



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA010752015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 21<sup>st</sup> April 2016

Decision & Reasons Promulgated  
On 25<sup>th</sup> May 2016

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**MS SALOME KANABO  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P. Turner of Counsel  
For the Respondent: Mr S. Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Ghana born on 24<sup>th</sup> June 1938. She is now 77 years old. She appeals against a decision of Judge of the First-tier Tribunal Taylor sitting at Taylor House on 20<sup>th</sup> July 2015 in which he dismissed the Appellant's appeal against

a decision of the Respondent dated 17<sup>th</sup> December 2014. That decision was to refuse to grant the Appellant further leave to remain under Article 8 (right to respect for private and family life). The Appellant wished to remain in this country with her husband Mr Samuel Sackey a United Kingdom citizen ("the Sponsor"). The parties married in Ghana on 16<sup>th</sup> February 2011 and the Appellant arrived in the United Kingdom on 14<sup>th</sup> July 2014. She had been granted a family visit visa valid from 23<sup>rd</sup> May to 23<sup>rd</sup> November 2014.

2. The Respondent refused the Appellant's application on the basis that she did not meet the Immigration Rules as her application was submitted whilst she was in the United Kingdom as a visitor. She had not lived in the United Kingdom for at least twenty years. She had travelled to the United Kingdom after living in Ghana for 76 years. The Respondent was not satisfied the Appellant had no remaining ties to Ghana. The Appellant had family and property in Ghana and there were no exceptional circumstances on which to grant the application outside the Immigration Rules.

### **The Hearing at First Instance**

3. The Appellant told the Judge she had a daughter who had died in the United Kingdom in 1999 and was buried in Wandsworth. The Appellant could not live in Ghana because she wished to have the opportunity to visit her daughter's grave and place flowers there. She could not leave her husband to return to Ghana. She had been lied to by her husband's lawyer in or about 2014 who incorrectly advised her to apply for a visit visa rather than a settlement visa.
4. The Sponsor told the Judge that it was on his lawyer's advice that he, the Sponsor applied for a family visit visa for the Appellant to travel with him to the United Kingdom following their marriage. His lawyer had advised that the Appellant should apply for a visit visa and then apply for permanent leave. They were not interviewed or questioned by the Entry Clearance Officer they just completed the application form and there was no opportunity to explain the purpose of the visit. The first application for a visa was refused. The parties remained in Ghana after their marriage until they could both travel to the United Kingdom in July 2014. The Sponsor was a lecturer until he retired in 1995. He had two pensions and an annuity and a current monthly income of £1,250. He owned his two bedroomed house outright. The parties would not be a financial burden on the State as he had never claimed benefit. The Sponsor also owned his own house in Ghana which was being looked after by a caretaker.
5. In closing submissions the point was made by the Appellant's representative that the Appellant had been wrongly advised. The parties had no intention to deceive the immigration authorities. The Appellant and Sponsor wanted the Appellant to settle but were advised wrongly to apply for a visit visa instead. The Appellant accepted that she was unable to meet the requirements of the Immigration Rules as she had entered the United Kingdom as a visitor and applied while she had that status.

6. The Judge noted at paragraph 13 of his determination that the Appellant had failed to demonstrate that she qualified to remain in the United Kingdom as a spouse or partner under Appendix FM and could not benefit from paragraph EX1. EX1 was not a freestanding Rule and could only be applied if the Appellant met the substantive Rule. In any event the Appellant had failed to demonstrate that there were insurmountable obstacles to her return to Ghana. The parties might well prefer to live in the UK where the Sponsor had his children and grandchildren but both Appellant and Sponsor had homes in Ghana. The Appellant failed to meet the requirements of paragraph 276ADE with regard to private life. There were no arguable grounds to grant leave outside the Rules.
7. In rejecting the Appellant's claim that the lawyer's bad advice should be taken into account the Judge wrote at paragraph 14:

"The Appellant claims that she travelled to the UK on a visit visa on the advice of a lawyer who said that she could then apply for indefinite leave in the UK. The limitation on applying for leave as a spouse while in the UK as a visitor or with leave for less than six months is not a new provision and should be well-known to any professional advisor. The Appellant has not produced any written advice from the lawyer to confirm her account of the advice that she was given. Her evidence that it was her genuine belief that she could apply for indefinite leave while in the UK as a visitor is undermined by her failure to disclose the true purpose of her visit during the application process. On the balance of probabilities I am not satisfied that a professional advisor would have given this advice on an unqualified basis without pointing out the risk that further leave may be refused".

The Judge dismissed the appeal under both the Immigration Rules and Article 8.

