



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2023-001404**  
**First-tier Tribunal Nos:**  
**HU/53790/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 24 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**The Secretary of State for the Home Department**

Appellant

**and**

**Elizabeth Boateng Antwi**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms Ahmed, Senior Home Office Presenting Officer  
For the Respondent: Ms Laughton, Counsel instructed by Zahra & Co Solicitors

**Heard at Field House on 23 June 2023**

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State. However, for convenience I will refer to the parties as they were designated in the First-tier Tribunal.
2. The appellant is a citizen of Ghana who entered the UK in July 2008 as a visitor. She has not had a lawful basis to remain in the UK since her visa expired on 24 December 2008.
3. The appellant lives in the UK with her daughter, son-in-law and three grandchildren, all of whom are British citizens. She claims that removing her from the UK would breach Article 8 ECHR because:
  - (a) she would face very significant obstacles integrating in Ghana due, in particular, to her health issues and lack of family support; and

- (b) she has a family life with her family in the UK including her granddaughters under the age of 18 (aged 16 and 17) in respect of whom she has a parental role.
4. In a decision dated 14 June 2022, the respondent refused the appellant's human rights claim. The appellant appealed to the First-tier Tribunal where her appeal came before Judge of the First-tier Tribunal G Andrews ("the judge"). In a decision dated 26 March 2023 the judge allowed the appeal. The respondent now appeals against this decision.

### **Decision of the First-tier Tribunal**

5. The judge made detailed findings of fact. The most significant findings are as follows:
- (a) The appellant has been a widow since 2000. Her son died in 2014 and she has one surviving child, who is her daughter in the UK with whom she lives.
  - (b) Her late son's widow and her four children live in a house in Ghana that is owned by her daughter in the UK.
  - (c) The appellant has one surviving sibling, who is living in Ghana, who is in her mid 80s.
  - (d) Since moving to the UK in 2008, the appellant has been dependent on her daughter and son-in-law for her accommodation.
  - (e) The appellant's daughter and her husband have a combined income of approximately £80,000.
  - (f) The appellant has been heavily involved in the life of her grandchildren, looking after them when her daughter was working full-time.
  - (g) The appellant has insulin dependent type 2 diabetes, high blood pressure, glaucoma and diabetic retinopathy. Despite her physical difficulties, she does not have significant care needs and is able to manage herself with personal care and cooking.
  - (h) The appellant has a warm and loving relationship with, and is an integral part of, her family in the UK.
  - (i) If the appellant were to return to Ghana new accommodation would need to be obtained for her, as there is not sufficient room in the property owned by her daughter.
  - (j) The appellant would not have family in Ghana available to give her practical support and her family would not be able to obtain a suitable carer who could meet her needs.
6. The judge then considered whether the appellant satisfied the conditions of paragraph 276ADE(1)(vi) of the Immigration Rules. The judge found that life would be difficult for the appellant in Ghana but that she would not have very significant obstacles integrating and therefore the conditions of paragraph 276ADE(1)(vi) were not met.

7. The judge considered the best interests of the appellant's two granddaughters who are under 18. The judge found that they have a very close bond with the appellant and would worry about her if she is returned to Ghana. The judge concluded that it is in their best interests for the appellant to remain in the UK but stated that her "*finding on this point is not as robust as would be the case if I were considering the possible removal of one of the children's parents from the UK*".
8. The judge then considered whether the appellant has a family life for the purposes of Article 8 ECHR with her family in the UK. The judge stated that she is an integral part of the family unit, sharing a close bond with her daughter and grandchildren, and playing a significant role in their lives. The judge found that the appellant's ties with them "go beyond the normal emotional ties" and concluded that she has a family life with them.
9. The judge considered the argument advanced on the appellant's behalf that she has a parental relationship with her grandchildren. The judge rejected this, finding that she has had the role of a grandmother, not of a parent.
10. The judge then undertook a balancing exercise, weighing factors for and against the appellant. In paragraphs 55 – 56 the judge set out the factors on the respondent's side of the balance. This included the following:
  - (a) The appellant did not meet the requirements of the Immigration Rules. The judge stated that she attached considerable weight to this, noting that Section 117B(1) of the Nationality, Immigration and Asylum Act 2002 required her to attach weight to the public interest in the maintenance of effective immigration controls.
  - (b) The appellant cannot speak English. The judge attached "relatively limited weight" to the public interest in the appellant being able to speak English. The judge's findings on this issue are set out in paragraph 56, where she stated:

