



Appeal Number: UI-2022-002913
(HU/00031/2022)

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

ON APPEAL FROM THE FIRST-TIER TRIBUNAL (IAC),
JUDGE YOUNG-HARRY

THE IMMIGRATION ACTS

Heard at Field House
On the 19 November 2022

Decision & Reasons Issued
On the 30 November 2022

Before

UPPER TRIBUNAL JUDGE BLUNDELL
and
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

BENJAMIN GYABAAH ANKOBIAH
(ANONYMITY NOT ORDERED)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Jane Heybroek, instructed via Direct Access

For the Respondent: Amrika Nolan, Senior Presenting Officer

DECISION AND REASONS

1. This decision is in short form because it is accepted by the respondent that the decision of the First-tier Tribunal (“FtT”) is vitiated by legal error and cannot stand.
2. The appellant appeals, with permission granted by Upper Tribunal Judge Grubb, against the decision of Judge Young-Harry, who dismissed his appeal against the respondent’s refusal to grant leave to remain as a partner.
3. The appellant is a Ghanaian national who was born on 21 December 1994. He entered the UK as a visitor in 2015 and has not left since then. He has not had leave to remain since the expiry of his leave to enter as a visitor in November 2015, although various unsuccessful efforts have been made to regularise his status.
4. The appellant applied for leave to remain as a partner on 3 October 2020. He said that he was married to a British citizen named Meghan Adjei, who he had met at a wedding 2017. They had married by proxy, in Ghana, in October 2019. She was said to be an administrator at the University of East London. In response to a question in the application form which invited the appellant to explain why he could not live with his partner outside the UK, he stated that she was a British citizen who had all of her family in the UK and had lived here from birth. She had no experience of the culture in Ghana. He said that the sponsor had ‘a sister with her family and Uncle with his family here. No parents anywhere.’
5. Evidence of various kinds was submitted with the application form. We note that there was amongst that evidence a document from Her Majesty’s Revenue and Customs showing the sponsor’s entitlement to Tax Credits for the financial year 2019/2020. That document showed that the sponsor was in receipt of Tax Credits, including the Lone Parent element, for the childcare provided to one Phillipa Osei. There was also some medical evidence showing that Ms Adjei had been suffering with palpitations and other health complaints.
6. The Secretary of State refused the application on 20 November 2021. She did not accept that there were insurmountable obstacles to the continuation of family life in Ghana, or that there were any circumstances which warranted a grant of leave on residual Article 8 ECHR grounds.
7. The appellant appealed to the FtT. The grounds of appeal were lengthy and, in common with the application which was presented to the Secretary of State, they contained excessive and often inappropriate reference to authority. Within the grounds of appeal, however, is a paragraph in the following terms:

Though it is correct that we do not have any biological children of our own, Meghan is the registered legal guardian of her little sister, Phillipa Osei (15 years old) and is therefore the primary caregiver of a relevant minor. The relationship between Phillipa and her mother is irreparably damaged, and Meghan is the only mother figure she currently has in her life. Meghan was the only [sic] who applied to Wymondham

College for Phillipa to attend there, Phillipa's fees are paid from Meghan's account, Meghan takes Phillipa to and from her boarding school, attends all the parents' meetings and is the main point of contact for Phillipa at the school. Meghan also arranges and pays for therapy to deal with her emotional and mental health issues which Phillipa has been suffering. Meghan was even able to claim Child Tax credits to assist in the financial aspect of caring for Phillipa. Frank Osei (father), who is not involved in Phillipa's life or upbringing also pays his child maintenance to Meghan as she is Phillipa's carer. Meghan moving to Ghana will cause a serious disruption in Phillipa's life and as such would be a disproportionate breach of Article 8 of the ECHR...

8. The appellant asked for the appeal to be heard on the papers. The papers were duly placed before the judge on 5 May 2022. The judge stated that she had been provided with bundles of documents from the appellant and the respondent. She described the appellant's bundle as containing "a witness statement, the sponsor's HMRC documents, NHS letters relating to the sponsor's health, and bank statements." She confirmed at [6] that she had considered all of these documents.
9. At [12]-[15], the judge gave reasons for concluding that there were no insurmountable obstacles to the continuation of family life in Ghana. At [16]-[17], she gave reasons for concluding that the appellant would not experience very significant obstacles to his reintegration to Ghana. At [18], she found that the decision appealed against was a proportionate interference with the appellant's established family life in the UK. She dismissed the appeal accordingly.
10. Permission to appeal having been refused by the FtT (Judge Saffer), the appellant instructed solicitors to assist him. To that point, everything had been done without the benefit of legal assistance. The solicitors (Messrs Irving & Co) advanced a single ground of appeal in support of the renewed application. The ground was that the judge's assessment of insurmountable obstacles under paragraph EX1 of the Immigration Rules was deficient, in that she had left out of account the sponsor's guardianship of her younger sister. Judge Grubb considered the point to be arguable.
11. Although the respondent filed a rule 24 response in which she sought to argue that the judge had been cognisant of the entirety of the sponsor's family life in the UK, Ms Nolan accepted at the start of the hearing before us that she was unable to maintain that submission, and that the decision of the FtT fell to be set aside in its entirety as a result of the omission. Her concession was entirely properly made.
12. There is no reference in the judge's decision to the sponsor's relationship with her younger sister. It might legitimately be said that the judge is not entirely to blame for that omission. The appeal was heard on the papers and the papers were not presented in the most logical fashion. There was little reference to the sponsor's sister but we are satisfied that there was sufficient reference for the judge to have been obliged to deal with the point, which was (in any event) expressly pleaded in the grounds of appeal as a matter which

supported the appellant's case that paragraph EX1 was met. We reach that conclusion with particular regard to the Tax Credits document which we have mentioned above, which made specific reference to the sponsor receiving lone parent support for her younger sister. Whilst that might not have amounted to chapter and verse on the relationship, or on the reasons why the sponsor could not relocate to Ghana with the appellant, there was at least a point here with which the FtT was obliged to deal. In failing to do so, the judge fell into legal error which was material to the outcome of the appeal.

13. The appellant now has the benefit of expert legal advice, and we expect that advice will already have been given on the steps which will be necessary before the appeal is reheard in the FtT. The appellant will evidently need to adduce further evidence of the sponsor's relationship with her younger sister and evidence concerning the claimed breakdown in the relationship between her and her parents. Consideration must also be given to showing why it would be not be feasible for the appellant and the sponsor to live in Ghana whilst the sponsor's sister is at boarding school in the UK. Consideration will no doubt also be given to paying any additional fee which might be necessary in order to ensure that the appeal can be heard, rather than determined again on the papers, in order that the next judge can have the benefit of oral evidence and legal submissions on what might not be the most straightforward of cases of this kind.

Notice of Decision

The decision of the FtT involved the making of an error on a point of law and that decision is set aside. The appeal is remitted to the FtT to be heard afresh by a judge other than Judge Young-Harry.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 November 2022