IAC-AH-SC/FH-CK-V3

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/01214/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 13 July 2022	**On the 25 August 2022**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

ROLAND KINGSLEY ATTAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Jones, directly instructed
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Ghana. He appealed to the First-tier Tribunal against the respondent's decision of 18 December 2018 refusing a human rights claim.

2. At a previous hearing on 5 March 2020 I found errors of law in the decision of the First-tier Tribunal and directed that the Article 8 issue be reheard in the First-tier Tribunal.

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3. The appellant, Mr Attah, adopted the evidence contained in his witness statements as being true and accurate and was content to rely on them as the basis of his evidence. He had come to the United Kingdom in 2003. As regards his sickle cell anaemia and hospital admissions over the last two years he said the most recent time had been in March 2020. He had had severe COVID symptoms and it turned out in fact to be pneumonia. He had been in hospital for three to four weeks then. He linked the admission to sickle cell because it made him susceptible easily to flu and pneumonia. As to managing the crisis incidents during the last two years he said he could easily manage them all right and they arose due to stress and dehydration. He would take in fluids and take the necessary medication. If it was serious he would have to go to hospital to go on a drip for a couple of days.

4. As regards concerns about returning to Ghana he said this was mainly that the medical system in comparison to the United Kingdom was very low so he would love to stay in the United Kingdom. Other family members had suffered from sickle cell and his brother Derek had died in Ghana from it. Also there was his father, cousins and nephews and nieces who had died in Ghana from sickle cell.

5. With regard to his eyesight and the reference at pages 103 and 104 bundle 1 he said he had lost vision completely in his left eye and only had very close proximity. His main seeing eye was his right eye. The retinal detachment referred to at page 103 was in his left eye. The doctors said there was a likelihood the right eye could be affected and they would see him every six months. As regards page 105 he said that it was the right eye and the focus now was on the right eye as it was unstable. The doctors had to weigh the balance as an operation could lead to loss of sight in the right eye so there was active monitoring and the reference to the retinal detachment concerned that.

6. He was asked to what he attributed his left eye deterioration in 2009 too and said that he had had perfect sight when he was younger and had dreams of doing a PhD but he experienced stress from the Home Office limitations and decision and at that time he began to have problems with his eyes and he was sent to Moorfields.

7. As regards his relationship with his wife, they had been living together since 2021. He hoped to settle down and have children with her. He was the only son of his family and since his father died he was not able to see him and the surname ended with him.

8. His wife worked as a social worker. As to public funds, he had never relied on public funds since he had come to the United Kingdom. He still received financial assistance from his sisters with family and friends.

9. He saw his sisters' children most of the time. Croydon was a home to African food, so he would meet up with his other sister also. He saw Matilda and her children perhaps three times in a month.

10. He was asked whether he still offered practical assistance to her children and said no but when he was with them he taught them, but he was more of an uncle now since he had gone to live with his wife and was not consistently collecting them from school. As regards his mother's health, the treatment was stabilised but she had a really bad knee. They were waiting for her to come over as she would be alone when his sister, who is her carer, went to the USA. There were just the two in Ghana, his sister Ruth, who was going to the USA, having been living there and had come back and was going back to the USA. Their mother was there.

11. On cross-examination it was put to the appellant that although he had not relied on public funds he had had medical treatment in the United Kingdom. He said that two or three times he had paid the health surcharge. Even with refusal applications. He thought that covered his healthcare until the visa was refused. He had been given one year's leave to work. He had paid for prescriptions etc.

12. It was put to him that he had had no leave since 2009. With his eyesight problems and sickle cell problems it seemed these were all funded by the public purse and he said yes, he had received NHS care and had had ongoing applications since 2009. With regard to the reference to the prosthetics department he said his left eye was damaged and they were trying to get an artificial eye to put in and it was cosmetic and it would not be a seeing eye. He was asked if he would manage the right eye and said he relied on the NHS and he did not think that was illegal.

13. As regards whether he would work in the United Kingdom if his appeal were successful, he said he wanted to build a family. His wife was British and worked. He had been trained as a health professional and had worked in the NHS before and also as a teacher. He could work full-time. His eye did not impair that at all. He would be able to contribute and benefit British society. He had contributed a lot. He was up to date with COVID jabs.