### **The Onward Appeal**

8. The Appellant's grounds of onward appeal argued that the application for a family visit had been made upon the advice of the Sponsor's lawyer Wisdom Abordo of Alpha Legal Services. The visa application was refused twice "even after an appeal to Leicester Home Office". The Sponsor had subsequently complained about the advisor. A third application for a visit visa resulted in the grant of a family visa to the Appellant. The visa was issued for six months scheduled to expire on 23<sup>rd</sup> November 2014. After the Appellant arrived in the United Kingdom the couple went to see the lawyer who said he was making an application to the Respondent. The Sponsor produced a letter from the Office of the Immigration Services Commission dated 20<sup>th</sup> October 2015 stating that Mr Abordo had pleaded guilty to three offences of providing unqualified immigration advice contrary to Section 91 of the Immigration and Asylum Act 1999 on 2<sup>nd</sup> October 2015. He was sentenced to 26 weeks' imprisonment.
9. The application for permission to appeal came on the papers before Upper Tribunal Judge Martin sitting in the First-tier on 20<sup>th</sup> January 2016. In refusing permission to appeal she stated that the grounds amounted to no more than a disagreement with

the decision that there were no compelling reasons to justify allowing the appeal on Article 8 grounds. The Judge had given detailed reasons why there was nothing to prevent this couple albeit elderly from living in Ghana. They were both of Ghanaian origin; both had property and family there and had lived there together for three years after they married. She added at paragraph 4 of her refusal "They were also less than candid in the Appellant obtaining leave to enter as a visitor when it was her intention to remain". There were no compelling reasons to allow the appeal outside the Rules.

10. The Appellant renewed her application for permission to appeal to the Upper Tribunal and the matter came before Upper Tribunal Judge Plimmer on 15<sup>th</sup> February 2016. Granting permission to appeal she wrote:

"In finding an absence of exceptional or compelling circumstances it is arguable that the First-tier Tribunal failed to take into account that the individual who initially advised the elderly Appellant and her husband that the Appellant should enter as a visitor as opposed to a spouse was being investigated by the OISC. The FTT was not satisfied that a professional advisor would have given the advice claimed. The FTT arguably failed to take into account the evidence before it that the matter was being investigated by the OISC. Since the date of decision the Appellant has provided an OISC letter dated 20<sup>th</sup> October 2015 stating that the individual who advised the Appellant has been convicted of providing unqualified immigration advice or services and sentenced to 26 weeks' imprisonment. The Appellant's representatives should be prepared to argue why such post-decision evidence should be taken into account when determining whether the FTT erred in law at an oral hearing."

11. In her onward grounds of appeal against the refusal to grant permission at first instance the Appellant submitted that there were compelling circumstances in her case given her and the Sponsor's ages and the strength of the Sponsor's ties to the United Kingdom of which he was a citizen. The balancing act required in Article 8 cases was not properly applied by the Judge and the onward grounds of appeal proceeded to cite at some length from a number of decided cases. These grounds of appeal were lodged on 1<sup>st</sup> September 2015 to the First-tier Tribunal. They should have been lodged by 28<sup>th</sup> August 2015 and no explanation why they were late was ever given. For those reasons Upper Tribunal Judge Martin refused to extend time. The point does not appear to have been dealt with by Upper Tribunal Judge Plimmer when she overturned that decision and granted permission to appeal. For the avoidance of doubt I formally extend time to the Appellant to lodge her appeal against the First-tier Tribunal's decision.
12. The Respondent replied to the grant of permission by letter dated 4<sup>th</sup> March 2016. She cited the case of **BT [2004] UKIAT 00311** that if an appeal was based in whole or in part on allegations about the conduct of former representatives there must be evidence that those allegations have been put to the former representative and the Tribunal must be shown either the response or correspondence indicating that there has been no response. The First-tier Tribunal determination did not disclose any

evidence put before the Tribunal that would meet the requirements identified in **BT**. The permission only referred to a letter confirming an investigation. It was thus not open to the First-tier to make a finding of fact against the lawyer. Nor was it open to the Tribunal to regard the Appellant's allegation against the Sponsor's former lawyer as a compelling circumstance that would warrant consideration outside the Rules.

13. In any event at paragraph 15 the Judge had considered the matter outside the Rules giving adequate reasons for finding that removal was proportionate. It was unlikely that the financial requirements would have been met in any event and the Appellant did not appear to have contested this submission. The Appellant had not argued that she could meet the requirements of an entry clearance application nor was any reliance placed upon the cases of **Chen** or **Chikwamba**. Even if the lawyer was at fault there was no evidence that the Appellant was prejudiced by the advice.

