



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI- 2022-003320
First-tier Tribunal No: HU/04384/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 May 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

EMMANUEL KONTOH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sood of Counsel, on a Direct Access basis
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

Heard at Field House on 24 February 2023

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Chohan (“the Judge”), promulgated on 25 May 2022. By that decision, the Judge dismissed the Appellant’s appeal against the decision of the Respondent to refuse his claim under Article 8 of the European Convention on Human Rights (“ECHR”).
2. At the hearing before us, the parties joined via Microsoft Teams. We were satisfied that neither party suffered any disadvantage by reason of the hearing taking place remotely and no submission to the contrary was made by either advocate.
3. At the conclusion of the hearing, we determined that the decision of the Judge involved an error on a point of law. We set aside the decision and, with the agreement of the parties, we proceeded to the remaking hearing. We now set out

(i) our reasons in respect of the error of law decision and (ii) our decision and reasons in respect of the remaking.

Background

4. The Appellant is a national of Ghana, born on 21 June 1997. His application, made on 31 January 2020, was on the basis of his family life (outside of the Immigration Rules) and his private life (within the Immigration Rules). He had entered the UK as a visitor on 19 September 2019 and made his human rights application before the expiry of his visa. At all relevant times, he has been living with his mother, his stepfather and his stepbrothers.
5. In a decision dated 4 March 2020, the Respondent refused his application. The Respondent concluded that he did not meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules. It is not clear from the decision whether the Respondent accepted that the Appellant enjoys family life within the meaning of Article 8 but, in any event, the Respondent concluded that there were no exceptional circumstances, relating either to family life or private life, warranting a grant of leave to remain outside of the Immigration Rules.
6. In her decision dismissing the appeal, the Judge found, inter alia, that the Appellant:
 - (1) had established “some family life” [7] in the UK; and
 - (2) had not demonstrated that there are very significant obstacles to integration into Ghana [12].
7. The grounds of appeal pleaded errors in relation to the judge’s reasoning and conclusions in respect of family life; in the Rule 24 response, dated 5 August 2022, the Respondent agreed that the judge had erred in law in her assessment of Article 8 ECHR and submitted that the assessment outside the Rules should be set aside.
8. Having noted the Respondent’s stance in the Rule 24 response, and the fact that additional evidence had been filed and served by the Appellant, the Upper Tribunal sent a direction to the parties in the following terms on 23 February 2023:

The Upper Tribunal (Judges Blundell and Welsh) notes that (i) there is no challenge to the dismissal of the appeal under the Immigration Rules; (ii) it is accepted by the respondent that the FtT erred in its consideration of Article 8 ECHR; and (iii) the appellant has filed and served up-to-date evidence of his circumstances. In these circumstances, the Upper Tribunal is minded (subject to any observations made by the parties) to proceed to remake the decision on Article 8 ECHR grounds at the hearing tomorrow. The parties should be prepared accordingly.

Error of law hearing

9. We agreed with the parties. We concluded that the Judge erred by failing to make material findings in relation to whether the Appellant enjoys family life within the meaning of Article 8 and, if so, with whom he enjoys that family life. We therefore set aside the decision. There was no challenge to the finding of the

Judge that the Appellant does not meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules and so we preserve that finding. Both advocates confirmed that they had prepared for us to remake decision on the appeal, and we proceeded to do so.

Remaking

The hearing

10. We heard oral evidence from the Appellant, Ms Katherine Antwi (the Appellant's mother) and Mr Owusu Sekyere (the Appellant's stepfather). All witnesses gave evidence in English.
11. In closing, Mr Whitwell relied upon the refusal decision and both advocates made oral submissions. During the course of this decision, we address the points made by the advocates.

Evidence

12. We have taken into account:
 - (1) The Appellant's bundle entitled 'Appellant's supplemental updating bundle' (PDF pages 1-70);
 - (2) the Respondent's bundle prepared for the hearing before the First-tier Tribunal (PDF pages one-47);
 - (3) the error of law bundle, insofar as the documents are relevant to the issues we have to decide (PDF pages one-114);
 - (4) a medical document provided to us during the course of the hearing; and
 - (5) the oral evidence of the witnesses.
13. We informed Ms Sood that we did not have access to the Appellant's bundle prepared for the First-tier Tribunal hearing and that, therefore, we had not seen her skeleton argument or the original witness statements. She was content to proceed without us having regard to these documents.