14. With regard to the proxy marriage in Ghana he said he thought around 40 or 50 people attended, being close family from both sides.

15. In the United Kingdom were his sisters Matilda, Dorcas and Sharon. Beryl had been here for six or seven years when she went to Ghana working with Ernst & Young and his sister Ruth was also in Ghana. Beryl lived in their father's house in Accra.

16. He was asked whether he had discussed with his wife what they would do as a family if the appeal were unsuccessful and whether they could

continue family life outside the United Kingdom and he said they had no plans about that and they would take the next step and appeal.

17. He would have been in the United Kingdom for twenty years in April 2023. He thought that his wife had been back to Ghana in 2021 and also perhaps in 2016 for visits. He was educated to Masters level in the United Kingdom and his family had paid. He did not agree it was fair to say that in comparison to other families in Ghana they were fairly wealthy. His father had been a bank manager but he was deceased now. He did not know the total costs of his studies in the United Kingdom. He had begun with an ACCA and struggled and preferred to do health sector work and did a Masters in that area. He was asked about the fee and was it £9,000 to £20,000 and said the ACCA would be £500 to £1,000 for registration and paying for tuition and the Masters had cost £9,000. He had worked to finance most of it and his father had provided about £4,000.

18. As regards his sister Beryl, she was not married and she should be going to the USA next week. It was not Ruth. Ruth lived in their father's house and was married with one child. The house had four bedrooms.

19. On re-examination the appellant was asked about Beryl going to the USA and he said she had got a job with Ernst & Young and was travelling next Monday. She had a work permit and her current intention was that she had chosen the USA over the United Kingdom. As regards Ruth's connection to the United States, it was mainly a visit but she was planning to study and had scholarships and had a current intention to relocate.

20. The next witness was the appellant's wife, Sandra Attah-Senyah. She adopted her statement as being true to the best of her knowledge and was happy to rely on it as the basis of her evidence. Her future hopes were to start a family. As to whether they discussed whether the appellant would work if they stayed in the United Kingdom she said yes, he would work in the health profession. She herself had been a social worker with Ealing since 2020 and managed her own clients. She enjoyed her work. In Ghana she had her parents and siblings. She had never considered doing social work in Ghana. It was not really organised there in comparison to the United Kingdom. As to whether she could do a job in the same way there she said that when in Ghana she thought the system was not that developed. She had gained her social work qualifications in the United Kingdom. She would not have to requalify abroad but perhaps she would do a top-up.

21. As regards why she would prefer to live in the United Kingdom she said that Ghana was a nice place but she had been here for a while and preferred it here. She could become a senior social worker and have a management role and was progressing towards that.

22. As regards the appellant's family in the UK she said he was very close to his sister Matilda and her children and they were very close and there

were a couple in Ghana as well. He had got better when in the United Kingdom but had had crises in Ghana and had not had to go to hospital in the United Kingdom since 2020. As regards whether he had expressed concerns to her about return to Ghana she said he had been here so long and most of the family were here and he called this home. They would go for holidays. She had been back in 2021 and before that in 2018. She went every two or three years for about two weeks.

23. When cross-examined by Mr Whitwell the witness said that they had not discussed what they would do if the appeal were unsuccessful. It was put to her that it sounded as though they could live in Ghana as a couple but understandably preferred to live in the United Kingdom and she said yes, they had been here a couple of years and saw it as their home. He had arrived in the United Kingdom in 2004. She had not had any dealings with Social Services in Ghana. She had stayed with her parents in Accra when she had gone back in 2021.

24. There was no re-examination.

25. The next witness was Matilda Gane, who adopted the evidence contained in her two statements and confirmed that they were true and that she was happy to rely on them as the basis of her evidence.

26. If the appellant had to leave the United Kingdom the impact on her and her children would be devastating. She was a single mother with four young children and he had been a support. It had been constant since her divorce. He played with them and helped with homework. They did not really understand and would be devastated. Their father had gone back to Ghana and it had an adverse effect on them but they had become stable. It would be such a setback. Her children were successful at school. Since the appellant's marriage there was no less an attachment. He saw the children maybe three or four times a month and they were all very excited to see him. There were letters in the bundle from them.

