**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/11365/2018

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 12th November 2019** | **On 19th November 2019** |

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**EKO**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Coward; Phoenix Chambers
For the Respondent: Ms S Cunha; Home Office Presenting Officer

**DECISION AND REASONS**

1. An anonymity direction was not made by the First-tier Tribunal ("FtT"), but as the appellant is treated as a vulnerable witness, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, EKO is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This

direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is a national of Ghana. On 28th July 2017, he made an application for leave to remain in the UK on private life grounds. The application was refused by the respondent for the reasons set out in a decision dated 4th May 2018. The appellant's appeal against that decision was dismissed for the reasons set out in a decision of First-tier Tribunal Judge Parker promulgated on 5th July 2019.

3. The appellant's immigration history is set out in the respondent's decision of 4th May 2018. The date upon which the appellant arrived in the UK is unclear. The appellant was encountered by immigration officials in September 2014 and stated that he had entered the UK a year ago, by lorry. The respondent made enquiries of the appellant's representatives seeking confirmation of the date upon which the appellant entered the UK. In a letter dated 8th January 2018 the appellant's representatives said that *"... according to our client he entered the United Kingdom in 2014."*. The respondent did not accept that there would be very significant obstacles to the appellant's integration into Ghana, a country where he was born and raised, and where he had spent the majority of his life including the formative years of his life. The respondent considered the mental health of the appellant and noted that the appellant has previously been sectioned by the NHS and released into the care of his brother who is a psychiatric nurse, and who has continuously looked after the appellant and made sure all his needs are taken care of. The respondent noted that the symptoms of the mental illness are paranoia, panic attacks and anxiety, and that the appellant relies upon his family for constant support. The respondent considered the medical evidence relied upon by the appellant and concluded that the appellant's removal from the UK would not be in breach of Article 3. The respondent noted the medical evidence that the appellant's mental state continues to improve due to his compliance with medication, and the medication described by the appellant's GP, is available in Ghana. The respondent

was not satisfied that the removal of the appellant to Ghana would be in breach of Articles 3 and 8 ECHR.

The decision of FtT Judge Parker ("the judge")

4. The judge considered the medical evidence and expert report of Dr Parsonage dated 18th May 2019 regarding mental health care in Ghana. The judge noted the evidence that the appellant has previously experienced a worsening of his psychotic illness on discontinuing treatment, and the prognosis that if he did not receive treatment, there would be a deterioration in his mental well-being. At paragraphs [18] and [19], the judge stated:

> "18. The appellant tells a story being bullied at school and leaving Ghana at the age of 14 to travel various countries over the next 10 to 15 years. He ended up in Italy working menial jobs before coming to this country in 2014. He had a psychotic episode which resulted in a hospital visit and by chance he met his brother who was actually his cousin and his cousin is a psychiatric nurse. He has been involved in his care since.
>
> 19. His brother looked at the cost of medical treatment in Ghana and the cost of medication. Unfortunately we have no objective evidence regarding this. Dr Parsonage who has written a medical report is not a country expert. The Ghana country of origin report will mention some discrimination that is not sufficient to amount to a breach of his Article 8 rights on its own. The operational guidance note on Ghana at 5.2 and 5.3 says the threshold for article 3 is a high one it is not simply whether the treatment is not available or not easily accessible in the country of origin. It quotes the case of N the test is whether the applicant's illness has reached such a crucial stage i.e. is dying and in *(sic)* would be inhuman treatment to deprive him of the care which is *(sic)* currently receiving and sending him to an early death. This is pretty crucial in an appeal such as this. He lives with his brother but regularly comes to London on his own to attend appointments for medical and legal reasons. He says he can spend up to a month there."

5. The Judge found, at [20], that the appellant is largely compliant with his medication. The Judge found that the appellant does not need continual supervision and, at [22], that there are no obstacles to prevent integration into Ghanaian life where he has lived the majority of his life. The judge concluded that the appellant is unable to meet the requirements of paragraph 276ADE of the immigration rules.

