



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

Appeal Number: IA/39222/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 January 2015**

**Decision & Reasons  
Promulgated  
On 26 January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**DENNIS DADZIE  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Oyediran of Chris Solicitors.

For the Respondent: Mr S Whitwell, Home Office Presenting Officer.

**DECISION AND REASONS**

1. This matter comes before me today following an 'error of law' hearing on 4 December 2014. The Decision and Reasons in respect of the 'error of law' is appended to this Decision and should be read as part of the current decision: see Appendix below.
2. At the error of law hearing, having found an error of law in respect of the First-tier Tribunal Judge's approach to issues in relation to paragraph 276ADE of the Immigration Rules and Article 8, there was also some discussion as to the possibility that the Appellant might have met the requirements for a permanent residence card in consequence of being a

person who had retained the right of residence pursuant to Regulation 10(5) of the Immigration (European Economic Area) Regulations 2006. Directions were given at the previous hearing indicating that argument would be permitted on that issue over and above the matters in relation to the Rules and Article 8.

3. Today the Appellant produces a number of supporting documents relevant to the question of whether or not his mother was a worker at the date of her divorce from her ex-partner who is, or was, an EEA national - the divorce having taken place in July 2009. The documents take the form of certified copies of payslips from that period together with a covering letter from the employer stating that the Appellant's mother had been employed from 1 June 2008. The covering letter is dated 10 December 2014.
4. The documents submitted today are consistent with documents previously submitted in support of the Appellant's application and contained in the Respondent's bundle before the First-tier Tribunal. The documents previously submitted include P60s for the tax years ending 5 April 2012 and 5 April 2013. These documents do not exactly correlate with the period over which the payslips now produced are spread but they are confirmation of the fact of employment with Mitie Security. Moreover the Appellant had previously submitted a letter from Mitie Security dated 29 April 2013 giving his mother's employment commencement date consistently as 1 June 2008.
5. I have also heard oral evidence from the Appellant's mother, Mrs Francisca Appiah-Kyei who confirmed the truth of the statement that she had signed on 17 September 2014 as evidence before the First-tier Tribunal. Additionally she answered questions both from Mr Oyediran and Mr Whitwell in respect of her employment history. I consider that she gave her evidence in a manner that was both internally consistent and consistent with the supporting evidence. It seemed to me that she was careful when giving her answers to try and be as accurate as her memory permitted. I find her to be a credible witness and I accept on the basis of her testimony and the supporting documents that she has indeed been employed as claimed including during the period of her divorce.
6. I acknowledge Mr Whitwell's reservations concerning the absence of other materials that might have further supported the Appellant's case in this regard. It is perhaps unfortunate that bank statements from the period corroborating payments from the employer have not been produced or that the witness was unable to produce her SIA licence today which she stated was in her work bag rather than the bag that she had brought to the Tribunal. Nonetheless, and notwithstanding these matters, I am

satisfied on the available materials - as I have said - that the witness's evidence should be accepted as credible.

7. In those circumstances I turn to a consideration of Regulation 10 of the 2006 Regulations and in particular Regulation 10(5) and 10(6).
8. I am satisfied on a balance of probabilities that the Appellant ceased to be a family member of his mother's ex-partner, who was a qualified person, on the termination of his mother's marriage (Regulation 10(5)(a)). I am satisfied that he was at that time residing in the United Kingdom in accordance with the EEA Regulations. It is to be noted that he has been present in the United Kingdom pursuant to the Regulations since his entry on 1 July 2006. I am also satisfied that the condition of regulation 10(6) is met (see below), and I am also satisfied that prior to the initiation of the divorce proceedings the Appellant's mother and ex-husband had enjoyed a marriage that had lasted for at least three years and had resided in the United Kingdom for at least one year during its duration. I do not understand any such matters to be disputed by the Respondent.
9. So far as regulation 10(6) is concerned, the Appellant was in July 2009 a family member of a person falling within regulation 10(6)(a). His mother, although not an EEA national, was nonetheless somebody who fell within the definition of a worker if she had been an EEA national. So far as the question of being 'the family member of such a person' (regulation 10(6)(b)), I remind myself that in July 2009 the Appellant would have been under 21 years and thereby met the definition of a family member under regulation 7(1)(b)(i).
10. Accordingly in those circumstances I find that at the date of the Appellant's mother's divorce the Appellant was a family member who retained the right of residence.
11. With reference to regulation 15(1)(f), "*a person who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years... [and who] was at the end of that period, a family member who has retained the right of residence*", "*shall acquire the right to reside in the United Kingdom permanently*". The Appellant would have been residing in the United Kingdom pursuant to the Regulations for five years as of 2 July 2011, and, for the reasons already explained, at that point he would have been 'a family member who had retained the right of residence'. In those circumstances he is a person who has acquired the right to reside in the United Kingdom permanently and his appeal is therefore to be allowed on EEA grounds.

