IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003934

First-tier Tribunal No: HU/57039/2023
LH/01560/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 December 2024

Before

UPPER TRIBUNAL JUDGE MEAH
DEPUTY UPPER TRIBUNAL JUDGE JACQUES

Between

ALLEN OBENG AMOAH
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Warren, Counsel instructed by Lei Dat Baig Solicitors
For the Respondent: Dr Ibisi, Senior Home Office Presenting Officer

Heard at Field House on 29 November 2024

DECISION AND REASONS

Introduction and Background

1. The appellant, a Ghanian national born on 18 February 1983, appeals against the decision of First-tier Tribunal Judge Bennett (FtTJ) promulgated on 10 April 2024 ("the decision").

2. By the decision, the First-tier Tribunal dismissed the appeal against the respondent's decision dated 22 May 2023, to refuse the

appellant's human rights application to remain in the UK. This application was made on 17 September 2021, following previous grants of Discretionary Leave between 2008–2021.

3. The application was refused under General Grounds of Refusal under Part 9 of the Immigration Rules, as the appellant's presence in the UK was deemed not conducive to the public good. He was said to be a persistent offender who had amassed a significant number of criminal convictions between November 2005 and March 2011. The appellant had also been convicted of a further crime in May 2021, of possession with intent to supply a Class B drug resulting in a suspended prison sentence, a curfew order, drug rehabilitation and a victim surcharge of £156.00. The appellant had failed to disclose some of his convictions in his latest application to which this appeal relates. His application was therefore also refused under the Suitability Requirements of the Immigration Rules under S-LTR.1.5 and S-LTR.2.2 on the grounds that he had failed to disclose all of his convictions and cautions.

4. It was accepted that the appellant had lived in the UK since 1983, having come here in the same year as his birth. A previous appeal against a refusal of an application for Indefinite Leave to Remain in the UK under the (now defunct) 14 year Long Residence Rule was allowed on human rights grounds on 09 July 2008, following which he was granted the various periods of Discretionary Leave to Remain.

5. Neither the appellant's criminal nor his immigration history were disputed by the parties.

The Grounds

6. The appellant's grounds seeking permission to appeal to the Upper Tribunal were as follows:

> "Grounds relied upon
>
> The previous grounds are relied upon. The Appellant came to the UK as a baby in 1983 and has lived here since then save for short visits outside of the country. He was granted leave to remain under Article 8 ECHR in 2008 following a successful appeal. He was then granted further periods of discretionary leave to remain with the last leave expiring in September 2021. He made an application to extend his leave which was refused and is the subject of this appeal.
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> The Appellant has criminal convictions for drugs offences with the most recent being on 9th April 2021 for possession with intent to supply a Class B drug. The Tribunal found that the appendant was a persistent offender given his conviction in April 2021 which was some 10 years after the last conviction on 4th March 2011,

although in between he was given a caution on 14th august 2020 for possession of a class B drug.

The Judge had to assess whether under the Article 8 claim there would be very significant obstacles to the appellant's integration into Ghana and this is considered by the Judge at paragraphs 48–52 of the decision. The judge noted the appellants evidence that he does not have a very close relationship with his mother and that his brother has relocated from Ghana to the USA. The judge did not find the evidence credible in respect of the lack of contact the Appellant states he with his family.

Error of law and response to the refusal of permission

The Appellant has suffered a stroke and evidence was supplied demonstrating the limited availability of medical treatment for stroke sufferers in Ghana. At page 16 of the appellant's bundle an article was supplied which stated that certain treatment for acute ischemic stroke care was not available in any of the study hospitals. The article stated that there was low priority for stroke care. In the refusal of permission it is stated that the objective evidence of medical treatment was limited to a single two page report. It is respectfully submitted that the report in A's bundle referred to previous studies and confirmed the findings in those studies regarding the lack of treatments. It is submitted that this is material evidence which has not been adequately considered.

The Judge did consider the appellants medical conditions at paragraph 60 onwards in the decision and found this did not form the basis of a claim under Article 3 ECHR but that the medical situation was argued in the context of Article 8. However it is submitted that when considering Article 8 ECHR the judge has not adequately considered the lack of medical treatment. At paragraph 57 the judge states that the appellant has medical needs that he would have to make arrangements for in Ghana. However the Judge has not considered the lack of treatment in the country and it is submitted at this is a material error of law with regards to the question of whether the Appellant will face very significant obstacles to reintegration in Ghana particularly given the fact that he came to the UK as a baby and has lived all his life in this country say for short trips abroad.