27. He had expressed fear concerning the state of his health in Ghana. His sickle cell had been managed pretty well in the United Kingdom. She had seen him when he had had a crisis in Ghana. The facilities for his health and pain management were nothing in comparison to the United Kingdom. It was not adequate at all. As regards the impact on her sisters' families and the sisters she said that they were a very close family and all had children and he was closest to her children as she was divorced. They met for family gatherings. His relationship with his wife was lovely and they were very kind to each other.

28. When cross-examined by Mr Whitwell the witness said that sister Dorcas had just had a baby who was 4 months old and Dorcas lived in Kent and was quite unwell. Ruth had returned to Ghana. Sharon was the next and had three children, all at school, so she could not travel today.

29. She was a single mother with four children aged 6 to 11 and they needed a male presence, which he had provided and built with them in the past, so even if he was not available as before, knowing he was in the United Kingdom was of value. She had explained to the children why he had to prove why he should be allowed to stay but he was in the United Kingdom and that was from their point of view.

30. There was no re-examination.

31. In his submissions Mr Whitwell referred to the refusal letter, on which he relied, and the skeleton argument. Article 3 had not been addressed and it was for the Tribunal to consider. There needed to be a very strong argument as to whether there was an error of law in that regard and in any event, it could not succeed in accordance with what had been held in AM. The evidence did not support it. The medical evidence showed that the appellant's conditions were managed wherever he was in the world. There was no causal nexus between return to Ghana and a return of his illness and nothing in the decision challenged the subsistence or genuineness of the relationship, so it was a question of whether there were insurmountable obstacles to re-integration into Ghana.

32. On the face of it, the couple were aware of his unlawful immigration status and both had roots originally in Ghana and there was no issue of language as English was a national language of Ghana and the appellant had extended family there. 40 to 50 people had attended the wedding and this was an extensive network. In theory both could work.

33. With regard to the appellant's vulnerability he said that if he was allowed he would work in the United Kingdom and his wife had social work qualifications which were transferable. There was family property and it was not overcrowded and his wife had said that if they were able to stay, then they would visit Ghana on holidays. There was therefore nothing to show family life would be very difficult to continue elsewhere. They would prefer to stay in the United Kingdom but the location of family life was not a choice.

34. As regards private life, reference was made to the skeleton argument. There were the previous findings on very significant obstacles and it should be questioned what in the last three or four years could lead to a departure from that. As regards Article 8 outside the Rules, reference was made to paragraph 38. There was no reliance on public funds but the appellant was not financially independent in the wider sense. The NHS reliance fortified the public interest. It was true that there was a wide spectrum under section 117B(5), but there was overstaying and the cost to public funds and the reasons to stay did not overweigh. The public interest should prevail.

35. In his submissions Mr Jones relied on his skeleton argument. He asked the Tribunal find the witnesses credible and Mr Whitwell said he had not suggested otherwise.

36. As regards Article 3 the arguments were set out as to why that should be considered. The concession had been withdrawn early before the Tribunal and the Secretary of State had had ample time to consider and argue the matter, so there was no prejudice.

37. As regards unjustifiable harshness and obstacles it was the same argument on Article 3 other than the threshold. The Article 3 points were set out in the skeleton. There was AM and the Secretary of State's guidance. Paragraph 61 set out why for the last few years the sickle cell had been well-managed. Shielding had assisted the appellant. There was reference to page 34 and the consultant's letter. This identified that the sickle cell risk factors were mainly with regard to escalation and complications. There was a risk of rapid escalation. In the stable environment in the United Kingdom this was managed quite effectively by the appellant mainly with the practical and financial support of his family in the United Kingdom. Before marriage he had lived with his sister and helped her family. The chronology at paragraph 20 showed the number of hospital admissions, the most recent being in March 2020 when he had suffered from pneumonia. His history required to be considered. It had been well-managed in the context of exemplary UK services but even then he had been hospitalised periodically. Paragraph 32 onwards of the skeleton was referred to. This increased his vulnerability, in particular with regard to the disability increase and a modest reduction in the vision in the right eye which was significant. The evidence at pages 103 to 105 of the bundle was of significance here. This stressed the cause of the original problem. It was relevant to note this in respect of risk and his right eye if there were forced removal. He apprehended his health would not be managed effectively and, given the family history including the death of his brother, this had force. It was capable of impacting on his health and triggering a crisis and was the basis of the Article 3 claim.

38. The same concerns were relevant to Article 8. There were very significant obstacles to his integration into Ghana given his disability and the risk of escalation, and the country evidence from paragraph 34 onwards painted a gloomy and distressing picture. There was societal discrimination within the workplace and with access to services for people with disabilities and there had been no improvement. So even without the risk of deterioration of his health he would automatically encounter circumstances where his situation might lead to him being disenfranchised and excluded even with family support. The case law had been set out. Society in Ghana would not welcome him.

39. He had a subjective fear and there was an objective reality of escalation and crisis. The deterioration in his health and his disabilities would compromise his ability to integrate. Reference was also made to the

decision of the Court of Session in MC [2016] CSOH 7. The appellant had been in the United Kingdom for over nineteen years, and had a very high level of integration and ties to the community, having made a positive contribution. He had done social and charitable work, as referred to at paragraph 41 of the skeleton where the evidence was summarised. He had made an extraordinary contribution to the community. It was the case that he had taken from society with regard to the funding of healthcare but he had given more back. He had substantial connections to the United Kingdom and it would take as long to build up such connections all over again in Ghana as it had taken in the United Kingdom. This was relevant to the issue of significant obstacles to integration and the combination of the factors was enough to meet the test.

40. As regards the submissions at paragraphs 43 to 48 of the skeleton, reference was made to the duration of the appellant's time in the United Kingdom and the strength of his relationships here with family and friends and in the community. This was relevant even if relationships were established and while his residence was insecure. The amount of time he had been in the United Kingdom was less than twenty years but close enough that it was a matter of real significance as to whether or not it would be unjustifiably harsh to require him to leave. His first six years in the United Kingdom had been lawful. He had not sought to go to ground or abscond but had sought to assert entitlement to leave to remain.

41. With regard to the immigration history, it appeared that there had been a repeated exercise of reconsideration which had taken six years and the respondent had therefore effectively tolerated his presence during that period when considering whether to grant leave. This was relevant to what had been said in EB (Kosovo) as regards the passage of time and the development of private life during that period, which required to be considered. This was relevant to proportionality. There had been no active enforcement action until the end of 2017 and this was relevant to the weight to be attached to private life. The appellant had sought to regularise his status. He had entered the United Kingdom lawfully. The fact that he had been given rights to appeal after reconsiderations indicated that there was thought to be some possible merit to his claims. It showed the Secretary of State recognised there were complex issues to be determined carefully. It was not a high case for compelling reasons or enforcement actions based on the Secretary of State's conduct.

42. Mr Whitwell had referred to what was said by the Court of Appeal in UE [2010] EWCA Civ 975 concerning a person's value to the community and contribution. This was capable of bearing on proportionality.

43. The use of NHS facilities was not the same as reliance on public funds and the relevant guidance, which would be provided, at page 24, was relevant to this. There could be a surcharge applicable, but there was no indication that this had been applied. It was likely, as it had been with regard to

emergencies, so there was a burden but the United Kingdom had indicated it was not one it was unwilling to bear.

44. On a balancing exercise, there were extraordinary compassionate factors including health issues and the balance was against enforcement and enhanced by the impact on the family in the United Kingdom.

45. As regards the extended family, it was unlikely now that there was family life with the adult siblings now as the appellant now lived with his wife. There was now a more typical relationship between siblings but the evidence of his sister Matilda should be borne in mind concerning the harm to the children if the appellant were removed, and their evidence should also be borne in mind. This was recognised in the decision letter also and was capable of tipping the scale.

46. To this should be added the appellant's relationship with his wife, which was lawful and there was no challenge to its genuineness and subsistence and that was transformative of the case. It was the case that the Immigration Rule provided for the person remaining if there were insurmountable obstacles to removal, but before that, there were all the other Rules including suitability, which were met, and the income was well over the limit and the only aspect not obviously met was the immigration requirements. The appellant was well-educated, as was his wife. There were all the difficulties that you would experience on removal and there was ample evidence to show the necessary obstacles. The guidance in Chikwamba [2008] UKHL 40 was of relevance here. It had been said in Younas [2020] UKUT129 (IAC) that only if it were inevitable the person would succeed that the appeal should be allowed without requiring the appellant to depart, and that was the case here, it was argued. All of the elements of the test were met, and there were no good reasons not to require the appellant to return to Ghana to make an application. There would be a profoundly negative impact on him for that to be required.