### **The Hearing before Me**

14. For the Appellant Counsel argued that the Appellant and Sponsor had been badly misled. Their representative had deceived them and had received 26 weeks' imprisonment on the basis of breaking the 1999 Act. Were these individuals in their 20's to 40's and were professional people one might be somewhat less sympathetic for them but they were approximately 75 years of age, two very old people who had fallen into the hands of disreputable representatives. Dealing with the preliminary point raised in the grant of permission the new material now available went to the core of the Judge's findings. The Judge had said at first instance that there was no evidence of dishonesty and had treated the Appellant's then representative as a qualified advisor. The advisor should have known that he was not entitled to take the Appellant's and Sponsor's money.
15. Counsel indicated he was not in a position to say whether the Appellant would have met the Immigration Rules at the time of the application as that was not information that he had been given in his instructions. What he had was evidence which showed that the Appellant and Sponsor had been deceived. There was clear evidence of the Sponsor's property and bank statements and money going in and out. There was enough therefore to show that the Appellant's application would not have been hopeless (if she had applied for entry clearance as a spouse). That was more properly a matter for another Judge but in the meantime there was a huge stain on the characters of the Appellant and the Sponsor. One could say there was every likelihood that an application for entry clearance would have succeeded as the Sponsor owned his own property in the UK and in Ghana. Money was not an issue.
16. There was something exceptional about this case. Whilst on the basis of the Appellant's status as a visitor she could never have met the Immigration Rules the only reason why she was in that position was because of the dishonesty of the representative. The Appellant and Sponsor did not simply make an allegation of dishonesty against the representative they took steps to report the matter to the OISC. What they did was in the wider public interest in reporting the lawyer. The Respondent would want people to do that. The focus in this case was on the

exceptional circumstances. Normally evidence after the event was not normally allowed in but this evidence showed the Judge's conclusions to be wrong. This was not intended as a criticism of the Judge. There was not the evidence before him but now there was such evidence. The question was what would the Upper Tribunal do with that evidence? The appeal should be remitted back to the First-tier Tribunal to be decided again. If this was a judicial review the test would be whether this was a material fact which could lead to a different result which was the case here.

17. In reply for the Respondent it was argued that the error made by the Judge in saying that the Appellants were not misled was not material. The case was never put in the First-tier on that basis that but for the bad advice they would have succeeded. The Judge was entitled to consider Article 8 outside the Rules which he did. Any error was immaterial. It was suggested that because the Appellant and Sponsor had been given poor advice that was a compelling reason to allow the appeal outside the Rule. Whilst it might engender sympathy for the Appellant the argument was not sustainable as there was nothing wrong with what the Judge did. If there was an error of law it was not material.
18. In conclusion for the Appellant Counsel argued that the **Ladd v Marshall** test was met. The Respondent appeared to accept that the Judge had got it wrong in the fact that the Judge did not believe that the Appellant and Sponsor were deceived. But for the visit visa issue they would have succeeded. The Judge had made an error of law. The decision should be set aside and sent back. There was evidence which pointed to a prima facie case. The parties had sufficient assets although Counsel conceded that that had not been shown in a clear and coherent manner in the statements. The Appellant's case would be much stronger if there was a schedule before the court showing that she met all the requirements. Nevertheless they did meet all the requirements of Appendix FM.

### **Findings**

19. In or about 2014 the Sponsor sought advice from a Mr Abordo who held himself out to be an immigration law advisor. He advised the Appellant and Sponsor that the Appellant should apply for a visit visa to gain entry to the United Kingdom. This application was rejected by the Home Office but it appears that the application was repeated at least twice before finally being granted. The Appellant duly travelled to the United Kingdom with the Sponsor and immediately made an application for indefinite leave to remain whilst here. This she was not entitled to do on the basis that her status was as a visitor. The correct course of action would have been to have applied for leave to enter the United Kingdom as the spouse of the Sponsor. Had this been refused it would have generated an out-of-country appeal.
20. The Appellant and Sponsor were unhappy to discover that the result of acting on the advice given to them by Mr Abordo was that the Appellant could no longer make an application for leave to remain whilst in the United Kingdom. They complained to the Office of Information Services Commissioner who investigated and found that in

taking the Sponsor's money Mr Abordo had committed one or more offences under the 1999 Act. He was successfully prosecuted for that.

21. The Appellant's case is that she and the Sponsor are elderly and thus vulnerable to being deceived but their main complaint is that the Judge on the basis of the evidence before him at the time was not satisfied that the Appellant and Sponsor had been given the wrong advice; had they been given the correct advice they could have succeeded under the Rules. The Judge formed the view that it was so obvious that the Appellant and Sponsor could not succeed in the way that had been chosen for them (applying for a visit visa and then once she was here applying for leave to remain) that the explanation of being deceived did not have the ring of truth about it.
22. The Tribunal is not in a position to know whether Mr Abordo was or was not otherwise competent (as opposed to dishonest). There seems little doubt that the Appellant and Sponsor were given incorrect advice by Mr Abordo (since the visit visa route did not lead to a further grant of leave under the Rules) but there is no indication that had the Appellant been given correct advice her position would have been materially different. That is to say there is no evidence that the Appellant could meet the requirements of Appendix FM including the financial requirements as at 2014 when she applied for a visit visa if instead she had applied for leave to enter as a spouse.
23. Counsel frankly accepted that he did not have evidence which would show that the Appellant could have met the financial and other requirements of Appendix FM as at 2014. In my view this evidence was crucial. As I have indicated I am not in a position to say whether Mr Abordo looking at the situation could see that the Appellant and Sponsor could not meet the requirements of Appendix FM and therefore advised them to carry out a course of action which would seek to evade immigration control albeit without them knowing that that was what was happening. The evasion was by the device of applying for entry clearance as a visitor and then making an application once here for leave to remain. To conclude that about Mr Abordo would be speculation on the Tribunal's part. All one can say is that he dishonestly held himself out as a person who could charge for immigration advice when he could not.
24. The burden of establishing that the Appellant was able to meet the Rules rests on the Appellant and that means that some evidence should have been produced to the Judge at first instance to show that but for the incorrect advice given by Mr Abordo (whatever his motivation for that incorrect advice was) the Appellant would otherwise have succeeded. The Judge's suspicion of some degree of collusion between the Appellant and Sponsor on the one hand and Mr Abordo on the other in so arranging matters that the Appellant came into the United Kingdom as a visitor and overstayed was an error but the question I have decided is whether it was a material error.
25. Given the paucity of evidence before the Judge that the Appellant could have otherwise succeeded if she had put in an application to the Entry Clearance Officer in

correct form it is difficult to see how the Judge's error was material in this case. Counsel suggested that the matter should be remitted back to the First-tier Tribunal for evidence to be gathered to show the financial position of the Sponsor in clearer terms with a view to showing that the Appellant could have met the requirements in 2014. That is in reality an invitation to the Tribunal to go on a fishing expedition to look for evidence which might be of assistance to the Appellant. If the Appellant wishes to say that she would have been eligible for entry clearance but for the advice of Mr Abordo she should be in a position to provide evidence of that. All instead that the Appellant has provided evidence of is the conviction and sentence to prison of Mr Abordo. That does not take the case materially further. The evidence of Mr Abordo's dishonesty is not controversial but its effect on the merits is limited.

26. It is difficult to see what detriment the Appellant has suffered in this case given that she is now in the United Kingdom since it is not at all clear that she could have entered the United Kingdom legally with leave to enter as a spouse. The question of a stain on the character of either Appellant or Spouse does not arise since the Appellant's honesty is not in issue.
27. The Tribunal cannot speculate on what the Appellant's status might have been in the absence of some evidence that the Appellant could have achieved a different status to what she currently has, namely someone who has overstayed a visit visa. Any consideration of the Appellant's application for leave to remain outside the Immigration Rules has still to be looked at through the prism of the fact that she cannot meet the Immigration Rules.
28. Even if the Judge was perhaps a little harsh on the Appellant at paragraph 14 of the determination in its implication that the Appellant's credibility was undermined, this does not alter the basic point that the Appellant cannot show she was otherwise entitled to enter the country as a spouse because there was no clear evidence presented at first instance (or indeed on Ladd and Marshall principles to me) that she could have satisfied the requirements of the Immigration Rules at the time she made her applications for entry clearance.
29. The Judge considered whether there were exceptional or compelling circumstances which would lead him to consider the appeal outside the Immigration Rules. For the reasons he gave at paragraph 15 he found that there were no such circumstances. The appeal before me did not engage with that aspect of the case the point of appeal being that the exceptional circumstance in this case such that the appeal should be allowed outside the Rules was that the Appellant and Sponsor were both elderly and had been the victim of deceit. I do not accept the force of that argument because I do not find that the Appellant could show that she would otherwise have been eligible for entry clearance as a spouse under Appendix FM (particularly the financial requirements). I do not accept the argument that because of the incorrect implication of collusion the Judge's findings under Article 8 were thereby infected. I find that the Judge's summary of his decision under Article 8 and his finding of a lack of compelling circumstances were adequately reasoned (see also Upper Tribunal Judge Martin's summary at paragraph 9 above). There were many reasons why this appeal



could not succeed outside the Rules. The Appellant had failed to meet the requirements of the Rules and has not produced evidence to show that she could have met those requirements. Any error of law in the Judge's determination was thus not a material one. I therefore dismiss the appeal in this case.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of a material error of law and I dismiss the Appellant's appeal against it.

Appellant's appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 10th day of May 2016

Deputy Upper Tribunal Judge Woodcraft

**TO THE RESPONDENT**  
**FEE AWARD**

As no fee was payable and the appeal has been dismissed there could be no fee award.

Signed this 10th day of May 2016

Deputy Upper Tribunal Judge Woodcraft