Legal framework

14. It is necessary to consider whether the proposed removal would be an interference with the exercise of the Appellant's right to respect for his family and private life; if so, whether any such interference would be of such gravity as potentially to engage Article 8; if so, whether such interference is in accordance with the law and necessary in the public interest; and if so, whether such interference is proportionate to the legitimate public end sought to be achieved (R (Razgar) v SSHD [2004] UKHL 27).
15. The burden of proof is on the Appellant to establish, on the balance of probabilities, that there has been an interference with his Article 8 rights and thereafter for the Respondent to show that the interference is proportionate.
16. The assessment of whether such interference is justified under Article 8(2) is described as "*the public interest question*" in section 117A of the 2002 Act. That

section requires us to have regard to the factors set out in section 117B when considering the public interest.

Findings and conclusions

17. We find the evidence of the Appellant and his witnesses to be credible and reliable, for the following reasons:
- (1) their accounts were not materially undermined by any material inconsistency, implausibility or lack of detail;
 - (2) the manner in which they gave evidence caused us to form the view that they were doing so honestly and without exaggeration;
 - (3) in cross-examination, Mr Whitwell explored matters of fact with the Appellant and his witnesses but made no suggestion in his closing submissions that their evidence was not truthful or reliable.

Family life

The existence of family life

18. In considering whether the Appellant enjoys family life, we apply the principles derived from Kugathas v SSHD (2003) INLR 170, Ghising [2012] UKUT 160 and Singh [2015] EWCA Civ 630:
- (1) There is no general rule about when family life can, or cannot, be engaged. Each case should be analysed on its own facts to decide whether or not family life exists, within the meaning of Article 8(1).
 - (2) In order to establish family life, it is necessary to show that there is a real committed or effective support or relationship between the family members and the normal emotional ties between a parent and an adult child will not, without more, be enough.
 - (3) There is no legal or factual presumption as to the existence or absence of family life, nor is there a requirement of exceptionality.
19. We find that the Appellant does enjoy family life with his mother, stepfather and stepbrothers. We reach this conclusion having taken into account the following matters.

Financial support

20. Since his arrival in the UK, the Appellant has lived with his family and been financially reliant on his mother, who is the sole earner in the family.

Practical support

21. We find that the Appellant provides his family members with real practical support. The nature and extent of support provided has decreased since 2020 but is nonetheless greater than would normally be expected of an adult child/sibling.
22. The Appellant came to the UK in September 2019 with the purpose of providing practical support for his mother. In April of that year, his stepfather had been diagnosed with stage 4, grade B, non-Hodgkin's lymphoma, which was treated with surgery and then seven courses of chemotherapy. As a result of Mr Sekyere's ill-health, the family dynamics changed. The family became solely reliant on Ms Antwi's earnings and she therefore had to increase her working hours. As a result of his physical frailty, Mr Sekyere could no longer provide practical support to his children and required personal care himself. As a consequence of these two factors, the family turned to the Appellant for help. A social care report, dated 10 January 2020, described the nature and extent of assistance provided by the Appellant. In summary, the Appellant took on the burden of caring for Mr Sekyere and shared with Ms Antwi the practical responsibilities of looking after his brothers.
23. The evidence of the witnesses demonstrates that this burden has lessened as Mr Sekyere's health has improved and as the children have become older (the two elder boys are now aged 18 and 16).
24. Mr Sekyere's last round of chemotherapy was in November 2019. Whilst he has not regained full strength, he remains in remission. He explained that he still suffers from right-sided weakness and has disrupted sleep. Ms Antwi explained that her husband remains vulnerable to infections. In oral evidence (supported by medical evidence) Mr Sekyere stated that he recently attended hospital because he was experiencing pain. He was diagnosed as suffering from kidney stones, which is being treated with medication.
25. Ms Antwi continues her heavier working pattern. She is contracted to work 28 hours a week but usually works 35 hours and sometimes longer. She was diagnosed with high blood pressure in 2015/16, which had been successfully treated with medication. However, recently her blood pressure has been high and her GP has informed her that she should rest and relax more.
26. Mr Sekyere no longer requires the intensive personal care previously provided by the Appellant but practical care is still given: the Appellant normally accompanies his stepfather on his twice daily walks; he ensures that his stepfather takes his medication; his stepfather cannot lift heavy items so the Appellant still carries out most household chores. In her witness statement, Ms Antwi described the care now provided by the Appellant to her husband [4]: "his needs are [now] more generalised, like needing love, motivation and help when he is tired or nauseous, and being accompanied to medical appointments." In terms of the practical care for his brothers, the Appellant takes his younger brother to football and picks him up from school twice a week.