For the reasons mentioned above it is submitted that the tribunal judge has materially erred and permission to appeal to the Upper Tribunal is therefore respectfully requested…"

7. Permission to appeal was granted by Upper Tribunal Judge Kamara in the following terms:

"1. The appellant seeks permission to appeal, two and a half months out of time, against the decision of First-tier Tribunal Judge Bennett who dismissed the appeal following a hearing which took place on 9 April 2024.

> 2. Time for appealing is extended notwithstanding the serious and significant delay as it is accepted that the appellant's solicitors were not notified of the refusal of permission to appeal by the First-tier Tribunal. Furthermore, while the grounds are somewhat minimalist, a point of importance to the appellant is raised, which is arguable.
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> 3. The appellant has resided in the United Kingdom since 1983 having been brought here as an infant. He faces removal to Ghana owing to being classed as a persistent offender. His last conviction took place in 2011. It is arguable that the judge erred in the assessment of the existence of very significant obstacles to integration given the appellant's physical health issues, the claimed lack of family support in Ghana and the argued lack of medical treatment for stroke survivors…"

8. The respondent did not file a Rule 24 response.

9. That is the basis on which this appeal came before the Upper Tribunal.

Documents

10. We had before us a composite bundle containing all necessary documents. This also included the bundles relied upon by the parties in the First-tier Tribunal.

Hearing and Submissions

11. The hearing was conducted with the Upper Tribunal panel sitting at Field House, whilst the representatives attended via Cloud Video Platform. Both representatives made submissions which we have taken into account, and these are set out in the Record of Proceedings and need not be repeated here.

Discussion and Analysis

12. We set out to the parties during preliminary discussions our observations that there appeared, on the face of it, to be an error in approach by the FtTJ insofar as the relevance of the assessment of 'Very Significant Obstacles' was concerned in relation to the appellant's Article 8 ECHR claim under the Immigration Rules. The FtTJ stated at [6]-[8] that:

> "There was discussion at the outset about the issues in the case and in particular whether the suitability requirements in Part 9 of the Immigration Rules (the 'IR') are in issue. Mr O'Ryan for the Appellant suggested that the application should have been, and was in fact, considered on the basis of 276ADE of the IR, and that the suitability requirements in connection with 276ADE (which, he asserts, are separate from the Part 9 requirements) are the only suitability requirements in issue.

> Mr Davis for the Respondent disagreed and took the view that the Refusal was decided on the basis of both Discretionary Leave (Part 9) and Private Life (276ADE). The parties agreed that the issue did not affect the witness evidence and that it could be addressed in closing submissions as they considered necessary.
>
> The issue of 'very significant obstacles to integration' having been raised in the Refusal and the ASA, Mr O'Ryan raised the question of whether, given it is accepted that the Appellant has 20 years' continuous residence, the test of 'very significant obstacles' in 276ADE does in fact also need to be satisfied. I indicated to Mr Davis my preliminary view that – barring suitability exclusions – 276ADE is satisfied such that the 'significant obstacles' test is not a live issue and he agreed…."

13. Accordingly, the FtTJ having noted at [10a] and [10b] that the issues needing resolving included whether the appellant had been properly caught by the Suitability Requirements S-LTR.1.5 and S-LTR.2.2, then goes on to find at [40] and then at [46]-[47] that:

> "The Appellant therefore falls for refusal on the basis of suitability ground S-LTR.1.5. On this basis I do not consider that any discretion under S-LTR.2.1 should be exercised to excuse the Appellant from being caught by S-LTR.2.2, as Mr O'Ryan submitted.
>
> On the basis of my findings above I find that the Appellant does not satisfy the substantive requirements of the IR…"

14. Having found that the appellant was caught by Suitability Grounds of Refusal the FtTJ ought to have at this point ended his consideration of Rule 276ADE(1) as the appellant would have been precluded from any such consideration given the decision to uphold the Suitability Grounds of Refusal.

15. In the instant case the appellant was prevented entirely from any such consideration of his claim under Rule 276ADE(1) given the FtTJ's finding that he had been properly caught by the application of S-LTR.1.5 and S-LTR.2.2. The position would have been different had the FtTJ not upheld these grounds when in which case the appellant would have, prima-facie, satisfied the requirement (previously under 276ADE(1)(iii)) having undisputedly spent well over 20 continuous years living in the UK at the date of his application, hence there would have been no need to go on to then consider 'very significant obstacles' (previously under 276ADE(1)(vi)). However, that was not the case here. Therefore, the only extant consideration was that to be carried out under section 117B of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002).

