



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: HU/04076/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 November 2021**

**Decision & Reasons  
Promulgated  
On 24 January 2022**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON  
DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**AGNES AMANKWA TETTEH  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Khan  
For the Respondent: Mr Whitwell

**DECISION AND REASONS**

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal of 27 May 2021 allowing the appeal of Agnes Amankwa Tetteh (born 31 May 1965) on Human Rights Convention grounds.
2. The immigration history supplied by the Respondent, and undisputed by the Appellant, is that she entered the UK in

November 2004 as a visitor. She was encountered by the authorities and arrested on suspicion of fraudulently using a false identity on 10 October 2012; whilst there is no evidence of criminal proceedings, she was served with notice of her removability from the UK and detained, during which time she claimed asylum on 26 October 2012, that application being refused and the ensuing appeal being dismissed on 14 January 2013 (albeit that the decision was not available to the parties and has thus been unavailable on the appeal).

3. On 4 May 2015 she applied for leave to remain on human rights grounds; that application was refused on 14 July 2015, and it was certified as clearly unfounded giving rise only to an out-of-country appeal; a Pre-Action Protocol letter brought an offer to reconsider the July 2015 refusal though it seems the Appellant failed to report subsequently and the next material event was her making of an application on 6 February 2020, the refusal of which refusal leads to this appeal.
4. Her application was refused on the basis that she had not lived in the UK for more than 20 years and had established no very significant obstacles to integration on a return to Ghana. The Respondent relied on "*Eligibility*" points alone; no "*Suitability*" grounds were cited suggesting the grant of leave was not appropriate for public interest reasons.
5. The Appellant's evidence was that she had aided doctors and nurses as an NHS volunteer, and helped frontline staff with the provision of protective equipment, accompanying patients for scanning and at the pre-admission stage, measuring blood pressure, administering medication, taking body fluid samples, and assisting with ECG tests, using the skills she had obtained from working in a different hospital. There was a wealth of corroborative evidence attesting to the Appellant's NHS work including various letters and emails relating to her shift work for Bart NHS Health Trust. These activities were important to her and she aspired to retrain as a nurse; it would be difficult to find the same work in Ghana where the culture was to use younger people in volunteer schemes.
6. Evaluating the Appellant's claim, the First-tier Tribunal accepted the immigration history summarised above and noted
  - (a) The Appellant's advocate did not formally concede the private life claim under the Immigration Rules but made submissions which rested heavily on her ECHR Art 8 rights;
  - (b) She had overstayed since May 2005 and used fraudulent details to seek indefinite leave to remain;

(c) She had spent 15 years and 2 months in the UK at the date of the Respondent's decision; and 16½ years here by the time of the appeal hearing;

(d) It was the Respondent's case that she could replicate her health related work in Ghana and that her skills would foreseeably be valued notwithstanding the ageism prevailing there, and she could join a church community there too.

7. The First-tier Tribunal then made these findings:

(a) It was appropriate to have regard to the importance of immigration control albeit within the context of a balancing exercise;

(b) She had established private life here via her residence and work (her healthcare work was her passion and gave purpose to her existence), embedding herself into the UK's way of life and without receiving public funds, albeit her residence was on a consistently precarious basis and should thus receive little weight;

(c) She suffered from a series of health conditions, including arthritis, diabetes, hypertension, high cholesterol, and hernias;

(d) She spoke good English;

(e) She had assisted the NHS notwithstanding the high risk to herself given her ethnicity putting herself at high personal risk and providing comfort to the loved ones of UK residents unable to say farewell in person, playing an important role in ensuring that the NHS remained operational throughout the pandemic;

(f) In the UK her health was managed via NHS care and she had the support of her cousin whereas in Ghana she would lack a family support network and would need to find employment in the face of ageism, threatening her ability to meet her essential living needs and health expenses;

(g) She was diligent and resourceful and had been a productive member of the community.

8. The Secretary of State's grounds of appeal assert that there was no finding made as to whether the Appellant faced exceptional or compelling circumstances justifying the appeal's success which was a prerequisite to allowing the appeal on ECHR Art 8 grounds. Judge Fisher granted permission to appeal for the First-tier Tribunal on 28 June 2021 noting that an aspect of the reasoning below appeared to rest on a finding that a need to secure low-paid employment might constitute exceptional circumstances or unjustifiably harsh consequences. Besides, Ms Tetteh appeared

resourceful, spoke English, had relatives who could support her in Ghana and faced no medical issues that could reach the *AM (Zimbabwe)* [2020] UKSC 17 threshold.

9. For the Respondent Mr Whitwell submitted that whilst the grounds of appeal were perhaps not well drafted there were nevertheless material errors of law. He would express the challenge rather differently. This was the appeal of a middle-aged individual who had resided in the UK for 16 years. There was no overt summary of the strengths and weaknesses of the appeal by way of the balance sheet recommended by the higher courts. Significant weight had been given to the Appellant's English language facility whereas it should have been of neutral effect; and the fact of volunteering had been treated as effectively decisive whereas *Thakrar* [2018] UKUT 336 (IAC) showed that even work in a skills shortage area such as nursing was insufficient. The mere fact that the Appellant might face the prospect of low paid work in Ghana was not enough to render the immigration decision disproportionate. Effectively the First-tier Tribunal had carried out a free-wheeling ECHR Art 8 assessment and in so doing treated the Human Rights Convention as a means of giving a general dispensation contrary to the interests of immigration control; there was no clear finding made under the Rules, and no elevated threshold had been recognised and applied. The grounds intimated a perversity challenge too: the facts of this case simply could not reach the high threshold to succeed outside the Rules.
10. Mr Khan submitted that the essential question for the First-tier Tribunal had been whether ECHR Art 8 was satisfied outside the Rules, which required a broader holistic assessment than an assessment of integration possibilities abroad. This was not just a case about the Appellant's own health problems and any consequent lack of medical care in Ghana. The Judge had given appropriate weight to the Appellant's lengthy and admittedly unlawful residence, to her UK activities, applying *Agyarko* [2018] UKSC 58 and *Rhuppiah* [2017] UKSC 11, and had applied the s117B statutory criteria.