12. In the circumstances it is unnecessary to give any consideration to the case under the Rules or under Article 8 of the ECHR.

**Notice of Decision**

13. The appeal is allowed.

*The above represents a corrected transcript of an ex tempore decision given at the hearing on 15 January 2015.*

Signed

Date: 25 January 2015

**Deputy Upper Tribunal Judge I A Lewis**

## **APPENDIX**

### **TEXT OF 'DECISION AND REASONS' ON ERROR OF LAW**

1. This is an appeal against the decision of First-tier Tribunal Judge Oakley promulgated on 19 September 2014, allowing Mr Dadzie's appeal against a decision dated 10 September 2013 to refuse to issue him with a Permanent Residence Card as confirmation of a right of residence.

2. Although in the proceedings before me the Secretary of State is the appellant, and Mr Dadzie is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Mr Dadzie as the Appellant and the Secretary of State as the Respondent.

#### **Background**

3. The Appellant is a national of Ghana born on 2 September 1990. He entered the UK on 1 July 2006 as the holder of an EEA Family Permit visa valid until 16 December 2006. On 1 November 2007 he applied for a Residence Card as the stepson of an EEA national exercising treaty rights in the United Kingdom, which was issued on 6 May 2008 valid until 6 May 2013. On 1 May 2013 he applied for a Permanent Residence Card as the son of a British Citizen. The factual matrix underlying the Appellant's immigration history is summarised in the findings of fact set out at paragraphs 13-20 of the First-tier Tribunal's determination - save that there appears to be a misunderstanding in relation to the reason the Appellant was advised not to apply for British citizenship at the same time as his younger brother, the Appellant no longer being a minor at the relevant date.

4. The application for a Permanent Residence Card was refused on 10 September 2013 for reasons set out in a 'reasons for refusal' letter ('RFRL') of that date, and a Notice of Immigration Decision was issued accordingly.

5. The Appellant appealed to the IAC. The First-tier Tribunal Judge allowed the appeal for reasons set out in his determination: although the case under the EEA Regulations was dismissed (indeed conceded by the Appellant), the Judge allowed the appeal with reference to paragraph 276ADE of the Immigration Rules.

6. The Respondent sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Colyer on 5 November 2014.

## **Error of Law**

7. The Respondent complains that the First-tier Tribunal Judge did not adequately engage with the requirement under paragraph 276ADE(vi) in respect of there being “*very significant obstacles to the applicant’s integration to the country to which he would have to go if required to leave the UK*”, to an extent that either indicates a misdirection of law, or otherwise an inadequacy of reasoning amounting to an error of law.

8. I accept the Respondent’s submissions in this regard. I make the following observations:

(i) At paragraph 24 of the determination the Judge does not clearly identify the relevant test under paragraph 276ADE(vi). The concept of ‘obstacles to returning to live’ in a country is not inevitably congruent with the concept of, and consideration of, ‘obstacles to integration’.

(ii) At paragraph 27, whilst the Judge identifies that the Appellant only has a single, elderly, relative remaining in Ghana, who “*would scarcely be in a position to assist the Appellant were he to return*”, beyond the absence of family assistance he does not identify any other reason why the Appellant, a young man in his early 20s who had lived in Ghana up to the age of 16, would face any particular – never mind very significant – obstacles to integrating himself back into his country of origin and nationality.

(iii) Further to the above, at paragraph 27 the Judge also places emphasis on the strength of the relationship with the Appellant’s mother in the UK – and implicitly the impact upon her of his departure – “*He has in fact been a tower of strength to his mother in recent times, in terms of the employment that he has undertaken in order that she can be supported*”. Whilst this may potentially be an obstacle to returning to live in Ghana in a broader sense (e.g. see the ambiguous self-direction of the Judge identified at (i) above), it is of no material significance when considering the question of the Appellant’s ability to integrate into life in Ghana.