Emotional support

27. All family members state, and we accept, that they share strong emotional bonds. In her witness statement, Ms Antwi stated [6] that the Appellant's "presence and help is incredibly uplifting to me and the whole family especially my husband." One of the Appellant's brothers described experiencing racially motivated bullying in January 2022 and how the support provided by the Appellant helped him to deal with the negative experience in a positive way.

28. Taking into account all these factors, we conclude that the relationships the Appellant enjoys with his mother, stepfather and stepbrothers are ones of real committed or effective support, consistent with the existence of family life within the meaning of Article 8.

Best interests of the children

29. Three of the Appellant's stepbrothers are children (aged 16, 14 and 13 respectively). In determining their best interests we take into account that, though they would undoubtedly prefer for the Appellant to remain in the UK, the absence of the appellant would (i) have little, if any, effect on the practical circumstances of their lives (ii) they will still have the support of both parents and (iii) they are all of an age such that we can infer that they are developing private lives outside of the family unit. For these reasons, we conclude that, whilst it is in the best interests of the children for the Appellant to remain within the family unit, it is not a factor that impacts their best interests in anything other than a minimal way.

Interference with family life

30. The maintaining of the refusal decision will interfere with family life with sufficiently serious consequences to engage Article 8, given it will separate the Appellant from his family. We give this factor only limited weight because:
- (1) prior to coming to the UK, the Appellant was able to maintain his relationship with his family members. Whilst we accept that remote communication is no substitute for face-to-face contact, the separation will not result in the fracturing of the Appellant's relationship with his family;
 - (2) whilst we accept that care provided by a family member will normally be preferable to that provided by the State, the Appellant's parents will be entitled to access the support of the state should it be necessary to replace the care currently given by the Appellant; but
 - (3) in any event, the evidence does not suggest that any such care would be required; as noted above, the Appellant's father's health is significantly improved, and the children of the family are not of an age at which they require extensive help. In this regard, the circumstances are entirely dissimilar to those considered in Lama [2017] UKUT 16 (IAC), on which Ms Sood relied. The circumstances have also moved on, fortunately, from those considered in the December 2019 report of Ms Davison (updated in January 2020), on which significant reliance was placed in the FtT.

Private life

31. We find the Appellant does not enjoy a private life in the UK within the meaning of Article 8. We reach this conclusion because of the absence of evidence of any relationships outside of the family unit.
32. If we are wrong about that, we further conclude that we attach very limited weight to any interference with his private life, given:
- (1) the brevity of the Appellant's stay in this country;

- (2) the limited evidence about the nature and extent of any such private life; and
- (3) his private life has developed at a time when his immigration status has been precarious (section 117B of the 2002 Act).

Public interest

33. It is not in dispute, and we find, that the Appellant does not meet the requirements of the Immigration Rules and we give this factor weight. In relation to section 117B of the 2002 Act, we find that he can speak English and is financially supported by his mother, both of which are neutral factors in our assessment.

The proportionality assessment

34. The assessment requires a balancing of the extent of interference with the rights of the Appellant against the public interest in his removal pursuant to the maintenance of effective immigration controls.
35. In our view, the weight that we attach to the public interest outweighs the limited weight we attach to the Appellant's family and private life. Whilst it is clear that there was a time when the family was heavily dependent upon the Appellant, both for the care of his stepfather and the other children of the family, that time has fortunately passed. Weighing the severity of the consequences for the family against the public interest in immigration control, the current situation is clear. The Appellant has discharged his obligation to his family, leaving behind his own studies in Ghana in order to do so, and they will undoubtedly miss him when he returns to Ghana. On the evidence as it currently stands, however, we are unable to conclude the consequences of the Appellant's removal are such as to outweigh the cogent public interest in the maintenance of immigration control. We therefore conclude that the Respondent's decision being maintained is a proportionate interference with the right to respect for his family and private life and lawful under section 6 of the Human Rights Act 1998.

Notice of Decision

36. The decision of the First-tier Tribunal involved the making of a material error on a point of law and we set aside the decision.
37. We remake the decision and dismiss the appeal on human rights grounds.

C E Welsh

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 March 2023