47. I reserved my decision.

Preliminary Issue

48. It was conceded at the hearing before the First-tier Judge that the Article 3 threshold was unlikely to be reached, and as a consequence the judge did not consider the point. That cannot amount to an error of law, and consequently the argument set out in the respondent's skeleton argument, referring to AZ [2018] UKUT 245 (IAC), can have no purchase. This is a rehearing of the appeal and though this Article 8 was the only issue before the judge at the hearing and hence it is ostensibly limited to that issue, but I see force in the argument made at paragraph 17 of the appellant's skeleton that the original grounds of appeal remain open to argument, the concession previously having been withdrawn, and bearing in mind also that the respondent has had ample notice of the point and does not, in my view, suffer any prejudice. Mr Whitwell very helpfully made submissions in

the alternative to his argument that Article 3 was not before the Tribunal, and in the circumstances, it seems to me that the argument about Article 3 is properly before the Tribunal for consideration.

The Evidence

49. I have set out a good deal of the evidence above in the context of the evidence given by the witnesses. The medical evidence is helpfully summarised at paragraph 32 of the appellant's skeleton argument. He has been diagnosed with sickle cell retinopathy. In a letter from Mr Petrushkin, the consultant ophthalmologist, it was said that the appellant had a chronic left retinal detachment with poor vision in that eye in March 2009, this being likely to be the result of sickle cell retinopathy. The vision did not improve and he did not see well from the right eye, which was now chronically inflamed. There was a stable temporal retinoschisis in the right eye, which would limit the visual field but did not require intervention.

50. Dr Howard, in his evidence, referred to the appellant having a subcapsular cataract (posterior anterior of the left eye) and retinal detachment in the left eye. He stated that the appellant has moderate sickle cell disease.

51. There is a letter from Yaw Brobbey-Mpiani, deputy director (administration) to the Ghana Health Service stating that the appellant will not be able to obtain treatment for his retinopathy in Ghana due to lack of local capacity.

52. In the letter from Professor da Cruz it is said that the appellant has stable but extremely poor vision at hand movements in the left eye. He has good vision in the right eye but with an unstable retinal position. It is possible that he will get progressive schisis retinal detachment in the right eye which will require complex retinal surgery in the future. It is said that the main problem is that his right remaining good eye is at risk of complications in the future, which will require extensive and complex retinal surgery necessitating access to high quality tertiary vitreoretinal surgical services.

53. The further points made by Mr Jones in his skeleton at paragraph 3 refer, inter alia, to the fact that the appellant is extremely vulnerable clinically and therefore there is a prevailing COVID-19 risk, he is partially blind, affecting his ability to work, support himself and pay for medical treatment, he is classified as disabled and so will be likely to be subjected to abuse and intolerance, his wife will have to join him, leaving behind a well-paid and stable job, her ability to find work will be limited given the evidence of discrimination against women in Ghana in terms of access to employment, wages and housing. His family can only provide limited supporting, having their own families to support. His mother has been diagnosed with multiple myeloma, for which the family will have to bear the cost of treatment and care, and the appellant will face long-term challenges integrating into the legal, economic and sociocultural aspects

of life, given his length of stay in the United Kingdom and his deteriorated physical condition.

54. There are quotations from background evidence, referring to the frequency of disability based discrimination in Ghana: some persons with disabilities said that they continued to face violence and abuse, both at the family and community level, most of the health facilities and institutions remain inaccessible and some communities in Ghana do not allow persons with disabilities to take part in cultural programmes. In the US State Department Report of March 2021, it was said that few adults with disabilities had employment opportunities in the formal sector, and paragraph 12.1.1 of the UKVI CPIN of September 2020 refers to funding being a major challenge to Ghana's efforts to meet its international human rights obligations and refers also to services being overburdened in poorer areas. Engagement in very low pay and formal activity becomes a survival strategy, amidst an immigration trend and recruitment of health workers remains a challenge, persons with disabilities are among the most vulnerable groups in Ghana and although research is being carried out on sickle cell anaemia the medical centres do not provide free medical care.

