made findings at paragraphs 16 to 21. They are detailed findings and ones that he was entitled to reach. He has set out the historical background of how the Appellant and Sponsor came to know each other. He accepts their joint factual account relating to their relationship. He has made specific findings relating to the features of the appeal namely that if the Appellant is removed the parties would be separated and there is little likelihood that the Sponsor would be in a position to follow her to Ghana due to his age, that he would not have any prospect of employment in Ghana, that they would lose their means of support if he went to Ghana and it would damage the Sponsor's prospects in relation to his pension arrangements. Judge Chambers has considered that the prospective degree of family disruption is a necessary ingredient and that it would be severe and that the Sponsor given his age and history would not fare well in a rural area of Ghana. Further he would not fare well elsewhere. These are all findings that he was entitled to make. These are all the factors effectively set out within the Court of Appeal determination of *AB (Jamaica)* and they were findings that the judge was entitled to come to.
10. In granting permission to appeal Judge Kelly acknowledged that the Tribunal had considered the relevant reported decisions and went on solely to concentrate on the suggestion that it was arguable that the Tribunal had failed to consider whether the Sponsor's age (61) was such as to present an insurmountable obstacle to family life taking place outside the United Kingdom and was otherwise a compelling circumstances rendering the Appellant's removal unjustifiably harsh. With the greatest of respect to the judge granting permission that is exactly the approach that has been adopted by Judge Chambers in his analysis at paragraph 19 of his determination. In such circumstances the decision of the First-tier Tribunal does not disclose any material error of law and the decision of the First-tier Tribunal is upheld and the appeal of the Secretary of State is dismissed.

Decision

11. The decision of the First-tier Tribunal does not disclose a material error of law. The appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal is maintained.
12. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that order and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris