



IAC-FH-CK-V2

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

Appeal Numbers: HU/17451/2019
HU/17454/2019

THE IMMIGRATION ACTS

**Heard at Field House via Microsoft Decision & Reasons
Teams Promulgated
On 23 July 2021 On 27 September 2021**

Before

**UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE O'CALLAGHAN**

Between

**RICHARD KOFI ASAMOAH
FREDA YEBOAH ODAME
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms S Ferguson, instructed by Soloman Shepherd Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Ghana. They entered the United Kingdom respectively on 15 September 2001 and 22 April 2000. Both entered as visitors. They made an application to regularise their stay in the United Kingdom on 23 June 2010 and that application was refused without a right of appeal.

2. Subsequently, a number of further representations were made, unsuccessfully, culminating in the current decision under appeal which is that of 8 October 2019. It was concluded that the appellants could not satisfy the provisions of paragraph 276ADE(1) of HC 395, nor did the factors relied upon by them have such weight as to justify a grant of leave under Article 8 outside the Immigration Rules. In addition, issues concerning the second appellant's health conditions were not found to be such as to engage Article 3 of the European Convention on Human Rights.
3. At the hearing before the judge Counsel expressly stated that she did not rely on Article 3 and therefore the matter was argued on the basis of private and family life issues within and outside the Immigration Rules.
4. The judge heard evidence from both appellants and from the second appellant's father. He noted their lengthy residence in the United Kingdom, their churchgoing and the second appellant's father and her family's residence in the United Kingdom as specifically relevant to the establishment of private life in the United Kingdom, which he accepted was the case.
5. He did not accept that the level of dependency between the second appellant and her father went beyond the normal ties of parent and adult child such as to engage her family life rights under Article 8, though he accepted that the relationship was relevant to the private life claim.
6. Though the second appellant had entered the United Kingdom on a visitor visa obtained under false pretences in that an age other than her real age was given, he did not attach any blame to her for this and therefore attached no weight to the means of her entry in his assessment of the issues before him. It remained the case that she had been residing in the United Kingdom unlawfully for some nineteen plus years.
7. The judge accepted that both appellants enjoyed family life between them but since it was proposed to remove them both there would not be any interference with that family life. He accepted their evidence that they did not have family in Ghana. He accepted that, other than the fact of their unlawful residence in the United Kingdom and working in the United Kingdom, the appellants had otherwise been law-abiding, and that no doubt this was why the respondent had not sought to invoke the suitability provisions of the Immigration Rules to justify refusing the application. He found that the appellants' private life had been established while they had for the most part been residing in the United Kingdom unlawfully and so while their status in the United Kingdom had been precarious. It was accepted that neither could demonstrate that they had been in the United Kingdom for a sufficiently long period of time to bring themselves within the provisions of paragraph 276ADE(1) by virtue of their residence alone. Their evidence was that while they had been working in the United Kingdom from time to time, they were also supported by family, friends and church members. He found that they were not financially

independent. It was accepted that they had accessed medical treatment including IVF treatment at public expense. He found that they had been a burden on the state. The fact that they spoke English was a neutral factor. He took judicial notice of the fact that English is an official language of Ghana and it was also the case that the appellants spoke at least one of the local languages of Ghana and so would not have any communication difficulties there.

8. The judge found that the appellants had both lived their formative years in Ghana and that rather than having to adapt to live in Ghana they would walk seamlessly back into life there. While both had been absent from Ghana for a significant period of time, it was clear that they maintained strong links with the Ghanaian diaspora, bearing in mind that all but one of the many letters of support they had received were from individuals who had been born in Ghana. Although the first appellant had had health problems in that he had previously suffered from testicular cancer he was not currently under any treatment and there was no evidence that testicular cancer could not be treated in Ghana. Also, while it was apparent that the second appellant was receiving medication for depression, there was no evidence that she could not access either that medication or a suitable substitute. There was no recent evidence of any suicidal ideation, the most recent episode having been in 2017, and there was no recent evidence that she would be at risk of suicide if returned to Ghana. He considered it to be striking that there was no medical report from a suitably qualified expert such as a psychiatrist or a psychologist setting out her current mental health problems and he derived little assistance from her medical records and the letter from the GP, who, plainly, did not hold herself out to be an expert in mental health problems. He readily appreciated that the second appellant's immigration issues might cause her anxiety and depression but, as he had noted, there was no evidence that this would persist once her immigration issues were concluded since the main source of her mental health problems was said to be her ongoing immigration status issues. No evidence had been provided that with regard to her treatment for blood pressure appropriate medication would not be available to her in Ghana.
9. The judge found, contrary to the appellants' claim that they would not receive any support from family, friends and churchgoers in the UK, that they would indeed receive such support. He rejected any suggestion that the same family, friends and churchgoers who had been supporting them for many years in the United Kingdom would suddenly turn their backs on the appellants. He was not assisted by the absence of any objective evidence as to the cost of living and/or medication in Ghana but found that, given the support the appellants received in the United Kingdom, they would have sufficient support to provide for their basic needs in Ghana.
10. He noted that it was plain that both appellants had been able to find work in the United Kingdom and the first appellant had been educated to