Discussion

55. In essence the position is not of any significant difference from the situation when the matter was considered by the First-tier Judge, whose findings about the medical evidence and the consequences for the appellant I concluded not to contain any errors of law in my earlier decision. Of course the judge's decision has been set aside, but I think it is right to bear in mind, from the letter of 1 December 2017 from Moorfields, that it was difficult to know whether the appellant's right eye will complicate in the future requiring extensive and complex retinal surgery, and I think it is right to say that the risk in that regard is unquantifiable. It is also of relevance that the appellant would wish to work in the United Kingdom and has clear work plans to work in the health sector. It is relevant to bear in mind that he has an employment history in Ghana as an auditor for an international accountancy firm and in the United Kingdom and is educated to MSc level and is part qualified as an ACCA. I do not consider any contention that he would be unable to work in Ghana to be borne out. He has at the moment one good working eye and an unquantifiable risk of potential deterioration in that eye, and in his oral evidence he said he would wish to work full-time in the United Kingdom. I can see no reason why that would not be possible in Ghana. The evidence that I have set out above concerning discrimination appears to me to be at most minimally applicable to the appellant. He is not a person who shows an obvious disability, and in any event he has qualifications, experience and family support to assist him. In this regard, I bear in mind that he still

has family members in Ghana, and it is relevant to note also that the number of members of his and his wife's family and extended family, some 40 or 50, who attended the celebration of the marriage in Ghana, are further indicative of the level of support available to him.

Article 3

56. I consider the evidence in the context of Article 3 in light of what was said by the court of human rights in Paposhvili and more recently by the Supreme Court in AM (Zimbabwe). It is necessary for the appellant to succeed under Article 3(2) to show that, though he is not at imminent risk of dying, he would face a real risk on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment and being exposed to a serious, rapid and irreversible decline in his state of health, resulting in intense suffering, or to a significant reduction in life expectancy.

57. I do not consider the claim to be made out in this regard. As noted above, there is no clear prognosis of a need for extensive and complex retinal surgery on the appellant's right eye. There is a risk, but the risk has not been quantified. It does not in my view, having considered all the medical evidence, amount to a real risk. I am far from sure that if there were significant damage to the right eye, that even that would meet the very high test set out in Paposhvili of a serious, rapid and irreversible decline in his state of health, resulting in intense suffering, but in any event, I consider that a real risk of such a decline in his health and the consequences set out in that case, has not been shown. The appeal under Article 3 is dismissed.

Private Life

58. As regards private life and the very significant obstacles test, clearly much of what has been considered in the context of Article 3 is relevant also. Mr Jones has emphasised matters such as the death from sickle cell crisis of the appellant's elder brother in Ghana and the illness and death of other family members, the fact that medical treatment is not free, the fact that the appellant had to travel far to obtain treatment for any crises, that the fact that he had never experienced a major crisis while in Ghana, his brother having done so and died as a result, his absence of social networks, the death of his father, and the diagnosis of his mother with multiple myeloma and the fact that his condition is considered to be a disability, for which there is a stigma.

59. I do not accept that the appellant lacks social networks in Ghana. Whether he returned with his wife or alone, he clearly still has family there in the form of one of his sisters and his mother and other family members, as well as his wife's family, who are clearly very supportive of the marriage. He is clearly intelligent and well-qualified and I can see no reason why he would not be able to obtain good employment as he wishes to do and seems to have no doubt of being able to do in the United

Kingdom. I do not consider any stigma of any materiality has been identified with regard to his disability. He would have the support of his sisters in the United Kingdom, the United States and Ghana in assisting with the support of his mother and her health problems. As I set out above, the risk of deterioration in the right eye has not been shown to be a real risk and is unquantified. I bear in mind the fact that he is clinically vulnerable, but also the fact that he has been fully vaccinated. He does not apparently view his disability as precluding him from getting work in the United Kingdom and no evidence has been provided to show that having sight in only one eye would prevent him from obtaining work in Ghana. If his wife joined him, though there might be difficulties in finding work, equally she did consider that she could work as a social worker in Ghana, though she might do some top up courses. Further, his father's death is not an irrelevant factor, equally the appellant is now aged over 40 and has managed without the support of his father in the United Kingdom for a number of years. I bear in mind that he has been away from Ghana for some nineteen years, but equally he spent the first 25 years of his life in Ghana and this is relevant to his ability to reintegrate into that country. On the proper broad evaluative approach set out in Kamara, I consider that the evidence that has been provided is not such as to show that there would be very significant obstacles to the appellant's integration into Ghana. There would no doubt be obstacles and some of those might have a degree of significance, but the very high threshold is not, in my view, crossed in this case. Bearing in mind the support he would have from his wife if she went with him, and the support of his and her family members and his ability to work, I consider that the matters summarised at paragraph 42 of the skeleton, as well as elsewhere, are not such as to show that the very significant obstacles test is met in this case.