"The appellant spoke through a Twi interpreter at the hearing, and Ms Laughton accepted that the appellant speaks limited English, and that s117B(2) of the 2002 Act is relevant here. That section states that it is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English. However, s117B(2) goes on to state that the reason for this is that persons who can speak English (a) are less of a burden on taxpayers, and (b) are better able to integrate into society. But the appellant is not of an age where she would be expected to go out to work (where speaking English might be important), or to undertake much by way of integration into society. Further, the respondent's own policy (in the Immigration Rules) is that adult dependent relatives need not speak English. The appellant's daughter and her husband have a good income, and I consider it likely that they would continue to support the appellant in the UK. Taking all this into account, I consider it appropriate in the particular circumstances of this appeal, to attach relatively limited weight to the public interest in persons who seek to enter the UK being able to speak English."
11. The judge then, in paragraphs 57 – 60, considered factors on the appellant's side of the balance in the Article 8 proportionality assessment. These are:
  - (a) The appellant has a private life in the UK. The judge stated that, in the light of the appellant's immigration history, and applying sections 117B(4)

and (5) of the 2002 Act, she attached little weight to the appellant's private life in the UK.

- (b) It is in the interests of the appellant's two minor grandchildren that she remains in the UK. The judge stated that her finding on this point "is not as robust as would be the case if I were considering the possible removal of the children's parents from the UK" and also that the best interests of children can be outweighed by the cumulative effect of other considerations.
  - (c) The appellant shares a family life with her daughter and three granddaughters in the UK. The judge made several findings about this family life, including: (i) the family life was shared prior to the appellant entering the UK in 2008; (ii) the bonds were strengthened during a period in which the appellant had no lawful basis to be in the UK and there is a public interest in her not being permitted to present the UK with a "*fait accompli*"; (iii) the appellant is an integral part of the family unit, sharing close bonds with her daughter and grandchildren and playing a significant role in their lives; and (iv) it would be difficult for the family members to maintain meaningful contact through modern communication and visits to Ghana.
  - (d) Although the appellant would not face very significant obstacles integrating in Ghana, she would face substantial challenges given her age and how long she has been out of the country.
12. The judge described the case as being "finely balanced", and concluded that, having taken everything into account, this was "*one of those small minority of cases where the factors on the appellant's side of the balance outweigh those on the respondent's side of the balance*".

### **Grounds of Appeal**

13. The grounds, as drafted, are not divided into distinct points, and are set out under a single heading "making a material misdirection of law on any material matter". However, I would divide them into two distinct submissions (which reflects the way Ms Ahmed advanced the case at the hearing before me).
14. The first ground/submission is that the judge gave excessive weight to the appellant's private and family life in the UK because she failed to take into account that only little weight ought to be attached to it given that it was formed whilst she was in the UK with either limited leave as a visitor or unlawfully as an overstayer. Reliance is placed on the Upper Tribunal decision *Rajendran (s117B - family life)* [2016] UKUT 00138 (IAC), where it is made clear that even where a person does not fall within the scope of sections 117B(4) and (5) of the 2002 Act it is necessary to consider, in the light of well established Article 8 jurisprudence, whether only little weight should be given to the person's family and private life.
15. The second submission/ground is that the judge failed to place adverse weight on the appellant's inability to speak English, which was required by Section 117B(2) of the 2002 Act.
16. I have not set out the submissions made by Ms Ahmed and Ms Laughton at the hearing, but their arguments are reflected in the analysis below.

