



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003968

First-tier Tribunal Nos: PA/50043/2022
IA/00087/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 17th November 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**Ewurabena Sackey Walker
(NO ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Razzaq Siddiq, Legis Chambers

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 24 October 2023

DECISION AND REASONS

Background

1. The appellant, a citizen of Ghana, born on 29 June 1999, entered the UK on 7 February 2017 with entry clearance valid until 3 August 2019, joining her stepmother. The appellant made an application for further leave to remain on the basis of her private and family life on 1 October 2019, that application being refused on 14 October 2019. The appellant withdrew her appeal against that decision and claimed asylum, on 10 March 2020, on the basis of claimed ill-treatment by her father and fear of her father on return.
2. The respondent refused that application in a decision dated 21 December 2021. The First-tier Tribunal initially considered the appellant's appeal at a hearing on 20 October 2022 which was adjourned to allow the appellant to obtain further medical evidence. The First-tier Tribunal concluded the appeal at a hearing on the 9 March 2023. In a decision promulgated on 30 May 2023 the appellant's appeal was dismissed on all grounds.

The Grounds of Appeal

3. The appellant appeals with permission granted by the First-tier Tribunal (Judge Boyes on 19 September 2023) on the grounds it was contended:
 - (1) that the judge made a perverse finding that the appellant was not physically and mentally abused, but rather was properly chastised;
 - (2) that the judge made an unreasoned finding that the appellant would be able to obtain support on return to Ghana from family members;
 - (3) that the judge erred in law in concluding it was not disproportionate to expect the appellant to return to Ghana and re-establish herself there.

Discussion

4. It was Mr Siddiq's submission that Judge of the First-tier Tribunal Bird's ('the judge) findings, including at paragraph [51], that "the appellant may well have been chastised by her father as she described when she was a child but I do not accept that it went beyond what unfortunately in that culture may be viewed as 'proper chastisement'" was against the weight of the evidence. Mr Siddiq referred me to paragraph 4.1 of the screening interview, where the appellant claimed she feared her father who had been abusive towards her, together with the asylum interview (and I was referred to the relevant questions).
5. Mr Siddiq submitted that the judge's findings were contrary to paragraph 43 of the Reasons for Refusal Letter which provided as follows:

"As unfortunate, disturbing and lamentable as the previous incidents have been, they can only be regarded as a criminal act as opposed to sustained or systematic acts of persecution against which the Ghanaian authorities were either unwilling or unable to offer domestic redress. The treatment you state that you experienced, whilst regrettable, does not reach the level of severity so as to constitute persecution within the meaning of Regulation 5(1) of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006."
6. Whilst Mr Siddiq initially submitted that the respondent had accepted that this was persecution he conceded that that was not the case. Mr Siddiq submitted that the judge erred in referring both at paragraph [54] and at paragraph [40] to the cultural context and the judge gave no reasons as to what she considered to be proper chastisement, with no explanation for those findings.
7. Whilst Mr Siddiq sought to criticize the judge's findings about cultural context, at paragraph [40], this is not properly before me as it was not in the grounds of appeal. Even if it were, in the context of considering whether the appellant had discharged the low burden of proof in respect of her protection claim, it was open to the judge to consider, as she did, that it was surprising that the appellant did not realise who her father was, including given that he presumably was living in the same house. In any event, nothing turns on this finding.
8. The judge considered the evidence relating to the claimed abuse by the appellant's father and considered the respondent's submissions. The judge was

required to consider and make findings as to whether the appellant's father posed a risk to the appellant on return to Ghana. The judge in detailed reasons from paragraph [33] onwards, set out why the evidence before the First-tier Tribunal did not support a finding that the appellant would be at risk of persecution or ill-treatment by her father on return, or that the Ghanaian authorities would not offer sufficiency of protection.

