Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13923/2019

THE IMMIGRATION ACTS

Decided under Rule 34 Without a Hearing	**Decision & Reasons Promulgated**
At Field House	
On 23 October 2020	**On 2 November 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

KOJO [O]
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Ian Howard promulgated on 5 February 2020, dismissing his appeal under the Nationality, Immigration and Asylum Act 2002 against a decision of the respondent made on 25 July 2019 to refuse him leave to remain and his human rights claim.

2. The appellant sought leave to remain on the basis of long residence and on the basis that he meets the requirements of paragraph 276 ADE(1)(vi) of the Immigration Rules as there are very significant obstacles to his integration into Ghana. The respondent did not accept that, or that his removal would be disproportionate.

3. The judge found that the appellant is dependant on alcohol, something he has been unable to manage despite numerous efforts, and lives from hand-to-mouth with no help from his family in the United Kingdom which includes three brothers [19]. He has other relatively minor chronic conditions related to his dependency [10] but that the appellant is able to function adequately [20] but this is blighted by his inability to resolve his alcohol dependency.

4. The judge noted the appellant's evidence that he had extended family in Ghana [17] but did not accept [23] that he has no knowledge of the existence of extended family currently living in Ghana, his evidence being highly suggestive that there are cousins still living within their own family or families in Ghana, in contrast to what he had said. And so was not satisfied that there is no family support network of which he could avail himself if returned to Ghana [24] and that [25] there were not very significant obstacles to his integration into Ghana.

5. The judge also found that the appellant's removal would not be an interference of such gravity as would engage article 8(1) [30], [31].

6. The appellant sought permission to appeal on the grounds that the judge had erred:

   (i) In assuming that the appellant would be able to turn to his family in Ghana when he had been neglected by his family in the United Kingdom, there being no consideration of whether they would be able and willing to support the appellant on return; and, had failed properly to apply the "very significant obstacles" test;

   (ii) In not giving sufficient reasoning for the conclusion that there would not be very significant obstacles, there being no other findings in relation to whether he could form a private life there;

   (iii) In failing to have regard to the report on Extreme Poverty and Human Rights in Ghana indicating that there would be significant problems in relation to unemployment;

   (iv) In assessing article outside the rules in failing at [29] take into account relevant background evidence, such that he might, absent government support, be in a situation of destitution.

7. On 25 June 2020 Upper Tribunal Judge Lindsley granted permission to appeal and gave directions which provided amongst other matters:

> "5. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules[1], I have reached the provisional view, that it would in this case be appropriate to determine the following questions without a hearing:
>
> (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so

[1] The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

(b) whether that decision should be set aside.

6. I therefore make the following DIRECTIONS:

(i) The appellant may submit further submissions in support of the assertion of an error of law, and on the question whether the First-tier Tribunal's decision should be set aside if error of law is found, to be filed and served on all other parties no later than **14 days after this notice is sent out** (the date of sending is on the covering letter or covering email);

(ii) Any other party may file and serve submissions in response, no later than **21 days after this notice is sent out**;

(iii) If submissions are made in accordance with paragraph (ii) above the party who sought permission to appeal may file and serve a reply no later than **28 days after this notice is sent out**.

(iv) All submissions that rely on any document not previously provided to all other parties in electronic form must be accompanied by electronic copies of any such document.

7. Any party **who considers that despite the foregoing directions a hearing is necessary** to consider the questions set out in paragraph 1 (or either of them) above must submit reasons for that view no later than **21 days after this notice is sent out** and they will be taken into account by the Tribunal. The directions in paragraph 2 above must be complied with in every case."

8. On 7 September 2020, the respondent made submission to the effect the grounds are simply a disagreement with properly reasoned conclusions supported by negative credibility findings. It is further submitted that the judge's findings with respect to article 8 are sustainable.

9. On 1 September 2020, the respondent replied to the directions, relying on the initial and renewed grounds for permission. No further submissions were made, nor was there any objection made to the provisional view taken that there is no need for a hearing.

10. The Tribunal has the power to make the decision without a hearing under Rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the parties. Bearing in mind the overriding objective in Rule 2 to enable the Tribunal to deal with cases fairly and justly. Neither party has objected to this, and I am satisfied that in the particular circumstances of this case that it would be correct to make a decision being made in the absence of a hearing.

11. It was for the appellant to satisfy the First-tier Tribunal, on the balance of probabilities, that there were very significant obstacles to his integration. It was asserted in the skeleton argument put before the judge that he had no family in Ghana, a position consistent with his evidence as set out in his witness statement of 10 December 2019 where he says that he would not

be able to get employment as he has never worked, has no one to support him, and has no relatives to whom he could look for support in Ghana.

12. It is of note that he simply says [7] he has no family in Ghana and that [19] he has no family or friends to whom he could look for support. I bear in mind, that an individual may have family in a country, but they may not be able to support him as, for example, they are destitute or ill and so these statements are not inconsistent.

13. There is no challenge to the judge's summary of the evidence that the appellant said he had a lot of cousins, giving their ages as between 10 and more than 33. He said only that he believes most have settled outside Ghana. The reasoning at [23] – that the evidence suggests that there are cousins still living within their families in Ghana is adequate and sustainable given their ages, and that they would have been born around the time he left.

14. It was for the appellant to satisfy the judge that he had no family to whom he could turn in Ghana. The judge did not believe the claim he had no family which is how he put it. That his family in the United Kingdom do not support him is not a sufficient basis on which to conclude that the family in Ghana would not support him. As the respondent submits, the judge did make an adverse credibility finding, and he thus gave adequate reasons for doubting the appellant's account of what support he would face in Ghana.

15. While I note the terms of the grant of permission, it remains the case that it was for the appellant to show that his family would not support him, not for the respondent to disprove that assertion. While it may well be that they would not, that was not the appellant's case; it was his case that he had no family in Ghana, or that he did not know if they were there. He did not assert that he had family there who would not or could not assist him, and in that context the decision is sustainable.

16. In summary, the judge gave adequate and sustainable, if brief, reasons for not accepting the appellant's claim that he has no family to turn to in Ghana.

17. In that context, it was open to the judge to find that the appellant had not shown he had no family support, and to conclude, albeit briefly, that he could not show that there would be very significant obstacles to integration. The grounds do not properly identify what these would be if he has family to turn to.

18. In this context, it cannot be argued that the judge erred in not referring to the report on poverty in Ghana, it not being arguable that in the light of the sustainable findings, it was material.

19. Accordingly, the conclusion that the appellant does not meet the requirements of the Immigration Rules is adequately and sustainably reasoned and so is upheld.

20. The judge found that article 8 was not engaged. That, given the very restricted nature of this appellant's private life was a finding open to him and is not properly challenged in the grounds. Having reached that conclusion, then any error with respect to proportionality is not material. Further, and in any event, in the light of the sustainable findings as set out above, and bearing in mind section 117B of the 2002 Act, such that there is a significant public interest in removal as the requirements of the Immigration Rules are not met. Further, little weight could be attached to the appellant's private life and he is not self-supporting. It cannot therefore be argued, even in the alternative, that the removal is disproportionate.

21. For these reasons, I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

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

Signed Date 28 October 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul