Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06189/2020
(UI-2021-001336)

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 30 May 2022	**On 8 July 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

AGNES MARY OKOTO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Echendu
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a female citizen of Ghana who was born on 7 August 1951. She appeals against a decision of the First-tier Tribunal promulgated on 11 November 2021 dismissing her appeal against a decision of the Secretary of State to refuse her leave to remain. Her immigration history is set out at [2] of the First-tier Tribunal's decision. The First-tier Tribunal summarised the background circumstances as follows:

> 3. A[ppellant] moved to the USA lawfully to live with her son Emmanuele who serves in the army there. I understand that the idea was that she would help care for her son's two children. However, she

> subsequently suffered a stroke and so she herself needed care. Emmanuele was posted to South Korea and so A moved to the UK to live with another son Benjamin. She had what I understand was a 2-year multiple entry visa valid until 5 September 2019. She made an application for leave to remain on 3 September 2019.
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> 4. R[espondent] refused the application for the following reasons. A did not have a partner, parent or dependent children in the UK so could not satisfy Appendix FM. There were no very significant obstacles to integration in Ghana. A had a daughter who remained in Ghana though she travels. A lived in Ghana until 2017 when she moved to the USA. A's family could support her in Ghana. Medical care would be available for A in Ghana.
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> 5. There were no exceptional circumstances. A had travelled in and out of the UK a number of times since her stroke. A had been interviewed along with her son on entry to the UK on 14 November 2018. She stated she planned to stay in the UK for 4 months. A's son Benjamin had stated that her plan was to return to the US to live with her son when he returned from service abroad. states that A is not receiving any further medical treatment. A's removal would not breach her ECHR Article 3 rights.

2. Having concluded that the appellant would not face very significant obstacles to integration in Ghana (paragraph 276ADE of HC 295 (as amended)) the First-tier Tribunal found at [16]:

> Mr Dorgbetor [the appellant's son] gave evidence before me. He is a Ghanaian citizen and has naturalised as a British citizen. He is settled in the UK and wishes to remain here. He works and has his own business; however, I was provided with little detail about this business. He did not tell me about any partner or children of his own and is not living with any such family members. He confirmed in evidence he was living with his mother, and his brother's wife and children. In my view he could be reasonably required to return Ghana to care for A should she require care.

The judge further found at [23]:

> There is no medical evidence post 2019 and A has not established what ongoing treatment or medication she requires. I have found that A has not shown that any treatment she requires would not be available and affordable to her on return to Ghana.

3. The grounds of appeal argue that the judge ' allowed himself to be influenced by his own personal feelings and reach conclusions on speculations and assumptions without any evidence to support the assumptions' and that it had been unreasonable for the judge to find that the appellant still had a daughter (Evelyn) living in Ghana ('*In the absence of any documentary evidence showing where Evelyn and her family live, I do not accept that they have left Ghana'*) because the 'suggestion at para 14 that previous evidence had stated that the appellant's daughter was living one of the African states in 2019 is frivolous as not only that the country mentioned was not Ghana but also the fact that 2019 is two years

back including the fact the daughter is married and ought to move to live with her husband and children.'

4. Those grounds are simply not made out. There is nothing at all in the decision to justify the serious allegation that the judge allowed his personal feelings to influence his analysis. Secondly, the judge was required to determine the appeal on the basis of the evidence; where evidence did not exist to support assertions of the appellant but could have been adduced relatively easily (for example, concerning the whereabouts of Evelyn and the best interests of the children living in the United Kingdom), the judge was entitled to find that the assertions had not been proved, the burden of proof throughout the appeal resting on the appellant. The grounds offer only disagreement and the highly speculative suggestion that Evelyn 'ought to have moved' from Ghana. Indeed, it seems that the grounds are quick to indulge in the very speculation of which the judge is accused.

5. As for his findings regarding Mr Dorgbetor, the judge's approach is wholly in line with relevant jurisprudence. The Rule 24 letter of the Secretary of State cites *Ribeli v ECO Pretoria* [2018] EWCA Civ 611 at [67 -70]:

> However, it is important to recall that the test under Article 8 is an objective one, whatever the subjective feelings of a person may be. That is not to criticise Ms Steenkamp: for understandable reasons she wants to continue to have the professional and social life she has built up in the UK and does not wish to return to South Africa. However, that does not come close to establishing that the Respondent's refusal to grant the Appellant entry clearance constitutes a disproportionate interference with Article 8 rights.
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> The starting point is that it is well-established in the authorities that there is no relevant family life for the purpose of Article 8 simply because there is a family relationship between two adults (such as a parent and her child) who live in different countries. There has to be something more than normal emotional ties: see *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31; [2003] INLR 170. In this case it is said on behalf of the Appellant that there is more: in particular that the Appellant needs to be close to her daughter so that she can receive the care and support which she needs.
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> The crucial point (and it is a powerful point as a matter of common sense as well as a matter of law) is that the Appellant's daughter could reasonably be expected to go back to South Africa to provide the emotional support her mother needs as well as to provide practical support. For example, if the concern is that the Appellant may be cared for in her home by people who may turn out not to be trustworthy, there is no reason why her daughter cannot live and work in South Africa to supervise the care arrangements made for her mother.

As the UT Judge observed, at the end of the day, what this case is about is the *choice* which Ms Steenkamp has exercised and wishes to be able to continue to exercise of living and working in a major international centre like London rather than in South Africa, which is her own country of origin. She is entitled to exercise that choice. But, in those circumstances, the UT cannot be faulted for having

come to the conclusion that any interference with the Appellant's right to respect for family life conforms to the principle of proportionality.

6. In essence, the judge made a finding similar to that of the Upper Tribunal in *Ribeli* which was upheld by the Court of Appeal. A close relative such as Mr Dorgbetor who is capable of acting as a carer in the country of the appellant's nationality properly has a choice as to whether or not he will accompany his mother to Ghana. However, the way in which he exercises that choice does not render any interference with the mother's Article 8 ECHR rights disproportionate. Following *Ribeli,* the judge reached findings on the evidence which he was manifestly entitled to reach notwithstanding the rather hyperbolic and outraged disagreement offered by the grounds (which submit that the judge's finding was 'unattainable and so unreasonable that no IJ who have such evidence before them would make such a suggestion').

7. I have dealt with the grounds identified by the grant of permission as arguable. As regards the remaining grounds, I agree with the comments of the judge who granted permission and with the comments of the Rule 24 letter.

8. In conclusion, the judge found that family members could reasonably be expected to assist the appellant in Ghana and that there was insufficient evidence to show that medical facilities in Ghana were incapable of treating her. The findings properly led the judge to conclude that the appellant could not meet the requirements of the Immigration Rules and that her circumstances were not such as render her removal to Ghana a disproportionate interference with her family and private life. In the circumstances, the appeal is dismissed.

Notice of Decision

The appeal is dismissed.

Signed Date 30 June 2022

Upper Tribunal Judge Lane