(iv) At paragraph 26 the Judge makes reference to the Appellant’s mother having “*been very badly advised when she applied for British citizenship for only herself and her other son, and did not include the Appellant*”. As noted above, it would appear that this advice was in fact sound, the Appellant by that stage being too old to register as a minor. Mr Oyediran acknowledged that it appeared the Judge was in error in this regard. The Judge, however, appears to attach weight to this circumstance in determining the key question: “*He appears to have been the victim of bad advice in 2009 when he has not been included in his mother’s application for British citizenship and I conclude that in the Appellant’s case there would be significant obstacles to him being returned to live in*

*Ghana*" (paragraph 27). It is entirely unclear why the Judge thinks this is a material consideration to the question of 'obstacles', and yet it is conjoined with that conclusion in the same sentence. Even if the Judge had been correct in his evaluation that the Appellant had been denied the opportunity of securing British citizenship through poor legal advice, this would not be relevant to the question of integration into Ghana. This is a material error of law.

9. The matters to which the Judge has had particular regard - the relationship with the mother and (erroneously) the missed opportunity of acquiring British citizenship - perhaps more properly belong to an Article 8 consideration outside the parameters of the Rules. Indeed in resisting the Respondent's appeal Mr Oyediran in large part sought to place emphasis on the Appellant's factual circumstances in the context of Article 8; those submissions necessarily do not directly address the contended error of law. However, it is under the Rules that the Judge purports to allow the appeal, and he does not otherwise go on to a consideration of Article 8 beyond the provisions of the Rules. This is perhaps particularly unfortunate because it is not readily apparent on the face of the determination that the Appellant was seeking to make out a case under paragraph 276ADE, so much as under the broader terms of Article 8 jurisprudence: e.g. see Skeleton Argument before the First-tier Tribunal, and note the emphasis in the supporting evidence on the family and private life established in the UK.

10. Be that as it may, I find that the First-tier Tribunal Judge erred in law by not properly applying the terms of the Rules, and otherwise providing inadequate reasons for his favourable decision under the Rules. The decision of the First-tier Tribunal is set aside accordingly.

### **Re-making the Decision**

11. During the course of discussion I raised with the representatives the possibility that the Appellant was 'a family member who has retained the right of residence' pursuant to regulation 10(5), and that he might thereby have satisfied the requirements for a Permanent Residence Card given his particular history. This did not appear to be something to which the original decision-maker had had regard, and had not apparently been in the Appellant's representative's mind when the concession under the Regulations was made before the First-tier Tribunal.

12. Any such 'route' to establishing a right to permanent residence would likely turn on the circumstances at the time of the Appellant's mother's divorce in July 2009: see regulation 10(6)(a). No evidence has been filed in this regard and the witness statements before the First-tier Tribunal do not expressly address this matter.

13. Given the declaratory nature of EEA decisions, in my judgement on the facts of this particular case it is not appropriate to exclude exploration of this matter in re-making the decision in the appeal because it had not previously been advanced or because the EEA ground of appeal had previously been conceded on behalf of the Appellant. Little is achieved by relying on procedural estoppel if the Appellant has in fact acquired substantive rights that are not contingent upon appellate procedures.

14. In all of the circumstances, whilst it is unlikely given the available evidence and the First-tier Tribunal's findings at paragraphs 13-18 that it will be necessary to hear much further by way of evidence in relation to either or both paragraph 276ADE(vi) and Article 8, it is appropriate that the Appellant be afforded an opportunity of filing further evidence in relation to the issue of retained right of residence, and for such a matter to be explored through oral evidence at a resumed hearing. Whilst at this stage, I do not seek to confine the scope of the rehearing, given that the scope of any further consideration is likely to be narrow it is not necessary to remit this matter to the First-tier Tribunal for rehearing afresh: the matter is retained in the Upper Tribunal and reserved to me.

15. At the conclusion of the hearing I indicated that the Appellant should file any further evidence upon which he wished to rely, including evidence in respect of his employment in 2009 with a view to exploration of regulation 10(5). I also indicated that insofar as Article 8 was relied upon, I would expect submissions from both parties on all relevant matters including sections 117A-117D of the Nationality, Immigration and Asylum Act 2002.

### **Notice of Decision**

16. The decision of the First-tier Tribunal Judge involved a material error of law and is set aside.

17. The decision in the appeal is to be remade before the Upper Tribunal, reserved to me.