## **Applying Excessive Weight to the Appellant's Private and Family Life in the UK**

17. The grounds argue that the judge erred by attaching significant weight to the appellant's private life and family life.
18. The respondent's argument in respect of the appellant's private life can be disposed of quickly, as it is simply not the case that the judge attached significant weight to it. The judge stated in paragraph 57, after considering sections 117B(4) and (5) of the 2002 Act, that only little weight was attached to the appellant's private life in the UK.
19. In contrast to the appellant's private life, to which only little weight was given, the judge did attach significant weight to the appellant's family life in the UK. However, this was not legally erroneous, for the following reasons:
  - (a) First, the judge was not required by Part 5A of the 2002 Act to attach little weight to the appellant's family life in the UK. Section 117B(5) applies only to private life. Section 117B(4) applies only to private life and relationships with a qualifying partner. There is no provision of the 2002 Act (or any other legislation) requiring that only little weight is given to family life with children and grandchildren.
  - (b) Second, as observed in *Rajendran*, there is Article 8 jurisprudence establishing that it will often be the case that little weight should be given to a relationship formed with a British citizen at a time when the person is in the UK unlawfully or with a precarious immigration status. However, as is explained in the *Lal* [2019] EWCA Civ 1925, the weight to give to a relationship in any given case will depend on the particular circumstances. As stated in paragraph 64 of *Lal*:

“We have no issue with the observations of the Upper Tribunal in the *Rajendran* case on section 117B on family life, on which Mr Malik also relied. We also agree with his submission that there is no rule of law which requires that little weight should not be given to a relationship formed with a British citizen at a time when the applicant's immigration status is precarious. The point is that what weight it is appropriate to give to such a relationship in the proportionality assessment depends on the particular circumstances. The relevant circumstances include the duration of the relationship and the details of the applicant's immigration history and particular immigration status when the relationship was formed (and when the application was made).”
  - (c) Third, this is not a case where the relationships that are relied on by the appellant to establish that she has a family life in the UK were formed at a time when she was in the UK unlawfully or with a precarious immigration status. This is because the relationships were already existing. As stated in paragraph 59(a) of the decision: *“The appellant plainly shared family life with her family members, prior to arriving in the UK in 2008”*.
20. For these reasons, this is a case where it was open to the judge to attach more than little weight to the appellant's family life in the UK and doing so was not inconsistent with Part 5A of the 2002 Act. I therefore am not persuaded by the respondent's first ground/submission.

## **Failure to Attach Adequate (or Any) Weight to the Appellant's Inability to Speak English**

21. Paragraph 117B(2) of the 2002 Act provides:
- “(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
- (a) are less of a burden on taxpayers, and
- (b) are better able to integrate into society.”
22. The grounds state that the judge failed to place adverse weight on the appellant’s inability to speak English as required by section 117B(2) of the 2002 Act. This submission is misconceived because in paragraph 56, after considering section 117B(2), the judge stated that she attached “relatively limited weight” to this public interest. “Limited weight” is not the same as “no weight”. It is a mischaracterisation of the decision to contend that the judge gave no weight to this consideration.
23. The more reasonable contention (which is the way the case was pursued at the hearing) is that the judge erred by only attaching limited weight to the public interest in the appellant speaking English. I am not persuaded by this argument for two reasons. First, section 117B(2) of the 2002 Act does not stipulate how much weight a judge needs to give to this public interest consideration. Second, section 117B(2) does not just state that it is in the public interest for a person to speak English; it also (in sub-paragraphs (a) and (b)) sets out two reasons why this is the case. The first reason is that people who speak English “are less of a burden on taxpayers”. The judge considered the question of whether the appellant’s inability to speak English would make her a greater burden on the taxpayer, and found that it would not, given that she was not at an age where she would be expected to work and that her family will (and have the income to) support her. The second reason set out in section 117B(2) is that people who speak English “are better able to integrate into society”. The judge also considered this reason, finding that because of the appellant’s age it would not be expected that she would undertake “much by way of integration into society”. Having engaged with and made clear findings in respect of the two reasons set out in section 117B(2), it was open to the judge to decide that in this particular case the English language public interest consideration was reduced and fell to be given less than its ordinary weight.

### **Notice of Decision**

24. The decision of the First-tier Tribunal did not involve the making of an error of law and stands.

**D. Sheridan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**21.7.2023**