Family Life

60. It is common ground that the appellant's marriage is genuine and subsisting. The fact of that marriage has, to an extent, changed the focus of the family life consideration away from the matters in respect of which errors of law were found by me previously. The appellant was previously living with his sister Matilda and her family and enjoyed a close relationship with her and her children and provided very valuable and significant support to her. Inevitably, since he has now moved away from their home, and they meet some three or four times a month, rather than him living with them, his role in their lives has diminished, though I accept that it will remain relevant and of a degree of significance, bearing in mind Matilda's evidence and also the written evidence provided by the children. However, the essence of his family life is now with his wife.

61. As to whether there are insurmountable obstacles to family life with his wife continuing outside the United Kingdom, in summary the argument in this regard is that they cannot reasonably relocate to Ghana since his wife is British and has settled in the UK working as a social worker and the

appellant's sickle cell disease, with severe complications and risk on return, are such as to meet the EX.1 threshold.

62. I do not consider that the argument is borne out in this regard. The insurmountable obstacles test is a high one. Though there may be obstacles, they appear to me to be far from insurmountable. The appellant's wife has spent most of her life in the United Kingdom and is a British citizen but she was born and spent her earliest years in Ghana and clearly has family there, including her parents. People frequently leave jobs in one country to work in another country and it would appear entirely feasible for to obtain work either as a social worker or doing other work in Ghana. I have already addressed the issue of the appellant's illness and risks on return in other contexts in this decision. The insurmountable obstacles test is not met in this case.

63. As regards the consideration of Article 8 outside the Rules and the unjustifiable harshness test, it is relevant to bear in mind that among other things, the appellant's relationship with his sisters and their children in the United Kingdom and the role he plays in the community, which is summarised at paragraph 41 of the appellant's skeleton. This includes the evidence of Ann-Phyllis Ofori who has referred to the many voluntary projects on which she has worked with the appellant, the letter from Act of Faith Ministries concerning the work done by the appellant in the NHS and local councils, a letter from Kodwo Bentum, referring to the appellant's involvement as a founding member of the Barking branch of the International Central Gospel Church – Grace Temple, Barking and the further letters from a number of people confirming the considerable contribution the appellant has made to their families and communities over many years.

64. These matters are all properly to be borne in mind, but equally it is in my view necessary to take into account the guidance referred by Mr Whitwell in his skeleton argument in UE [2010] EWCA Civ 975, emphasising the importance of bearing in mind the benefit to the community provided by a person as potentially tipping the scales in their favour. These cases are of course very fact-sensitive and, as was pointed out in UE, it will be unusual for the loss of benefit to the community to tip the scales in an applicant's favour. It is something to be placed into the balance as I do in this case, and clearly the appellant has contributed quite significantly to the community. However, it does not in my view, take matters any further, even considered with the other evidence in the context of Article 8. In this regard, I bear in mind the further evidence of the sisters and the support given by the appellant to them and their families, to Matilda and her family in particular. The best interests of the children are for the appellant to remain in the United Kingdom, but in my judgment this is outweighed by the public interest in this case.

65. In this regard, I also bear in mind the Chikwamba point made by Mr Jones. The relationship is accepted and the appellant's wife earns above the

financial threshold. However, it does not seem to me that this is a proper case, bearing in mind the guidance in Younas, to conclude that that tips the scales. Matters in essence have to be considered at the time when the entry clearance application is made, and it is impossible to say at the moment what the position at that time would be.

66. Bringing these matters together therefore, I consider that it has not been shown that that there are insurmountable obstacles to the appellant's integration into Ghana nor that there are insurmountable obstacles for him and his wife enjoying family life in Ghana. The appeal is dismissed also in respect of Article 8 outside the Rules and with regard to Article 3.

Notice of Decision

67. The appeal is dismissed on all grounds.

No anonymity direction is made.

Signed Date 12 August 2022
Upper Tribunal Judge Allen