diploma level. There was a paucity of evidence to show that they would not be able to find similar work in Ghana and indeed, it appeared that the appellants had not looked into this. The judge noted that the first appellant had worked in a warehouse and considered there must be many warehouses in Ghana and the first appellant had been unable to say why he could not find similar warehouse work in Ghana. He therefore found that in addition to the support from family, friends and churchgoers they would receive they would be able to find work in Ghana which would assist them in meeting their basic needs. He found that beyond the medical conditions to which he had referred, the appellants were otherwise healthy and capable of work.

11. Concluding on the decision under the Immigration Rules, the judge noted that even on the appellants' account, they had lived in Ghana throughout their formative years and in the case of the first appellant, he was well into his 20s when he left Ghana. They both spoke at least one if not more of the official languages in Ghana as well as English and, given that they had resided there during their formative years and the evidence of their ties to the Ghanaian diaspora, they would have cultural ties. Their evidence was that they would continue to attend church in Ghana and he found that they would very quickly establish friendships and acquaintanceships in Ghana which would help them to adjust and integrate. He did not accept that they had been absent from Ghana for such a long time that they had lost their previous ties or integrative bonds. As a consequence, he did not consider that there would be very significant obstacles to the appellants' integration in Ghana. He cited the guidance from the decision of the Court of Appeal in Kamara [2016] EWCA Civ 813.
12. As regards Article 8 outside the Rules, he noted the second appellant's evidence that she sees her father regularly and that she cooks and helps with housework. It transpired that he lived with his girlfriend and that in addition to the second appellant, he had two other adult children and a brother residing in the United Kingdom.
13. The judge did not accept the evidence that insofar as he depended on his daughter the support she provided to her father could not be provided by his other children or his brother. Neither of the other children nor the brother had provided a statement or letter for the benefit of the appeal and there was no explanation of their circumstances which would prevent them from providing support. The judge noted evidence that the appellant's father had suffered from prostate cancer though this was in remission, and he had no significant ongoing needs. His girlfriend was said to be blind but there was no evidence setting out the difficulties either she or he encountered with their daily living needs which in the absence of the second appellant would go unmet. Again, the judge considered there to be a paucity of medical information as to the second appellant's father from which he could derive any assistance.

14. He rejected any suggestion that the second appellant's father would be unable to meet his needs in the absence of his daughter. He accepted that there would be an interference with the appellants' private life and that their removal would give rise to a more than technical interference with their private lives under Article 8. He took into account their lengthy residence in the United Kingdom and bore in mind that their private life had been established in the United Kingdom while their stay was precarious. The fact that they spoke English was a neutral factor and it was clear on the other hand that they had been a burden on the state by accessing healthcare to which they would not otherwise have been entitled. The judge concluded that the appellants' removal would not result in unjustifiably harsh consequences for either of them or their family or friends in the United Kingdom. He dismissed the appeal.
15. Permission to appeal was initially refused by a Judge of the First-tier Tribunal, but subsequently a Judge of the Upper Tribunal granted permission.
16. At a subsequent hearing before me on 16 February 2021, Ms Simak, who appeared on behalf of the appellant, sought to raise points which had not been in the original grounds. After some discussion, I agreed that amended grounds of appeal could be put in and those were the grounds before us at the date of the hearing.
17. In essence, the point argued for in the grounds concerned the fact that the second appellant completed twenty years in the United Kingdom seven days after the promulgation of the judge's decision. Reliance was placed on guidance of the Upper Tribunal in OA [2019] UKUT 65 where it was found that where in a human rights appeal a finding can be made that the appellant satisfied the Immigration Rules at the date of the hearing there can be no discussions of proportionality as the decision not to grant leave will not be lawful.
18. Otherwise, it was argued that the judge had come to inadequate and irrational conclusions on the appellants' entitlement to leave under paragraph 276ADE and had erred in his evaluation of the ability of the appellants to integrate into Ghana, citing both Kamara and the decision of the Outer House of the Court of Session in MC [2016] CSOH 7, which indicated that paragraph 276ADE required consideration of the appellant's private life ties both to the country of origin and the United Kingdom and this was a point that had been ignored by the judge. It was also argued that the judge had erred in his evaluation of Article 8 outside the Rules and that there was no need to show unusual or unique circumstances on the appellant's part and the judge had erred in that the family life of the second appellant's father would be severed by her removal and lead to unjustifiably harsh consequences and that she provided practical care to him due to his medical conditions. It was argued that the long residence and proximity to the Rules was an issue in that in cases falling just outside

a particular Rule this might add weight to their argument, as referred to by Lord Carnwath in Patel [2013] UKSC 72.

19. Building on these submissions, Ms Ferguson argued that the paragraph 276ADE(1)(vi) issue was relevant to private life established in the United Kingdom as held in MC and the time spent in the United Kingdom was relevant to significant obstacles to integration. The judge had accepted that there was private life and that the appellants had lived in the United Kingdom for a long time and though their stay had been unlawful, it affected the weight to be given to the private life and such a lengthy period of time had been lived in the United Kingdom, albeit unlawfully.
20. The judge had also erred with regard to integration in concluding that the appellants would be able to walk seamlessly back into Ghana, which did not take proper account of the amount of time they had been away from Ghana. There was enough in the relationship between the second appellant and her father to come within the case law. The second appellant had lived with her father and family on her arrival for six years until she got married. The family life scenario was engaged.
21. Mr Melvin relied on the Rule 24 response and skeleton. He argued that the judge's decision was sound and dealt with all the relevant issues. The challenge was with regard to matters of weight, which were for the judge. The judge had come to sustainable findings. The appellants were at liberty to make another application and produce evidence of any other issue. The respondent did not agree that that was to be presented before the First-tier Tribunal or the Upper Tribunal.
22. By way of reply, Ms Ferguson argued that the challenge was not a matter of weight. There were matters lacking in the decision with regard to significant obstacles to integration and a failure to take into account the strength of all the private life factors and the reverse of building up a private life in Ghana.
23. We reserved our decision.
24. It is clear, bearing in mind that we are dealing with the question of whether or not there was an error of law in the judge's decision, that since the second appellant completed her twenty years' residence in the United Kingdom after his decision was promulgated, there can be no error of law with regard to the issue of completion of twenty years, and the respondent does not consent to this matter being dealt with as a new matter before the First-tier Tribunal or before us. As Mr Melvin noted, the appellants are free to make any fresh application in that respect and no doubt that will be done, bearing in mind that the second appellant has now completed twenty years' lawful residence in the United Kingdom, it appears, and bearing in mind also no doubt the points made by the judge at paragraph 42 of his decision.

25. We consider this to be a thorough and clear decision by the judge in which he took account of all the relevant evidence in the context of the appropriate legal tests. He was clearly aware, referring to it on a number of occasions in his decision, of the amount of time that the appellants have been in the United Kingdom, and the relevance of that to the ability to integrate back into Ghana. He was clearly aware of the nature and quality of the private life in the United Kingdom they would be relinquishing in returning to Ghana, and rightly focussed on the question of whether or not there were very significant obstacles to integration into Ghana. Clearly, the longer a person has been in the United Kingdom, the more difficult such integration would be, and the judge was clearly alive to that point. It was perhaps slightly unfortunate wording to refer to the ability of the couple to “walk seamlessly” back into life in Ghana after such a lengthy period, but the reasons he gave for finding that they would not experience very significant obstacles to integration, summarised at paragraph 49 of his decision, were clearly open to him. He was aware of the significant amount of time they had been absent but bore in mind the strong links they retained with the Ghanaian diaspora, bearing in mind that all but one of the many letters of support they had received were from individuals who had been born in Ghana, and earlier had noted that they both speak English, which is an official language of Ghana, and also both speak at least one of the local languages of Ghana and that, as he set out in his conclusions at paragraph 58 and elsewhere in the decision, the couple lived in Ghana throughout their formative years and in the case of the first appellant, he was well into his 20s when he left Ghana.
26. Accordingly, we consider that the judge, who bore in mind the Kamara guidance in his conclusions, came to a decision which was properly open to him on the issue of whether or not there were very significant obstacles to the couple integrating into Ghana.
27. As regards the Article 8 outside the Rules issue and in particular the second appellant’s relationship with her father, again, we consider that the judge gave proper consideration to this. He noted the evidence concerning the relationship between them but also bore in mind the fact that the second appellant’s father has two other adult children and a brother residing in the United Kingdom and also lives with his girlfriend. The judge noted a paucity of medical evidence concerning the second appellant’s father from which he could derive any assistance. Again, we consider that he addressed all the relevant factors in his decision and came to conclusions which were properly open to him.
28. As a consequence, we find no error of law in the judge’s decision. These appeals are dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 23 August 2021

Upper Tribunal Judge Allen