9. Whilst the judge might have better expressed what was said at paragraph [54], the judge was not stating that the appellant was being 'properly chastised' by her father. Neither was the judge stating that this treatment was acceptable. Rather, the judge was finding, in terms, that the level of the treatment, which the appellant was subjected to from her father, did not reach the level of persecution.
10. The judge had before her, in the respondent's reason for refusal letter, extracts from background country information, including respondent's country policy and information note: Protection for women August 2019 which discussed legislation on domestic violence and noted a 2016 national study, which highlighted the main challenges and characteristics of domestic violence in Ghana, including that not all respondents agreed with what was understood to be violence and noted that the study reiterated that harmful social norms and attitudes underpinned and normalized domestic violence. It was in this context that the judge's comments must be considered.
11. The judge's findings at [54] cannot be considered in isolation, but must be considered holistically. These followed the judge's findings in relation to the lack of credibility in the appellant's evidence. The judge had considered in the round, including at [46], the report from Dr Gray in relation to the appellant's mental health issues, including a diagnosis of PTSD. The judge noted that from an early age, the appellant had lost or been separated from the people who had played significant roles in her life, with a great deal of significant changes in her life and noted that Dr Gray had made no comments as to how these events might have contributed to the appellant's trauma and depression.
12. The judge at [47] accepted that it may be the case that the appellant's father was strict and punished her physically and verbally but went on to make findings which were open to the judge that this itself did not amount to persecution. This was not a matter of the judge finding such treatment acceptable, but rather the judge being required to make a finding as to whether there had been past persecution and essentially whether there was a risk on return.
13. The judge took into account that there was no evidence of sexual abuse and did not find the appellant's account that she had to sleep in the same bed as her father was credible and noted that she did not confide in her aunts. The judge found that the appellant had not been truthful in relation to her father's attitude towards her and had sought to exaggerate this in order to form the basis of her asylum application [47].
14. The judge took into account at [48] that the appellant gave an account of her father ensuring the appellant's wellbeing by entrusting her day-to-day care in the hands of two female members of his family, which the judge notes would be seen in Ghana as a culturally relevant arrangement.
15. The judge at [49] noted that although the appellant described one claimed incident of her father looking at the appellant's stepsister in the UK, there was no statement from this stepsister to corroborate this where the judge was entitled to

find that such should be reasonably available and again the judge was satisfied that this information was added to bolster the appellant's claim.

16. At [50] the judge went on to note that although the appellant claimed she fled her stepmother's house in the UK to live with a member of the church, again no supporting evidence was provided from the church members were such in the judge's implicit findings ought reasonably to have been available.
17. The judge noted that the appellant described her father coming to the church and speaking to one of the church elders and significantly made no attempt to force the appellant to return with him and left her passport for the appellant with the church member. The judge was entitled to find this to be inconsistent with the appellant's claim that it was her father's intention to "get control of the appellant".
18. The judge made properly reasoned findings, including at [51], that despite the fact that the appellant claimed to have lived with various members of the church and friends, there were no statements from any of these people which might have supported her claim. When asked in cross-examination why there was no evidence in support of her claim, she stated that these people did not want to come. The judge further noted that the appellant could have obtained letters of support from her aunts who lived in the United States, who were claimed to have witnessed the ill-treatment and yet no statements were provided.
19. The judge set out at [52] that the appellant had described, at paragraph [28] of her witness statement, an incident where her aunt had noticed her fear. The judge noted that a statement could have been provided from her cousin who accompanied her home but again, whereas the judge was of the view that the appellant had had ample time to obtain information and statements, she had failed to do so. Those were findings that were entirely open to the judge in considering the appellant's account and her credibility in the round.
20. The judge goes on to note at [53] that the appellant is in contact with Aunt Lydia and her husband with whom she lived from 2011 to 2014. The judge noted that Aunt Lydia and her husband were aware of the appellant's father's verbal abuse and the appellant claimed in her witness statement that they had encouraged her to stand up for herself. The judge was therefore entitled to take into account, as she did at [53] that no statement was provided from Aunt Lydia and her husband which might have corroborated this claim. Instead a statement was provided from Aunt Lydia and her husband claiming that they would not be able to support the appellant financially because her uncle was retired and that she would be unable to find employment in Ghana because she does not have the necessary qualifications.
21. The judge found it significant that these were the uncle and aunt whom the appellant states were the very people who had encouraged her to stand up to her father, so the judge would have expected to see a letter in support explaining the father's behaviour towards the appellant.
22. The judge also took consideration that the appellant's witness statement appeared to indicate that she was left in the care of relatives and that her father did not have hands on day-to-day care of her and that although she claimed her father did not have a good relationship with his sisters, they all continued to live in the same house until his aunts emigrated to the United States.