6. Insofar as the Article 8 claim is concerned, the judge refers, at [25], to the five-stage approach set out by Lord Bingham in Razgar. It is not entirely clear whether the judge found that the appellant has established a family and private life in the UK. It could however be assumed that the question was resolved in favour of the appellant. At [28], the Judge found that the decision appealed, has consequences of such gravity as potentially to engage the operation of Article 8. The judge noted that it is not in issue that the interference caused by the decision is in accordance with the law and the judge found that the interference is necessary in the interests of immigration control and the economic well-being of the country. The judge then turned to consider whether the decision to refuse leave to remain is proportionate.

7. The judge considered the relevant public interest as set out in s117B of the Nationality, Immigration and Asylum Act 2002. At paragraph [43] of the decision, the judge states:

> "At the time of the application the appellant could not meet the rules. At the time of the decision the appellant could not meet the rules and thereby under any consideration the rules have not been met at the relevant dates I have to decide whether there are compelling circumstances to deal with the matter outside the rules."

8. The Judge found that the appellant can work on return to Ghana. The reasons given at [42] are that the appellant has no family in Ghana and a brother who says without supporting evidence, the cost of maintaining the appellant in Accra is too great. It is not clear how those reasons support a finding that the appellant can work on return. The judge considered the medical evidence and noted that the appellant has a psychotic condition which will not be treated properly in Ghana. It was uncontroversial that the medication required is available in Ghana, but the issue was whether the appellant can access it, due to cost and availability. The judge referred to the relevant authorities and found that they do not assist the appellant as it has been established that his condition is not life-threatening and that he can travel. The judge found that the appellant has demonstrated he can live in countries such as

Italy, Libya and Nigeria independently, and could return to Ghana, the country of his birth. The judge noted the psychiatric evidence that with medication, the appellant will live a satisfactory life in Ghana and there is no risk of deterioration. The judge noted the appellant had been sectioned for five weeks in 2016 but has not been sectioned since and appears stable on his medication. The judge concluded that there are no very significant obstacles to the appellant returning to Ghana.

9. In the grounds of appeal, the appellant claims that the judge's conclusions are irrational. It is said that the judge erred in failing to carry out a proper balancing exercise and failed to properly consider the impact that removal would have on the appellant. Furthermore, the judge erred, at paragraph [22], in proceeding upon the premise that the appellant has spent the majority of his life in Ghana, having noted at [18], the appellant's account that he left Ghana at the age of 14 and travelled through various countries over the next 10 to 15 years.

10. The appellant was granted permission to appeal to the Upper Tribunal by FtT judge Bristow on 9th September 219. In granting permission to appeal, Judge Bristow observed that the remark that the appellant spent the majority of his life in Ghana, is factually incorrect and the assessment of the appellant's family and private life may have been infected by the mistake as to fact, to the appellant's detriment. Permission to appeal was granted on all grounds.

11. Mr Coward submits that the judge refers at paragraph [18], to the applicant's claim that he left Ghana at the age of 14. However, in reaching his decision at paragraph [22] that there are no obstacles to prevent integration into Ghana, the judge refers to the applicant having spent the majority of his life in Ghana. On the facts, the applicant has spent less than half his life in Ghana. Mr Coward submits there is no reflection in the decision of the fact that the applicant has never lived in Ghana as an adult. He submits the appellant left Ghana as a child, and a careful consideration of the test under paragraph 276ADE(1)(vi) was

required. The Judge was required to consider whether there would be very significant obstacles to the appellant's integration into Ghana. The judge not only proceeds upon a mistake as to fact, but also fails to have regard to the strong support network that the appellant has in the UK, that would not be available to him in Ghana. Mr Coward submits the judge failed to have proper regard to the evidence that the appellant is on a stable pattern of secure treatment, that should not be disrupted. He submits the medical evidence and background material relied upon establishes that there would be very significant obstacles to the applicant's integration into Ghana, and the judge is likely to have reached a different decision if he had appreciated that the appellant left Ghana at the age of 14, and has never lived in Ghana previously as an adult, with significant mental health issues.

