Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/09605/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 25 March 2015	**On 5 May 2015**

Before

UPPER TRIBUNAL JUDGE DEANS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS ESTHER GYABAH-BOADI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr D Clarke, Home Office Presenting Officer
For the Respondent: Present but not represented

DETERMINATION AND REASONS

1) This is an appeal by the Secretary of State against a decision by Judge of the First-tier Tribunal O'Garro allowing an appeal by Ms Esther Gyabah-Boadi (hereinafter referred to as "the claimant").

2) The appeal was allowed under paragraph 276ADE(vi) prior to the amendment of this provision by HC 532 with effect from 28 July 2014. The judge found that the appellant was 48 years old and had lived in the UK for 16 years. Since arriving in the UK she had not been back to Ghana, which was her country of origin, and in that time her marriage had broken down, her parents had died, and all of her siblings had migrated to the UK. The judge accepted the appellant's evidence that she had lost all ties with

Ghana and there was no-one there to whom she could turn for emotional and financial support if she returned. The judge was satisfied that the appellant had lost her connection to life in Ghana in terms of Ogundimu [2013] UKUT 00060.

3) The Secretary of State sought permission to appeal on a number of grounds. The first of these was that the judge should have applied the version of paragraph 276ADE(vi) in force at the date of the hearing in September 2014. The second ground was that the judge had erred in finding that the appellant had no ties with Ghana. According to the Presenting Officer's minute of the hearing the appellant still had a nephew living in Ghana. The appellant spoke the language and had professional qualifications which would assist in finding work there. The third ground was that the judge had failed to resolve a material conflict in the evidence. At paragraph 26 the judge recorded: "The appellant's evidence is that she has lost all ties to Ghana and I guess she means the people she would have been able to turn to for both emotional and financial support if she was returned there." The application criticised the use by the judge of the word "guess". It was submitted that the judge had failed to resolve a conflict between the appellant's evidence and the legal test in Ogundimu. Permission was granted on these grounds.

4) At the hearing, Mr Clarke, for the Secretary of State, referred me to the decision of the Upper Tribunal in Bossadi [2015] UKUT 00042, which enlarged on the test as stated in Ogundimu in respect of paragraph 276ADE(vi). In relation to whether the judge applied the Immigration Rules which were in force at the appropriate time, Mr Clark very properly acknowledged that this was not an issue he would pursue. I note that the implementation provisions of the relevant Statement of Changes (HC532) state that the change would take effect on 28 July 2014 for all applications to which paragraph 276ADE applied which were decided on or after that date. In this particular appeal the application was decided by the Secretary of State on 6 February 2014 and therefore fell under the previous version of paragraph 276ADE(vi), as found by the judge.

5) Mr Clarke indicated that he would address me on the second and third grounds in the application. He referred to the Presenting Officer's minute and said that he also had before him the Presenting Officer's notes of cross-examination, although these had not been produced. The son of one of the claimant's siblings in the UK was living in Ghana but the judge had failed to take this into account. In terms of paragraphs 15 and 16 of Bossadi, ties that were dormant could be revived. The judge should not have sought to "guess" what was meant by the appellant's evidence. It was fatal to the decision for the judge not to have acknowledged the claimant's family ties, particularly as these could be revitalised. The test in paragraph 276ADE(vi) was not satisfied and the decision should be remade on that basis.

6) The claimant did not address me directly but she was assisted by a friend from her church, Mr Chris Vanderpuije. Mr Vanderpuije submitted that Ms

Clarke's assertion that dormant relationships could be revived was speculative. The claimant had no relationship with her nephew apart from a blood tie and she could not foist herself on him. In any event, the nephew had since relocated to the UK.

7) I note that according to the decision in Bossadi, the requirement in paragraph 276ADE(vi) requires a rounded assessment as to whether a person's familial ties could result in support of him or her in the event of their return, taking into account both subjective and objective considerations and also consideration of what lies within the choice of the claimant to achieve. It seems to me that this aptly describes the approach taken by the judge to the assessment of whether the requirements of paragraph 276ADE(vi) were met in this appeal. The judge accepted that at the age of 32, when she came to the UK, the claimant still had ties with Ghana through her parents, her husband and her home. The judge found there was no question that the appellant would have forgotten her language or her culture but, in terms of Ogundimu, these were links which were remote or abstract without a more direct connection to life in Ghana. In the 16 years the claimant has spent in the UK her marriage had broken down, her parents had died and all her siblings had left. The judge found that the claimant had no real connection to life in Ghana. The judge further had regard to country information stating that women in Ghana lacked capacity to engage in viable economic activities and remained in a vicious circle of poverty. The judge found that without family ties to support the claimant on her return to Ghana, she would be very vulnerable and not able to sustain herself.

8) As I read the decision, the judge was not suggesting that the claimant had any expectation of encountering serious harm on return to Ghana, such as might satisfy the threshold of Article 3, but was acknowledging that without active social or family ties to Ghana the claimant would find it very difficult to re-establish herself there.

9) It is unusual to find a judge using the word "guess" in making findings but the judge's use of informal language in this context does not amount to an error of law. The judge was required to take into account both subjective and objective considerations and was simply seeking to give meaning to the claimant's subjective assessment of her situation.

10) In the findings the judge did not mention the claimant having a nephew in Ghana at the date of the hearing. If there were any suggestion that this was a material factor, I would have expected the judge to refer to the matter. I am not at all persuaded, however, that the presence of the claimant's nephew in Ghana was a material factor and by the judge not having referred to this it may be assumed that the judge did not consider it a material factor either. I accept the point made on behalf of the claimant that in order to rely on the support, whether emotional or financial of her nephew, she would have to have some greater connection to him than merely the "blood tie" referred to. It is difficult to imagine a strong connection between a

woman of the claimant's age and circumstances and her nephew, even though he happened to be in Ghana at the relevant time. I am satisfied the judge was entitled to disregard this factor.

11) In short, I am satisfied that the judge made no error of law in finding that the claimant satisfied the terms of paragraph 276ADE(iv) as it stood at the date of the Secretary of State's decision.

Conclusions

12) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

13) I do not set aside the decision.

Anonymity

14) The First-tier Tribunal did not make an order for anonymity. It has not been argued before me that such an order should be made and I see no significant reason for making one.

Signed Date

Judge of the Upper Tribunal