23. The judge also found there to be difficulties with the appellant's evidence, whereby she had described that her paternal grandmother, who had visited them, had criticised the appellant's father for beating her [paragraph [7] of the appellant's witness statement] and it was therefore curious that these two aunts did not report any claimed out of control behaviour of the appellant's father to her grandmother whilst she was visiting.
24. The judge drew all these strands together and concluded at [56] that the appellant had exaggerated her father's behaviour in order to form the basis of an asylum claim. The judge made findings that although the appellant may well be traumatised, the psychologist made these findings with no comment on the other events in the appellant's life and whether they may have contributed to that trauma and therefore the judge found this report to be of limited value. There was no challenge to the latter finding.
25. The judge also properly took into consideration, that since the appellant left her stepmother's home there was no evidence that the appellant's father had sought to contact her once she had blocked his calls and he had not come to the church, even though he knew she attended it. The appellant remains in regular contact with family and the judge took into consideration that they have not given her any information of her father's whereabouts. The judge made findings which were open to her that the appellant had failed to demonstrate to the lower stand that there was a real risk on return to Ghana. Indeed, it was not clear that the appellant's father was even in Ghana.
26. It was Mr Melvin's submission that the judge's comments on "proper chastisement" were not material to the appeal. The respondent had taken the view that at its highest the appellant's claim that the behaviour that the appellant claimed of her father was lamentable and not acceptable in the UK. However it did not amount to persecution and this was essentially the essence of the judge's finding. Considering all of the judge's findings as a whole, any error made by the judge in referring to "proper chastisement" is not material and the judge took into account all of the factors including that there was no indication that the appellant went to the authorities in the UK despite the fact that she had leave and has noted that the father had dropped off her passport and there was no indication the appellant's father was still in Ghana.
27. I have considered the relevant authorities which set out the distinction between errors of fact and errors of law and which emphasise the importance of an appellate tribunal exercising judicial restraint when reviewing findings of fact reached by first instance judges. (see including **Volpi & Anor v Volpi [2022] EWCA Civ 464**). I have reminded myself that the First-tier Tribunal judge will have had regard to the whole of the sea of evidence presented to her, whereas an appellate court will only be island hopping (**Fage UK Ltd. v Chobani UK Ltd. [2014] EWCA Civ 5**). There is no material error of law disclosed in ground 1.

Ground 2

28. The judge concluded at [58] that family members in Ghana would be able to offer the appellant support and provide a safe environment to rebuild her life. The judge noted at [58] that the appellant would, in the judge's findings, have the support of her uncle and aunt with whom she is in contact.
29. It was argued on behalf of the appellant that the appellant's aunt and uncle had provided a letter dated 4 July 2022 claiming that they were not in a position to

support the appellant; it was stated that they were not in a position to provide food, clothing, healthcare and accommodation and it was noted that the appellant's wife's husband was retired. The letter went on to comment on the appellant's lack of employability and that the appellant was at a "real risk" of coming into contact with her father, "which is likely to lead to a resurgence of serious, psychological trauma".