12. On behalf of the respondent, Ms Cunha submits that at paragraph [18], the Judge refers to the appellant's case. She accepts the judge had not made a finding as to the credibility of the applicant, and whether the judge had accepted the appellant's account that he left Ghana at the age of 14, but she submits, the judge was concerned with whether there are very significant obstacle to integration. She submits the thrust of the appellant's claim is his poor mental health. She submits that on any proper view of the evidence, the appellant cannot satisfy the high threshold relevant to an Article 3 claim on medical grounds, and that in the circumstances, absent any additional factual element, the claim could not succeed on Article 8 grounds.

13. Although there is some force in the submissions made by Ms Cunha, she, rightly in my judgement, accepts that the judge appears to reach conclusions upon a mistake as to fact, in circumstances where the judge does not expressly reject the appellant's account that he left Ghana at the age of 14. She also, rightly in my judgement, accepts that the decision of the FtT judge appears to conflate a number of issues and lacks clarity so that I can be satisfied that the judge properly addressed all relevant issues.

14. At the conclusion of the hearing before me, I informed the parties that in my judgement, the decision of the F*t*T Judge does contain a material error of law, and that I set aside that decision.

15. Although the judge refers to the five stage approach for the consideration of an Article 8 claim, and appears to resolve the first four questions in favour of the appellant, at paragraph [43] of his decision, the judge states that the appellant cannot satisfy the requirements of the rules and he has to decide whether there are compelling circumstances to deal with the matter outside the rules. Having considered matters, the judge states at paragraph [61], that he finds "*.. there are no very significant obstacles within the meaning of the law and the appellant can return to Ghana.".*

16. The only ground of appeal available to the appellant was that the respondent's decision is unlawful under s6 of the Human Rights Act 1998. The judgment of the Supreme Court in Agyarko -v- SSHD [2017] UKSC 11 confirms that the fact that the immigration rules cannot be met, does not absolve decision makers from carrying out a full merits-based assessment outside the rules under Article 8, where the ultimate issue is whether a fair balance has been struck between the individual and public interest, giving due weight to the provisions of the Rules.

17. The judge's conclusion at paragraph [61] of the decision that there are no very significant obstacles within the meaning of the law and the appellant can return to Ghana, fails to address the Article 3 and 8 claims. As to the human rights claim on Article 8 grounds, the Judge should have adopted the approach set out by Lord Bingham in Razgar [2014] UKHL 27. The Tribunal should first determine whether Article 8 of the ECHR is engaged at all. If Article 8 is engaged, the Tribunal should have gone on to consider the remaining four stages identified in Razgar.

18. The issue in this appeal, as is often the case, was whether the interference is proportionate to the legitimate public end sought to be

achieved. The judge does not appear to properly address that issue, and to the extent that he does consider whether the decision to refuse leave to remain is proportionate or in breach of the Article 8 rights of the appellant, the judge proceeds upon the premise that the appellant can return to Ghana where he has lived the majority of his life. The respondent had not conceded that the appellant had left Ghana at the age of 14. The judge makes no finding as to the credibility of the appellant, and whether he accepts the account of the appellant that is referred to at paragraph [18] of the decision. The judge does refer, at [58], to the appellant having been able to live in strange countries such as Italy, Libya and Nigeria independently. That however is inconsistent with the finding, at [22], that the appellant has lived the majority of his life in Ghana.

19. In my judgement the judge has failed to properly address the human rights claim advanced by the appellant and I can have no confidence that the judge properly addressed his mind to the relevant facts and issues. In my judgement the decision of the FtT judge is infected by a material error of law and must be set aside.

20. As to disposal of the appeal, I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.

21. The decision of First-tier Tribunal Judge Parker promulgated on 5th July 2019 is therefore set aside, and the appeal is remitted for rehearing before the First-tier Tribunal afresh, with no findings preserved. The parties will be notified of a hearing date in due course.

**Notice of Decision**

22. The appeal against the decision of F*t*T Judge Parker is allowed, and the decision of F*t*T Judge Parker is set aside.

23. The appeal is remitted for rehearing before the First-tier Tribunal, with no findings preserved.

Signed

**Upper Tribunal Judge Mandalia**

**13th November 2019**