Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/27606/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 March 2018	**On 17 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

LYNDA DZIFA QUAYE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. S. Bellara, Counsel instructed by Ilford Law Chambers
For the Respondent: Ms J. Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Devittie promulgated on 25 July 2017 in which he dismissed the Appellant's appeal against the Respondent's decision to refuse further leave to remain under Article 8.

2. Permission to appeal was granted as follows:

> "Whilst technically it is arguable that the judge did not consider the appeal under Article 8, and it was raised in the grounds, where all the factors relevant to an assessment under Article 8 had been considered

> under the Immigration Rules, it cannot reasonably be argued that the proportionality assessment would have yielded a different outcome. Simply because the judge did not technically dismiss the appeal under Article 8, permission is granted."

3. The Appellant attended the hearing. I heard brief submissions from both representatives following which I stated that the decision involved the making of a material error of law. I set aside the decision aside and remitted the appeal to the First-tier Tribunal to be reheard.

Error of Law

4. The Judge dismissed the appeal under the immigration rules. There is no power to allow or dismiss an appeal under the immigration rules following the changes made to sections 82 to 84 of the Nationality, Immigration and Asylum Act 2002 by the Immigration Act 2014, section 15. The only ground of appeal against a decision to refuse an application made under the immigration rules is on human rights grounds, section 84(2) of the 2002 Act, as amended. The Judge could have allowed or dismissed the appeal under Article 8 on human rights grounds, but he cannot allow or dismiss an appeal "under the immigration rules". This is an error of law.

5. The Judge's findings are set out in paragraph 11. The grant of permission states that the outcome would not necessarily be different had the Judge considered Article 8 more widely. However, the findings set out in paragraph 11 relate entirely to whether or not the Appellant satisfies the requirements of the immigration rules. These are the only matters that the Judge has considered.

6. The Judge considered paragraph 276ADE and found that there would not be very significant obstacles to the Appellant's return. His findings are set out in three sub-paragraphs [11(i) to (iii)]. These findings relate only to the situation in Ghana. There are no findings relating to the Appellant's circumstances in the United Kingdom, and any private or family life which she has established in the United Kingdom. There is no proportionality assessment, and no consideration of the factors set out in section 117B of the 2002 Act. It cannot be said that the decision would necessarily be the same, and that the Appellant's appeal would be dismissed under Article 8 outside the immigration rules, where there has been no consideration of any of the factors which fall to be considered outside the immigration rules. I find that the failure to consider Article 8 outside the immigration rules is a material error of law.

7. I find that the decision involves the making of a material error of law. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given

the nature and extent of the fact-finding necessary to enable this appeal to be remade, given that no findings have been made as to the Appellant's private and family life in the United Kingdom, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Decision

8. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.

9. The appeal is remitted to the First-tier Tribunal to be re-heard.

10. The appeal is not to be heard by Judge Devittie.

11. No anonymity direction is made.

Signed Date 13 April 2018

Deputy Upper Tribunal Judge Chamberlain