



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

HU/17147/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34

Decision & Reasons
Promulgated

On 31 December 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

A

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant is a citizen of Ghana, aged 60. She came to the UK with 6 months leave as a visitor in June 2009. She says she has remained here since leave expired (although the respondent notes that her marriage certificate shows that she and her husband married in Ghana on 12 December 2018). She made unsuccessful applications for a residence card in 2019. On 13 September 2019, she applied for leave to remain on family and private life grounds, based on her relationship with her husband.

2. The respondent refused her application for reasons explained in a decision dated 4 October 2019. The appellant did not meet the eligibility immigration status requirement. It was considered whether she was exempt through paragraph EX.1 of appendix FM of the immigration rules, but there were found to be no insurmountable obstacles, or very significant difficulties, to the appellant and her husband continuing their family life in Ghana, of which country they are both nationals.
3. The appellant appealed to the FtT. Judge Howorth dismissed her appeal by a decision promulgated on 24 February 2020. The judge accepted evidence from the appellant and her husband (which emerged only in oral evidence at the hearing, although the appellant was represented) that her ex-husband had attempted to kill her and had threatened her before her divorce. However, there was no evidence of any ongoing threat, or of absence of legal protection, so no very significant difficulties were found, and no disproportionate interference with article 8 rights.
4. The appellant sought permission to appeal to the UT on grounds attached to an application dated 6 March 2020. The grounds are confused. They proceed in part on the misconception that compliance with the financial requirements of the immigration rules, and with requirements to provide evidence with an application, may be established by providing evidence in the course of the appeals procedure, even up to the stage of seeking permission to appeal from the FtT to the UT
5. By a decision dated 27 and issued on 31 July 2020, the FtT granted permission, on the view that the FtT arguably “erred in considering article 8 in that the decision considers only the claimed threat to the appellant from her former husband and not the personal circumstances of the appellant and her husband and families.”
6. By a note and directions issued on 28 August 2020 the UT took the provisional view that it would be appropriate to determine without a hearing whether the making of the decision of the FtT involved the making of an error on a point of law and, if so, whether it should be set aside. Parties were also given the opportunity to submit on whether there should be a hearing to resolve those issues. Neither party asked for a hearing.
7. The case firstly came before me at that stage. I resolved the error of law issue without a hearing, in terms of rules 2 and 34, as follows.
8. In her response, dated 9 September 2020, the SSHD “did not oppose the application for permission to appeal” - which was beside the point, as that application had been granted. The gist of the response was that the SSHD

accepted that the decision should be set aside for legal error, and remade. The SSHD also appeared to accept that it might be appropriate for further evidence, which was not before the FtT, to be entertained. There was a rather vague submission that some findings of the FtT should be preserved.

9. In a response, also dated 9 September 2020, the appellant argued the case on a rather confused basis, ending at [21] by asking for permission to appeal – redundantly, as the case had passed that stage – and by looking forward “to a favourable response in granting the appellant leave to remain” – an outcome which is not within the scope of the FtT or the UT. Tribunals allow or dismiss appeals; they cannot grant leave.
10. In light of the grounds of appeal (although, perhaps, reading them rather generously) and of the SSHD’s concession, the decision of the FtT was set aside by my “error of law” decision dated 13 and issued on 19 November 2020. The substance of that decision is incorporated above.
11. Parties were given 14 days from the date the “error of law” decision was issued to submit on further procedure required; on whether that should take place in the FtT, or in the UT; and on the eventual outcome sought. It was indicated that after that time, the UT would consider how to proceed further; and might do so, whether responses were received or not, by dismissing or allowing the appeal, as originally brought to the FtT.
12. Time for those submissions having gone by, the case is before me for further decision.
13. In a response dated 27 November 2020, the SSHD submits thus: the case should remain in the UT; the FtT judge erred by not properly considering the relationship between the appellant and her husband; the appellant has not challenged the findings that she could not obtain protection, or relocate; there is lack of evidence about the ex-husband’s threats, or her ability to know if she returns; relevant findings by the FtT at [20,22 and 23] “should be sustained”; “once an error is found, submissions may be made” on additional evidence from the appellant; she has not indicated whether she wishes to give oral evidence; the case can be resolved by way of submissions.
14. This is a little muddled, but makes it sufficiently clear that the SSHD agrees that a further decision may be reached, without a hearing, based on materials on file.
15. In a response dated 1 December 2020, the appellant submits thus: it is agreed the case “can be resolved via submissions”; the appellant does challenge the findings on protection and relocation in Ghana, and on her ex-

husband's ability to know of her return; there is evidence from the appellant, her husband, and a family friend, on those matters; and the appeal should be allowed "so that the appellant can live peacefully with her spouse in UK".

16. In light of the agreement of both parties, the UT may now proceed in terms of rules 2 and 34 to make a fresh decision on the appeal, as originally brought to the FtT.
17. The only live issue is whether the appellant's ex-husband poses a threat to her in Ghana, amounting to an insurmountable obstacle, or very significant difficulty, in the way of her and her husband carrying on their family life in Ghana. She has not suggested any other obstacle, and there is no evidence by which she might be found to have a right to remain in the UK for any other reason.
18. A statement from a supporting witness, living in Ghana, says that she is a former neighbour and close family friend of the appellant. She witnessed domestic violence, and cites an example on 10 January 1998. She says that the appellant's ex-husband proposes to hunt her "regardless of her location".
19. Another statement is from a pastor and close family friend in Ghana, who says that he witnessed domestic violence from 1999 to 2009, when the appellant "got the chance to travel".
20. I find the evidence sufficient to show, on the balance of probability, and as the FtT accepted, that the appellant was subjected to domestic violence by her former husband before she left Ghana.
21. That was a long time ago, circumstances have changed, and the assertions of ongoing malevolence are vague. I do not find the evidence sufficient to show, on the balance of probability, that the appellant's ex-husband continues to pose a threat to her.
22. There is no evidence from which it might sensibly be held that the appellant's ex-husband is likely to know, or to be able to track her down, if she returns to Ghana. It is not the largest country in Africa, but it is quite extensive, with a population of 30 million; 2 million in Accra and 1.5 million in the second largest city, Kumasi. It is idle to suggest that the appellant and her husband could not locate themselves in security.
23. There is also no evidence the level of protection from violent former partners officially available in Ghana is less than legally sufficient.

24. For those several reasons, any one of which would suffice, the evidence falls well short of showing that the appellant's ex-husband poses a threat to her in Ghana, amounting to an insurmountable obstacle, or very significant difficulty, in the way of her and her husband carrying on their family life in Ghana.
25. The grant of permission, and the SSHD's concession, appear to have been made in an abundance of caution, lest some other feature of the case had been overlooked which might have disclosed a right to remain. However, there is simply no other basis on which the appeal might rationally be allowed on article 8 grounds.
26. The FtT made an anonymity direction. Parties have not addressed that issue. The direction remains in place.



11 December 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.
6. **The date when the decision is "sent" is that appearing on the covering letter or covering email.**