Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02821/2020

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 31 January 2022 **On 22 March 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

LIBLIN ADDO
Respondent

Representation:
For the Appellant: Mr Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr Aslam, instructed by Dotcom Solicitors

DECISION AND REASONS

Background

1. Although this is an appeal by the Secretary of State, we shall refer to the parties as in the First-tier Tribunal. The Appellant's appeal against the refusal of leave to remain was allowed by First-tier Tribunal Judge Lingam ("the Judge") on 28 September 2020.

2. Permission to appeal was granted by Judge Grant on 8 November 2021 on the basis that it is arguable that the Judge:

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(1) gave inadequate reasons for finding there are very insurmountable obstacles to family life continuing outside the UK by taking into account irrelevant matters and in engaging in speculation, and

(2) may have misapprehended the evidence or law in finding that the requirement of the immigration rules were met for leave to remain as a partner when there was no evidence of a mandatory English language test or the Sponsor's finances as required in appendix FM-SE.

The Respondent's refusal letter (4 February 2020)

3. This noted that the Appellant had been here without valid leave and accordingly did not fulfil E-LTRP 2.2. It was not accepted it would be very difficult for the Sponsor to move to Ghana or that there would be a significant degree of hardship or inconvenience. The Sponsor speaks English and family life can continue in Ghana. Separation of extended family members does not usually amount to an insurmountable obstacle. It has not been established that the family life the Appellant and Sponsor have with the Sponsor's adult children goes beyond normal emotional ties. A material change in the quality of life such as the type of accommodation or a reduction in income does not amount to an insurmountable obstacle.

4. In relation to her private life, the Appellant had not lived in the United Kingdom for 20 years and had failed to establish that there will be very significant obstacles to her integration in Ghana, where English is widely spoken and which will help her adapt socially and culturally. She lived there for 32 years and will have retained knowledge of the life, language and culture, and would not face significant obstacles to reintegrating into life in Ghana once more.

5. There were no exceptional circumstances as her private life was established when her position was precarious. She has shown an ability to adapt to a new life in another country and integrate here indicating she could reintegrate into life in Ghana. She has failed to provide evidence of a relationship with her partner's children or that they go beyond those existing with extended family members. Her partner can return to Ghana where her knowledge of life culture and customs can assist him to integrate. He speaks English and has experience of work which will help him secure employment. Alternatively, he can remain here and they can maintain their relationship from overseas. She can practice her religion in Ghana and do community work. Her friendships do not justify being able to remain and the Sponsor, his children, and the friends she has in the United Kingdom can visit the Appellant in Ghana whenever they wish. She can secure employment in Ghana.

Respondent's Submissions

6. It was asserted in the grounds that the Sponsor's background as a highly experienced social worker working with very vulnerable children whose

expertise would be difficult to replace was not vital background information or relevant to the question of whether the requirements of EX 1 (b) were met. The Judge appears to give considerable weight to his own opinion on whether or not is it is desirable to keep the Sponsor in the UK in light of his profession. Despite not being a qualified medical professional, the Judge formulated his own opinion on the impact on the Sponsor's health. The Judge gives weight to the likelihood of the Sponsor being able to obtain a similar job and pay but it is unclear how this is a very significant obstacle.

7. The Judge did not have evidence of the Appellant or Sponsor's income or of English language proficiency. The Judge has formed his own opinion on her ability to speak English and accepted the Sponsor's word regarding his income which are not sufficient to meet the requirements of the rules.

8. Mr Tufan added orally that the factors identified by the Judge do not amount to very significant difficulties. The 'very significant obstacle test' of unjustifiably harsh consequences as identified in Agyarko v SSHD [2017] UKSC 11 had not been met. The Judge made reference to SSHD v Kamara [2016] EWCA Civ 813 but made no findings on it. In any event, the Appellant she can reintegrate and 'be an insider'. The Judge identified that she spoke English but not fluently, this does not satisfy the English language requirement of the rules. In Chikwamba v SSHD [2008] UKHL 40 as explained in Younas (s117B (6)(b) (Chikwamba; Zambrano) [2020] UKUT 129 (IAC) at paragraphs 83 and 90, the Court noted that the public interest required entry clearance to be made. The assessment within section 117 (B) of the Nationality, Immigration, and Asylum Act 2002 was flawed as the precarious nature of the family life had not been considered. Mr Tufan conceded that if he lost on the issue of insurmountable obstacles, his appeal would fall away.

9. We note here that at paragraph 83 of Younas the court held:

> "Neither Chikwamba nor Agyarko support the contention that there cannot be a public interest in removing a person from the UK who would succeed in an entry clearance application. In Agyarko, a case in which the Chikwamba principle was not at issue, it is only said that that there "might" be no public interest in the removal of such a person."

Appellant's Submissions

10. Mr Aslam's submissions were based on a Rule 24 notice that he had drafted but appears not to have been submitted. The Respondent was not present at the hearing before the Judge. The Judge only needed to consider the points raised in the refusal letter. That did not include financial considerations. The refusal letter accepted the Appellant was competent in English. Taking the Judge's decision as a whole, insurmountable obstacles had been established. The Judge considered the length of time the Appellant and Sponsor had been here, the Sponsor's

British nationality and employment, the difficulties he would have uprooting to Ghana, his relationship with his adult daughters, his health issues and lack of availability of health cover. Whilst his work as a social worker was not relevant to family life issues, it was relevant in the proportionality assessment. The Judge did not speculate as to the Sponsor's medical health as it was raised in oral evidence. The grounds are merely a disagreement with the findings made in a well-reasoned decision. The question of the couple being separated to a short period of time while an application for entry clearance is made from abroad had never been raised.

The Judge's decision

11. The Judge found that;

> "29. … The Appellant's partner is a British national and has lived in the UK for over 31 years. Given the extensive time spent in the UK, I accept it would be extremely difficult for the Sponsor to uproot his life and start all over again in Ghana. The Sponsor as evidenced is a highly experienced senior social worker of over 20 years. In his capacity, the Sponsor discharges a very important service within the authority body he works. Furthermore, Mr Darko works with vary (sic) vulnerable children. His departure would be difficult to replace and as such it will be a grave loss to the health authority that benefits an experienced social worker. He is also a devoted father to his three children who are all adults. He has explained why he continues to provide financial support to his children. I am satisfied on Mr Darko's evidence that whilst his children do benefit his financial support, they are not in main dependent on their father. Nevertheless, it is obvious the Sponsor has a close fatherly relationship with his adult daughters who value their father's involvement.
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> 30. If he were expected to leave the UK for Ghana, there is no guarantee that Mr Darko can walk into a similar job of equal standard to match his experience and current pay. In such case, the Sponsor would not be able to support himself or his Partner. Perhaps and more importantly, Mr Darko suffers from stress, cardiac issues and high blood pressure. He is an outpatient cardiac care patient. He has explained how if forced to move to Ghana, he would lack necessary health cover to access the necessary health care for him. Mr Darko who is unwilling to quit his life in the UK submitted that the Appellant is a valuable support for him. That the departure of his Partner would merely add to his stress level that would be exaggerated by his high pressure and responsible job. Thus, any decision requiring Mr Darko to leave the UK with the Appellant, would, under the current circumstances, be unreasonable."
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> "31. … Mr Darko's serious health condition including his over 30 year absence from Ghana when he was not paying into the health system in Ghana and with no guaranteed job on return to Ghana would

collectively, add to the (sic) Mr Darko’s stress level. This in turn would probably have a serious impact on his health issues. If Mr Darko has to pay for his own health bills in Ghana, then it is imperative for him to be in employment. There is no evidence when the Appellant and Mr Darko were to return to Ghana, that he would be able to walk into a position that would reflect his experience and current pay. Even if the pay is not matched, there is probable indication that Mr Darko current leading a settled work and family life in the UK would within a reasonable time or in a short space of time be able to establish a comfortable lifestyle in Ghana. As Mr Darko is being treated as a (sic) outpatient cardiac patient, there is a real probability that if things do not work out as envisaged, there is a real probability that Mr Darko and will require medical attention. The Appellant’s evidence is that she was never allowed to build her working life. Hence, any job she would secure would probable (sic) not be enough to meet of (sic) their immediate essential bills such as accommodation, food and other related bills before being able to pay for Mr Darko’s medical bills. Without access to such vital medical care, there is a probability that Mr Darko’s health would suffer on a serious level.

32. Alternatively, Mr Darko intimated to me that he values his partner’s support when he has to attend his out-patient appointments. She cooks and looks after him. She is at home when he returns from a difficult day at work. The Appellant is clearly a very important stable anchor in his life. Further, if the Appellant were to return to Ghana for a settlement visa, it is probable Mr Darko can visit Ghana to see the Appellant but his visits would probably be short owing to his work commitment in the UK. The Appellant (sic) expected return to Ghana on her own would probably distract Mr Darko from his obligations as a senior social worker. In totality, I am satisfied for reasons I have set out that the Respondent’s conclusion under para EX.1 Appendix FM is consistent with the stated requirement because expecting the Appellant or her partner to continue with their family life either as a unit or from separate countries would create substantial hardship that would be unjustifiably harsh to their already settled family unit in the UK“.

…

“41. … there is good evidence that the Appellant’s subsisting family life with her partner would cause interference in the exercise of her established family life in the UK. In terms of her private aspect of Art 8 rights, I take account that only the first six months of her stay in the UK is lawful; the remaining 16+ years is though (sic) unlawful means. She has over the years worked without permission from the Respondent. She was and is active with her church activities. Overall, she has an established private life in the UK”.

…

> "46. The Appellant's private life in main was formed when she was without legal basis to remain in the UK. Even so, she has spent a considerable number of years in the UK".
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> …
>
> "51. I give the Appellant's relationship with her partner appropriate weight… I am satisfied that the consequential effect of the Appellant's requirement to leave the UK would be unjustifiably harsh on the Appellant and her Partner who suffers with recognised health issues.
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> 52. Moreover, I am satisfied on the evidence that the Appellant has good English language ability. I am satisfied that her language ability allows her to integrate and find employment to be financially independent of public funds. In any event, there is no information/evidence that she had in past nor currently relies on public funds to meet accommodation and or maintenance. I am satisfied that these aspects of the requirements are being met by her current Partner whose annual income adequately surpasses the specified income requirement under the Rules…".
>
> "53. That when striking a balance of the Appellant's rights and circumstances against the Respondent's public interest issues, I am satisfied that the decision would be a disproportionate and unnecessary measure forcing the Appellant to return to Ghana with the current documentary evidence to effectively pursue a settlement visa overseas when the same is, now, before me. Moreover, I have in mind the unreasonable or unjustified interruptions in the established family life currently enjoyed by the Appellant, her partner, as well as his own established private and family rights enjoyed in the UK".

Conclusions and reasons

12. We are satisfied that the Judge has given adequate reasons for finding that there will be very substantial difficulties and unjustifiable hardship in requiring the Appellant and Sponsor to enjoy their family life in Ghana. The Judge considered the personal circumstances of the Appellant and Sponsor. The Judge considered the Sponsor's health condition and the likely impact on that by his removal, his employment and the likely reduction in his ability to work and afford consequent treatment in Ghana. The Judge considered the Appellant's inability to 'make up' that financial shortfall, the adverse impact that would have on both the Appellant and Sponsor, and on the ability of the Appellant and Sponsor to enjoy their family life. Those are all relevant factors, the weight being applied to each and cumulatively being a matter for the Judge. The fact that the Appellant can in due course be 'an insider' and reintegrate as explained in Kamara does not mean that this would be without very substantial difficulties and unjustifiable hardship in their family life in Ghana. The Judge has not speculated on the medical evidence or employment challenges in Ghana but has made findings on the evidence presented.

13. The Judge did not fall into the trap identified in Younas because he considered section 117 (B) of the Nationality, Immigration, and Asylum Act 2002 in detail. Within the assessment, the Judge plainly had in mind the family life of the Appellant and Sponsor as prior to making the specific findings referred to above in paragraph 10, the Judge said (our underlining);

> “27. It is therefore necessary to consider whether as provided under pare (sic) EX1 and EX.2; there would be ‘insurmountable obstacles’ or ‘very significant difficulties’ for the Appellant and the Sponsor to continue their family and conduct the private lives in Ghana …”
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> “28. The legal reps’ written submissions helpfully identify the issues as;
>
> (i) “… are there insurmountable obstacles to family life with her husband continuing outside the UK? ...”

14. The Respondent is not assisted by Younas at paragraph 83 as it is not the fact that the couple may or may not meet the requirements of entry clearance that is the key in this case, but the severity of the consequences of removal of the Appellant’s removal on the couple’s ability to enjoy their family life in Ghana.

15. The refusal letter does not assert that the rules are not met in relation to either financial or English language requirements. Nor were those issues argued before the Judge as the Respondent chose not to appear. There was therefore no need for the Judge to consider those issues as they were not in dispute. Accordingly there was no material error of law in the Judge forming his own opinion on her ability to speak English and accepting the Sponsor’s word regarding his income which he was entitled to do.

16. We find there was no material error in the decision dated 28 September 2021 and we dismiss the Respondent’s appeal.

Laurence Saffer

Deputy Upper Tribunal Judge Saffer
8 March 2022

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the

Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.