



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/19943/2014

THE IMMIGRATION ACTS

Heard at Glasgow
On 7th January 2015

Decision & Reasons issued
On 12th January 2015

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

IVIOUS MABEL TUFFOUR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr M Sabir, of MBS, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a determination by Designated First-tier Tribunal Judge Murray promulgated on 31st July 2014, dismissing her appeal against refusal of leave to remain. She accepted that she could not meet the requirements of the Immigration Rules, and argued her case under Article 8 of the ECHR only.
2. (To avoid any further procedural confusion, it should be noted that the purported notice of appeal by the appellant's daughter (IA/19977/2014) was subject to a notice of no valid appeal issued on 27th May 2014. There are no extant proceedings in which she is an appellant. She is involved only as a dependant. The grant of permission to appeal to the Upper Tribunal errs in identifying two appellants.)

The grounds of appeal to the Upper Tribunal.

3. The grounds are clear and quite detailed. They were reproduced as a skeleton argument, to which Mr Sabir initially had nothing to add. Five main points are raised:
- (i) (paragraph 2 of the grounds): at paragraph 55 of the determination the judge failed to take account of all relevant circumstances; did not see that there were no real inconsistencies in the evidence concerning a relative of the appellant's partner, said to be a brother, half-brother or uncle, and about whether the appellant and her partner met in Edinburgh or in London; and if there were any inconsistencies, failed to take account of the explanations for them;
 - (ii) (paragraph 3): at paragraph 57, in deciding to give little weight to a letter from an advocate in Ghana, the judge failed to ask herself the correct question; should not have found that the information conveyed in the letter, stemming from the appellant's guardian, was from a partial or tainted source; and should not have found that the fact that the letter was designed to support the appeal detracted from its veracity;
 - (iii) (at the end of paragraph 3): the judge failed to address whether it would be unduly harsh to expect the appellant, with her 4 year old child, to relocate in Ghana;
 - (iv) (paragraph 4): at paragraph 58, the judge failed to conduct a separate assessment of the best interests of the child, wrongly taking it that her partner, who is an EEA national, might also go to Ghana;
 - (v) (paragraph 5): at paragraph 60, the judge failed to consider the appellant's mental health problems in the Article 8 context, which raises different considerations from an Article 3 health case.

Submissions for respondent.

4. The main allegation of factual error was about where the relationship between the appellant and her partner began. The appellant's uncle says in his statement at paragraph 11, "Shortly after we moved to Edinburgh, Ivious met her current partner Daniel. They began a relationship in September 2012 and have been in the relationship ever since". Although that was not a specific statement that the relationship began in Edinburgh, that was its natural reading. It did not show that the judge had fallen into a misconception and could not be characterised as a clear error of fact.

5. In any event, paragraph 55 of the determination set out several other problems with this chapter of the evidence, in which the appellant identified no possible errors. There was nothing to displace the adverse credibility finding.
6. Although there was evidence about the mental condition of the appellant's uncle, it did not suggest confusion, memory problems or any other difficulty in giving evidence. There was no basis for treating his evidence with any extra latitude.
7. Regarding the letter from the advocate in Ghana, the judge had not fallen into the error of treating it in isolation or as tainted simply because the information came from the appellant's side. The item was approached in the context of the appellant making "a veiled asylum claim" which she never properly pursued and which she outlined only after she had spent a long time in the UK. The judge was entitled to take these features into account. Even if the judge erred on this point, the letter was insufficient to suggest that the appellant had any difficulty in returning to Ghana. She made no protection claim and relied on Article 8 only. There was no error in making a comment on availability of internal relocation, but that was only an aside, because the appellant did not show that she was in need of Article 3 or Refugee Convention protection in relation to any part of Ghana.
8. The only relevant information placed before the First-tier Tribunal about the child's best interests appeared to be that she was at nursery, would soon be starting primary school and that the appellant had a partner. Even on the appellant's contentions that partner is not the child's natural or adoptive father. Her grounds suggested that the judge considered that the appellant's partner might be forced to remove to Ghana, but there was no question of that. It was unobjectionable to observe that it was *possible* for him to do so. The judge had not treated that as anything but a matter of choice. In any event, on her adverse credibility findings there was no family unit to consider for Article 8 purposes.
9. As to the aspect of the appellant's health, there had been no significant evidence about that before the First-tier Tribunal either. There was nothing to call for any further extended treatment. Medical considerations might play in principle a part in the proportionality outcome, but in substance none were raised.
10. Finally, Mrs O'Brien submitted that the challenge to the adverse credibility conclusion was crucial. If that stood, none of the other challenges were significant.

Response for appellant.

11. Mr Sabir agreed that the challenge to the adverse credibility findings was primary, and that if that did not succeed the other challenges fell away. It therefore became

common ground that if error were to be identified the case would be apt for remit to the First-tier Tribunal for a fresh hearing.

12. Mr Sabir said that the crux was that the judge failed to approach the evidence from the appellant's uncle correctly. It was a point which might have made all the difference regarding the credibility of her relationship with her partner. If that had been established, proportionality would have been considered on an entirely different basis.

Conclusions.

13. The judge said that she did not give much weight to the letter from the advocate in Ghana. In the context of all the evidence and reading the determination as a whole, that is a conclusion she was entitled to reach. She did not disregard it only because it tends to favour the appellant.
14. The judge's observation about internal relocation is incidental, and entirely valid.
15. Strictly construed, the uncle's statement is specific about *when* the appellant and her partner met, not *where* they met. However, the obvious and natural meaning of the relevant passage is that the meeting was in Edinburgh. The appellant has not persuaded me that the judge erred in reading the passage as inconsistent with other evidence.
16. Importantly, paragraph 55 goes on to identify further discrepancies in the evidence about when, where and for how long the parties were in contact and with whom they stayed. The medical evidence about the appellant's uncle does nothing to explain away these discrepancies. The judge also found the appellant's partner to be an unclear and unreliable witness. The Upper Tribunal should be slow to interfere with findings reached by the judge who has had the advantage of hearing directly from the three witnesses.
17. The judge had other reasons for coming to an adverse conclusion on credibility. For example, there was the illogicality of the appellant saying that she developed an ectopic pregnancy and lost her child because she was kicked. The judge was unsurprisingly sceptical of the claim that the appellant's uncle would have paid £1,500 to a businessman to get the appellant to the UK from Ghana yet would have been unaware that a false document was used for that purpose. The appellant's partner said that he wished to adopt the child but had made no enquiries and had no knowledge about her biological father. Those were all valid points which have not been disputed.

18. The appellant's representatives have done their best to burrow out such errors as might be found, but I am not satisfied that there is any material flaw in the judge's overall adverse credibility conclusion. It was reached for several sustainable reasons. The determination as a whole is a more than adequate explanation to the appellant of why her case has been found to fall short of probation.
19. As said in the determination at paragraph 63 and as accepted by the parties before me, credibility was crucial. The case might not have succeeded outwith the Rules even on the most favourable factual findings, but on the findings actually reached it had no prospects. There was no reason to think that the child's best interests would be adversely affected by her return to Ghana with her mother.
20. The determination of the First-tier Tribunal shall stand.
21. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

8th January 2015
Upper Tribunal Judge Macleman