16. The following is stated in headnote 1 of **Bossadi (paragraph 276ADE; suitability; ties) [2015] UKUT 42** in this regard:

> *"(1) Being able to meet the requirements of paragraph 276ADE of the Immigration Rules requires being able to meet the suitability requirements set out in paragraph 276ADE(1). It is because this*

> *subparagraph contains suitability requirements that it is not possible for foreign criminals relying on private life grounds to circumvent the provisions of the Rules dealing with deportation of foreign criminals…"*

17. We noted that the FtTJ was not aided in this regard by the respondent's reasons for decision letter as though this also stated the appellant had been caught by the application of the Suitability Requirements in relation to consideration under Rule 276ADE(1), the decision appears to then go on to nonetheless consider in substance the appellant's claim under this part of the Rules. In any event, we find that the FtTJ was correct in stating at [40], that the appellant was unable to meet the requirements of the Immigration Rules under Rule 276ADE(1) on the basis that he had been properly caught by the Suitability Requirements.

18. We noted that both parties accepted, following our preliminary observations, that there was indeed no scope for any consideration of 'Very Significant Obstacles' as is envisaged, certainly within the framework of the Immigration Rules given the FtTJ's findings that the appellant was correctly caught by S-LTR.1.5 and S-LTR.2.2. of the Immigration Rules.

19. Concomitantly, it is therefore also unclear why the FtTJ embarked on a consideration of 'Very Significant Obstacles' under a separate bespoke heading given his finding that the Immigration Rules, and in the instant appeal Rule 276ADE(1), was not a live issue, and on the basis there was no requirement to consider section 117C(4)(c) of the NIAA 2002, given that the appellant was not subject to deportation proceedings, and his case was not one that had been considered under the deportation provisions of the Immigration Rules – The following is stated in this regard in the headnote of **Clarke ("Section 117C - limited to deportation") [2015] UKUT 00628 (IAC):**

> *"That section 117C of the Nationality, Immigration and Asylum Act 2002 is applicable only in deportation cases is made clear in section 117A(2) which, in directing the court or tribunal to the considerations involved when looking at the public interest question, clearly distinguishes between those cases that involve deportation from those that do not. Section 117A(2)(b) provides for a distinct category of cases, providing that, in considering the public interest question, the court or tribunal must have regard to the considerations listed in section 117C "in cases concerning the deportation of foreign criminals".*
>
> *Accordingly, irrespective of whether or not an appellant may fall within the definition of a "foreign criminal" in section 117D(2), the provisions of section 117C of the 2002 Act* ***only apply in cases involving deportation****.."*[Our emphasis].

20. The following is stated in this regard at paragraph 33 of **Chege ("is a persistent offender") [2016] UKUT 187 (IAC)**:

> *"Section 117D(2) of the 2002 Act provides for three separate routes by which an offender might qualify as a "foreign criminal" for the purposes of section 117C, namely:*
>
> *a. A sentence of imprisonment of at least 12 months;*
> *b. Conviction of an offence that has caused "serious harm";*
> *c. Being a persistent offender.*
>
> ***However since, in order for s.117D(2)(c) to be engaged, the Secretary of State must already have formed the view that paragraph 398(c) of the Rules applies, the Tribunal would not be applying s117C to anyone, however persistent their offending, that the Secretary of State has not already considered showed a particular disregard for the law in the sense explained above***...[our emphasis]"

21. It therefore follows that there was no scope for consideration of 'Very Significant Obstacles' either within the confines of Rule 276ADE(1), on the basis of the refusal decision and the FtTJ's findings on the applicability of the Suitability Requirements, or indeed under section 117C of the NIAA 2002. This was on the basis that the appellant in this matter was not made the subject of any deportation action consequent to his persistent offending, even though this was an option available to the respondent to pursue against him in the light of his criminal activities. However, his is a case that the respondent chose, for reason/s known only to her, to deal with the appellant's application by way of the refusal under part 9 of the Immigration Rules in the context of his criminal history and persistent offending.