30. As highlighted above, the judge made negative credibility findings including that although it was this aunt and uncle who had encouraged the appellant to stand up to the claimed behaviour of her father, there was no evidence from the appellant's aunt and uncle to support the claimed behaviour of the appellant's father. The only references are to a "resurgence of serious psychological trauma" if the appellant risks being in contact with her father, with no further information as to why this would be the case, where such ought to have been available.
31. It was clear that the judge did not attach significant weight to either the appellant's evidence or the evidence in support that she would not be assisted by her family, if that was required. This must be considered in the context of the judge's findings that the appellant had exaggerated her evidence in order to bolster her asylum claim.
32. Mr Siddiq submitted that there was no evidence to support the judge's finding that the appellant had extended family in Ghana, and Mr Siddiq referred to the fact that the appellant's mother had passed away. Mr Siddiq submitted that there were three paternal aunts, two of whom were in the US and one of whom had passed away, with the only aunt from her father's side and husband living in Ghana. However, I note from the appellant's witness statement, that she makes reference to cousins and to the children of her deceased Aunt Ruth.
33. There is no material error therefore, in the judge referring in her findings, to the possibility that the appellant would, if necessary, on returning to Ghana, have the support of her aunt and uncle and extended family. In the alternative, even if the judge was mistaken in finding that there were other family members other than her aunt and uncle, such would not be material as this was only one small part of the judge's findings at [66] in relation to Article 8 and proportionality.
34. The judge set out a number of other considerations in finding both that there were no significant obstacles and that it was otherwise proportionate for the appellant to return to Ghana. In finding that the appellant's aunt and uncle would assist her, the judge at [65] took into account that her aunt and uncle had previously supported her and at paragraph [53] of the appellant's statement, she had explained how her aunt had contacted a friend in the United Kingdom to allow the appellant to live with her.
35. Any reference therefore at paragraphs [64] and [66] or otherwise to extended family, was not material and the judge reached those findings against the backdrop of taking into account the appellant's resourcefulness in the UK and that whilst she may need help to manage her mental health, she is returning to Ghana, where she spent her formative years and she has family with whom she is still in contact. There was no material error in the judge finding that the appellant would not face significant difficulties and it would not be disproportionate for her to be returned. There is no merit in ground 2, which is not made out.

Ground 3

36. Similarly ground 3, which argued that the judge erred in her proportionality consideration in relation to Article 8 lacks merit and is no more than a disagreement with the judge's properly reasoned findings.
37. Although it was argued that the judge's findings were against the weight of the evidence, the grounds of appeal seek to re-argue the appeal before the First-tier Tribunal. The grounds also argue that the appellant speaks English, has no criminal record, is employed and has never been dependent on public funds. However, the grounds fail to consider that such factors including taking into consideration Section 117B of the Nationality Immigration and Asylum Act 2002, can be no more than a neutral factor. The judge reminded herself correctly at [63] that any right the appellant has must be balanced against the public interest under Section 117B.
38. The judge heard and considered and rejected the appellant's evidence of abuse, as without credibility, with no credible evidence that her father had pursued her after she left the family home and no credible evidence that he is in Ghana or even if he is, no credible evidence to support a finding that the appellant's father would seek her out including that he had returned her passport to the appellant's church some three or four years before.
39. It was in this context that the judge considered the appellant's return to Ghana. The judge also took into consideration the appellant's mental health issues; the judge weighed what was in favour of the appellant against the public interest. The judge took into account that the appellant had been in the UK without permission and that whereas the appellant, in the judge's words, may have acquired rights under Article 8 it was proportionate for her to return, and that the appellant would be able to easily reintegrate into society in her own country.
40. The findings of the judge are sustainable, and it is difficult to see on the evidence before the judge how any other conclusion could have been reached. Ground 3 is not made out. There is no material error of law.

Notice of Decision

41. The decision of the First-tier Tribunal does not contain an error of law and shall stand.

M M Hutchinson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2023