### **Findings and reasons**

11. It might be thought that the First-tier Tribunal took a slightly generous approach to the issues confronting it given the Respondent's mixed immigration history and historic reliance on false documents. However, the question for us is whether a material error of law arises from its reasoning.
12. Notably the First-tier Tribunal followed the correct approach in assessing a human rights claim, first determining whether private life was in play, then looking to whether there was a material interference, and finally moving on to proportionality. There is

nothing surprising in the finding that Ms Tetteh had established private life given she had resided in the UK, working and becoming immersed in her local community, for more than sixteen years. The Judge found that Ms Tetteh had used false documents at one point, but as the Court of Appeal has noted on more than one occasion (eg *ZH (Bangladesh)* [2009] EWCA Civ 8 and *Aissaoui* [2008] EWCA Civ 37), there is a real difference between so doing with a view to procuring work as opposed to maintaining a false identity to defraud individuals of goods or services or pursue some extended course of criminal conduct. The Secretary of State has the initial responsibility for determining the public interest, and notably here the decision maker did not raise “*Suitability*” grounds.

13. True it is that the Tribunal did not clearly make a finding as to whether or not the Respondent faced very significant obstacles to integration in Ghana. But that is unsurprising given her advocate below is not recorded as pressing her case under the Rules. The case as argued and determined was squarely by reference to ECHR Art 8 outside the Rules. On that basis it was appropriate to measure the strength of her UK ties against her remaining links to Ghana. It can hardly be said the Tribunal below was unaware of the “*very significant obstacles to integration*” test not being met, given that was the starting point for considering the case on the basis it did and that it expressly referenced rule 276ADE.
14. In reality the Tribunal was clearly aware that success outside the Rules required something equivalent to a compelling case: as it put it §53, summarising *Agyarko* as calling for “*very substantial difficulties or exceptional circumstances or unjustified harshness*” and applying that test thus: “*the uncertainties in her securing employment to support herself, would cause her very substantial hardship or unjustifiable harshness*”. That language is very similar to the Secretary of State’s own preferred terminology of “*unjustifiably harsh*” consequences and clearly represents an assessment that went beyond a bare balancing exercise in which the public interest and private rights were given equal weight in the scales. On the contrary, the Tribunal clearly recognised that it was apposite to require something relatively extreme before finding the public interest outweighed by case-specific factors.
15. Finally, the Tribunal correctly had regard to the statutory criteria placed on the appellate agenda by s117B NIAA 2002. It noted Ms Tetteh spoke English and that she was financially independent given she lived with a cousin who provided her with board and food. Albeit neutral factors they did not weigh against her. She had herself consistently shown diligence and resourcefulness which would ensure she was a productive member of the community. Weight was properly given to the Appellant’s contribution to the NHS’s healthcare capacity during the capacity. The President noted in *Thakrar*, in the context to contributions to the community, “*If*

*judicial restraint is not properly maintained in this area, there is a danger that the public's perception of human rights law will be significantly damaged.*" It is hard to imagine that a reasonable member of the public would consider the Tribunal's approach to the public interest here to be misguided, given Ms Tetteh's valuable work in fighting such a significant threat to public health. The Tribunal was clearly alive to the precariousness of her immigration status, expressly noting that most of her presence here had been as an overstayer, and correctly recognised that *Rhuppiah* interpreted the s117 regime such as to hold out the possibility of exceptional cases where the general discounting of private life for precariousness can be overridden.

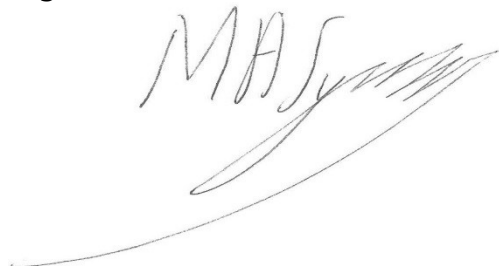
16. The Home Office case, even supplemented by Mr Whitwell's submissions, does not establish a material error of law. There is no indication that the FTT gave affirmative rather than neutral weight to the Respondent's English language facility, it overtly applied an appropriately high threshold for a private life case succeeding outside the Rules, and it applied a staged analysis to the existence of private life and the proportionality of the immigration decision's interference with that private life that did not enter the territory of unprincipled dispensation. The decision was not structured as a "*balance sheet*" exercise, but that is not an absolute requirement so long as private rights and the public interest are weighed against one another and no relevant considerations are overlooked.
17. There being no material error of law in the decision below, the appeal must be dismissed.

## **Decision**

The appeal is dismissed.

Signed

Date 20 January 2022

A handwritten signature in black ink, appearing to read 'M.A. Symes', with a long, sweeping underline that extends across the width of the signature area.

Deputy Upper Tribunal Judge Symes