22. We noted Ms Warren's points made during preliminary discussions in relation to the FtTJ's assessment on Article 8 ECHR as whole, including when weighing factors for and against the public interest under section 117B of the NIAA 2002, where she clarified that her arguments would be aimed primarily on salient facts arising in the appellant's claim which she stated had either not been properly considered, or at all, by the FtTJ when assessing proportionality which in reality went also towards the question as to whether the appellant's Article 8 ECHR rights would be breached.

23. We accept that this was the correct way in which this matter was to be argued in acknowledging that the issue ultimately was whether the appellant's Article 8 ECHR private life claim was considered and dealt with lawfully by the FtTJ. Importantly, this did not in our judgement either necessitate or constitute a departure

from the grounds of appeal relied upon, and on which permission was granted, which we find in substance, is to do with the FtTJ's overall consideration of Article 8 ECHR, including assessment under section 117B of the NIAA 2002. However, we find that the difficulties lie elsewhere in the decision and are not to do with the FtTJ's erroneous consideration of 'Very Significant Obstacles' seemingly under section 117C(4)(c) of the NIAA 2002, bearing in mind the appellant was not subject to deportation.

24. Though the FtTJ noted the appellant's medical issues, including at [51] that the most significant of these was that the appellant had suffered a stroke for which he is required to take daily medication, it appears to us that there is a paucity of reasoning as to why the FtTJ chose to accept at [51] the assertions in the Respondent's Review that there were alternatives to the medication Citalopram in Ghana, which forms part of the appellant's medication regime in the UK. The FtTJ also acknowledged at [57] that the appellant had medical needs for which arrangements would need to be made in Ghana. However, there is no reasoning as to how the appellant might be expected to make such arrangements given the medical evidence relied upon by the appellant before the First-tier Tribunal. This included not only the lack of availability of Citalopram in Ghana, as had been accepted by the respondent, but also that there was a dearth of proper aftercare for stroke victims there. The FtTJ ought to have engaged with the evidence and provided reasons on how the appellant would in such circumstances source suitable treatment to manage his condition and medical needs in Ghana. In other words, it was inadequate to simply state that the appellant '*would have to make arrangements*' without engaging in substance with how this could be achieved and whether any potential lack of such treatment/s, including lack of access to alternatives to Citalopram, would or could have amounted to a breach of his Article 8 ECHR rights.

25. Dr Ibisi sought to persuade us that there were no errors in the FtTJ's decision. We also heard detailed arguments from Ms Warren on the FtTJ's approach to some of the medical and other evidence upon which the appellant sought to rely before the FtTJ, including that there was inadequate reasoning on other salient points and features in the appellant's case. However, we do not need to go into any great detail on these latter points as we accept that the FtTJ's decision was infected by the error in their approach to the assessment of the appellant's private life claim under Article ECHR, for the reasons stated above, especially when considered against the backdrop of the undisputed facts in the appellant's case including his lengthy residence in the UK, alongside his medical/health issues.

26. Accordingly, the Upper Tribunal interferes only with caution in the findings of fact by a First-tier Tribunal which has heard and seen the parties give their evidence and made proper findings of fact. This has been stated numerously by the higher courts, for example

recently in **Volpi & Anor v Volpi [2022] EWCA Civ 464.** Unfortunately, that is not the position here. The FtTJ's decision was vitiated by a material error in the way that they approached the evidence and the facts in the appellant's case when assessing proportionality under Article 8 ECHR. This also included the FtTJ's erroneous assessment of 'Very Significant Obstacles' under a separate heading when this was not in fact a live issue in the appeal. We cannot be certain that that evaluation also did not have the concomitant effect of infecting the approach to the wider Article 8 ECHR consideration.

27. We therefore set aside the decision of the FtTJ in its entirety, although primarily on the flawed assessment of Article 8 ECHR.

28. That said, the appeal was heard and dismissed over 8 months ago, and we do not consider that it would be appropriate to preserve any of the findings of fact made by the FtTJ. The appeal must be considered afresh, with the benefit of any additional up to date medical and other evidence, including information and details on whether the appellant has engaged in any further criminal activity.

29. Accordingly, in applying **AEB [2022] EWCA Civ 1512** and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC)** , we have considered the general principle set out in statement 7 of the Senior President's Practice Statement. We consider, however, that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process.

Notice of Decision

30. The appellant's appeal is allowed.

31. The appeal is remitted back de novo to the First-tier Tribunal at Manchester to be heard by any FtTJ other than FtTJ Bennett.

S Meah
Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 December 2024