



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

Appeal Number: IA/17181/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 24 April 2017**

**Decision & Reasons Promulgated
On 4 May 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MR CHARLES AMOAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Warren, Counsel, instructed by Paragon Law
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Place promulgated on 2 June 2015. The appellant is a citizen of Ghana born on 16 December 1965. He entered the United Kingdom with a visit visa in May 2008 and overstayed. His application, which was the subject of the decision in this case, was on the basis that he enjoys family life in the United Kingdom with his mother, uncle and sister and that the relationship with his mother and uncle is because of their various different physical and mental health needs more than the usual

and the normal emotional ties that thus an Article 8 family life for the purposes of Article 8 exist between the appellant and his mother and with his uncle.

2. The judge heard evidence from the appellant and his half-sister. She also had before her a significant amount of evidence relating to the care needs and the medical needs of both the appellant's mother and uncle.
3. The judge's findings appear in the decision from paragraph 25 onwards. In summary she accepted that the appellant cares for his mother, that her quality of life was better with him and it was with Social Services being responsible for her issues people should talk to her in her own language and that her son prepares Ghanaian food for her. She also accepted at 26 that the uncle lives with him some of the time and that the uncle's health has improved with the company and support he is receiving from the appellant.
4. The judge was not satisfied that the appellant met the requirements of paragraph 276ADE (vi) of the Immigration Rules, that there was no other provision of the Immigration Rules which allowed him to enter and she did not accept that it was implausible that he thought his immigration status was being sorted out. She found at [29] that he had had no intention of complying with the terms of his visit visa when he arrived, that he remained in the full knowledge that the Immigration Rules did not allow him to remain and that he deliberately overstayed.
5. Materially in this case the judge did not accept that the family life existed between the appellant and his mother and uncle, in particular with the mother though accepting that there were unusually strong ties in this case it was against the background where there had been no contact between the appellant from age 9 until age 42 and although accepting that the appellant is his mother's carer, she did not accept that family life existed although accepting he was acting as his mother's carer he was provided with accommodation and financial support which would not been available to him in Ghana.
6. The judge gave little weight to private life as it had been established whilst the appellant was here unlawfully that being an application under Section 117B of the Nationality, Immigration and Asylum Act 2002.
7. The judge then went on to find at [34] that "In case I am wrong with the question of family life then I will in any case go on to consider the question of proportionality."
8. The judge found however that it would be proportionate to remove the appellant, noting that the Immigration Rules made no provision for relatives to enter or remain as carers, that Parliament appeared to have decided that the need to maintain proper immigration control an application for immigration was that savings might be made by having relatives from other countries who come to the United Kingdom to provide

care for people who need it; that the appellant's mother did have the option of residential care but she had not been prepared to consider it; that the care needs were opened ended; and, that there had been a complete break in the past of family life. She found that any family life which had been established had been so established when the appellant had been fully aware he no legal right to remain in the United Kingdom and looking at all the evidence the balance of proportionality tips in favour of the respondent.

9. The challenge to the decision is based on four grounds of appeal:

- (i) that the judge had misdirected herself in law as to the question to be asked whether family life existed in this case and in answering that question had in any event taken into account immaterial matters (the receipt of funds and accommodation)
- (ii) that the judge failed properly to take into account various factors in assessing private life, specifically the family relationships between the appellant and his uncle and his mother as although family life had been found not to exist in this case, nonetheless these should have been taken into account as part of family life, the judge appearing to have considered that Section 117B of the 2002 Act as a complete answer to the Article 8 case; and, on that basis, the consideration of proportionality was flawed;
- (iii) that the judge failed properly to take into account the rights of the mother in the sense that she has a family and private life which would be impacted by the removal of the appellant;
- (iv) that the judge had erred in considering the prospect of the mother's relocation to Ghana.

10. I deal with the grounds in turn.

Ground 1

- 11. Ms Warren submitted that the judge's analysis of family life particularly paragraphs [31] and [32] was flawed in that the incorrect test had been applied and on account of the failure to take account of irrelevant factors.
- 12. Mr Bramble in response submitted that the judge was entitled to find there was no family life in this case but that this error, if it existed, was immaterial given that the judge had gone on at [34] to assess proportionality. He submitted that it could not be argued that the assessment of proportionality in this case was infected by any incorrect findings of fact and that at [25] and [26] of the decision the judge had properly taken into account and made findings in respect of the appellant's family life and the care that he gave to the uncle and to his mother.

13. It was open to the judge to take into account the absence of contact between the appellant between the ages of 9 and 42 and his mother and she was not satisfied as to his reasons of why he had come to the United Kingdom or why he decided to leave Ghana to come to look after his mother. It was open to her in that context to look at the issues of accommodation and financial support that context being this was things he did not have in Ghana. They were taken together with what is found at paragraphs 25 and 26 this is an adequate consideration.
14. I consider that it was open to the judge to conclude and bearing in mind what she had found at [25] and [26] that family life did not exist in this case. I am not satisfied that she misdirected herself as to the law, she clearly referred to emotional ties and whilst the fact-finding exercise could have been better set out it is adequate and sufficient.

Ground 2

15. Whilst I accept that there are difficulties given the lack of reference to the existing of family relationships in the context of private life, the judge did consider proportionality. It is sufficiently clear from the way that the decision is framed (albeit that it could be better structured) at [33] and [34] that the judge did not in reality simply consider that section 117B was a sufficient answer to that issue. In the context of the decision as a whole it is evident that the judge did consider the other factors and simply did not consider that the public interest in maintaining immigration control had been outweighed. It must nonetheless be borne in mind that that the appellant was financially dependent [32] and that there is a public interest in the maintenance of immigration control, all matters set out in sections 117A and 117B.
16. The judge had undertaken a balancing exercise as she says at paragraph [33] it also appears that she has in referring to "these Considerations" [33] taken all the relevant factors set out at [25] to [31] in respect of private life.
17. Further, and in any event, given that the judge did go on to consider proportionality in the context of their being family life (the high point of the appellant's case), it cannot be argued that any error in considering private life is material, given not least the effect of section 117B.

Ground 3

18. Ms Warren submits that the judge did not properly take into account the rights of the mother to family life in her alternative assessment. I consider that this adds little to the submission that in assessing private life the judge had not taken into account the relationships between the appellant and the uncle and the appellant and his mother and for the reasons I have given I have not considered that this amounts to an error of law. In any event, I consider that at paragraphs [35] and [37] the judge has considered matters which are material in assessing the needs of the

mother. I am satisfied that she gave adequate and sustainable reasons at [38] for showing that she had in fact taken these factors, that is the mother's rights to family life into account and that accordingly ground 3 is not made out.

Ground 4

19. It is submitted in this case that the judge had erred in noting that there was no evidence that the mother would be unable to return to Ghana by reason of either cultural or medical care [38] and that the appellant could continue to care for her in Ghana. I consider that the judge did accept that the mother would refuse to move and indeed that is implicit in what the judge finds and said she would be unable to do so by reason either of cultural or medical care. There is I consider no indication that the judge was considering that this would happen and it is important to note that the inability to go to Ghana is qualified by the phrase to do so by reason either of cultural or medical care. This is not a situation of saying that she would return or that the appellant would continue to care for her in Ghana were that to occur.
20. In any event I consider that it was open to the judge in assessing proportionality and indeed was incumbent on the judge in so doing in applying Section 117B in that the family life in this case had been established while the appellant's presence in the United Kingdom was precarious and that in the circumstances the judge was entitled and gave adequate and sustainable reasons for finding that the balance of proportionality tipped in favour of the respondent. Further, I consider that even if it were shown that the judge had erred in not finding in the approach to family life I consider that the judge's assessment of proportionality in this case was adequate and sustainable given the finding she had reached prior to her consideration of that at paragraph [34].
21. As Mr Bramble submitted there are a substantial number of findings which start at paragraph 25 in respect of family and private life. Whilst I accept that the decision could have been made out in a better it is sufficiently clear to the appellant as to why the judge was not satisfied that on facts of this case even taking into account the health and other needs of the appellant's mother that the public interest was such in maintaining immigration control that the decision was proportionate. It is also sufficiently clear from the decision for the reasons I have just given that the private life aspects and the relationship between the appellant and his uncle and the other aspects of the private life were taken into account.
22. Accordingly, for these reasons I consider that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed

Date: 2 May 2017

A handwritten signature in black ink, appearing to read 'Jeremy Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul