Upper Tribunal
(Immigration and Asylum Chamber)
Appeal Number: IA/13568/2015

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On Friday 22 July 2016	**On Wednesday 27 July 2016**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR EVANS ANSU ANDREWS

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Akomene, solicitor, Afrifa and Partners
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
No anonymity order was made by the First-tier Tribunal. There is no good reason to make an anonymity direction in this case.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Row promulgated on 26 October 2015 ("the Decision") dismissing his appeal against the Respondent's decision to refuse him leave to remain outside the Immigration Rules. Permission to appeal the Decision was granted on 20 June 2016 by Upper Tribunal Judge Bruce on the basis that the adverse inferences drawn from the absence of the section 7 report were either not justifiable or were premature in circumstances where the Appellant was not on notice as to the relevance of that

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document. The matter comes before me to determine whether the First-Tier Tribunal Decision involved the making of a material error of law and, if I so find, to re-make the decision.

2. The Appellant is a national of Ghana now aged nineteen years. He claims to have arrived in the UK in 2007. This is disputed by the Respondent whose earliest record of the Appellant is an application for leave made on 17 June 2010. There is reference to a letter from the Bushey Academy stating that the Appellant attended there from 7 September 2009 but it is noted by the Judge that this was not before him ([8]).

3. The Respondent granted the Appellant leave until his eighteenth birthday which was on 15 January 2015. The Appellant made an in-time application for further leave, the refusal of which has led to this appeal. The basis of the Appellant's claim to remain is that he has lived in the UK with his foster parent, Mr Amoah, under a family court order, has established his life in the UK and has no family to whom he can return in Ghana. The Judge heard evidence from both the Appellant and Mr Amoah. It is the Appellant's case that his father abandoned him in the UK, that his father is now dead, he does not know the whereabouts of his mother and has no idea whether he has any other family members in Ghana. He has been educated in the UK. He is a keen footballer and would like to play professionally or have a career coaching. He has no partner or children in the UK.

4. The Appellant's case is put on the basis that there are very significant obstacles to his return to Ghana so that paragraph 276ADE(1)(vi) is met; alternatively, that he can succeed outside the Rules on the basis of Article 8 ECHR.

<u>Submissions</u>

5. The Appellant's grounds of challenge centre round the Appellant's failure to produce the section 7 report which would have been prepared prior to the placing of the Appellant with his foster carer, Mr Amoah. The Appellant argues that the social services must have been satisfied that it was necessary to place the him with Mr Amoah due to a lack of family members to care for him and that the Respondent must also have been satisfied that there were not adequate reception arrangements in Ghana as otherwise she would not have granted him leave to be in the UK as an unaccompanied child. The Appellant argues that it was not open to the Judge to go behind those earlier decisions by requiring the production of the section 7 report and drawing adverse inferences from its non-production. The Appellant argues that those adverse inferences have impacted on the Judge's findings in relation to the obstacles faced by the Appellant in Ghana and have led him to speculate as to the availability of family support there.

6. The second of the Appellant's grounds focusses on the Judge's proportionality assessment. It is said that the Judge has on the one

hand accepted that the Appellant should not bear responsibility for being in the UK illegally as he was brought here as a minor whilst on the other holding that against him in the public interest.

7. In relation to the first of those grounds, Mr Akomene points out that the Respondent did not dispute that the Appellant did not have family members in Ghana. He submitted that the Home Office would have been privy to the social services' conclusions which led to the placing of the Appellant with Mr Amoah and had granted leave on the basis that it was satisfied that the Appellant did not have other family members to care for him. As Mr Wilding pointed out, this is inaccurate. Generally, documents produced in family proceedings are tightly controlled and would not be disclosed to the Home Office unless ordered to be shown to it. He said that there is nothing on the Home Office file to suggest that the Home Office has seen that report. In response, Mr Akomene pointed out that even if the Home Office did not have knowledge of the social services' views, it would still be the case that the Home Office accepted that the Appellant did not have family in Ghana to whom he could be returned as otherwise leave would not be granted. As I pointed out, though, the fact that the Home Office accepted that there were no adequate reception facilities at the time when leave was granted does not necessarily equate to a recognition that the Appellant does not have family members in Ghana; simply a recognition that no-one could be found at that time based on what may well have been only cursory enquiries and would necessarily be based on what the Home Office was told by the Appellant and Mr Amoah.

8. Mr Wilding submitted that the Judge was entitled to take into account the failure to produce the section 7 report. It was for the Appellant to make his case. The Judge was simply noting the absence of evidence. The Judge's findings at [28] to [31] of the Decision were open to him based on that lack of evidence. The Respondent had not conceded the facts of this case although Mr Wilding did accept that the decision letter did not directly challenge the Appellant's account of having no family in Ghana. Mr Wilding also pointed out that, having now been alerted to the impact of the lack of evidence, the Appellant was still not seeking to introduce any further evidence to demonstrate that he did not have family in Ghana.

9. Mr Wilding also pointed out that, irrespective of the issue whether the Appellant does have family in Ghana, the Appellant would still not be entitled to remain in the UK. The Appellant is a young single adult. There is nothing which constitutes a very significant obstacle to his reintegration in Ghana. On his own account he was aged ten when he came to the UK.

10. In relation to the second ground, Mr Wilding submitted that there is no contradiction in the Judge's conclusions concerning proportionality. The Judge accepted that the Appellant was not at fault for being here illegally. However, applying section 117B, the Appellant's status has always been precarious. He was told that he would not be permitted to

remain beyond his eighteenth birthday. Furthermore, the Rules are an indication of where the public interest lies. If the Appellant is unable to satisfy the “very significant obstacles” test in paragraph 276ADE, there is no basis on which he should be able to remain. That was the starting point for the Judge’s consideration of Article 8. The balancing exercise was a matter for the Judge and it was for him to give such weight as he considered appropriate to the various factors unless his decision could be said to be perverse which is not this case.

11. Both parties accepted that, if I were to find a material error of law, I could go on to re-make the decision based on the evidence which was before the First-tier Tribunal Judge. Mr Akomene confirmed that the Appellant did not seek to adduce further evidence and there was no challenge to the credibility findings other than in relation to the Judge’s reliance on the failure to produce the section 7 report.

Discussion and conclusions

12. I begin with the Judge’s consideration of the issue surrounding the Appellant’s family in Ghana. I note as a starting point that the Respondent has not expressly disputed the Appellant’s case on this issue. However, I also accept Mr Wilding’s submission that neither has she conceded it. Furthermore, the basis for the Appellant’s application for further leave to remain, according to the decision letter was based not on the lack of family members in Ghana and therefore that there were very significant obstacles to the Appellant returning there but rather that he had made his life in the UK, been made the subject of a family court order in favour of someone living in the UK, had received education here and been granted leave to remain. As the Respondent pointed out, the Appellant was granted leave outside the Rules and not discretionary leave and the factors on which he relied were not sufficiently persuasive. He could continue his studies or employment in Ghana. There is no mention of his family circumstances.

13. The evidence before the Judge was that of the Appellant and Mr Amoah, the Appellant’s foster carer. Both provided very short statements for the hearing. Mr Amoah’s statement says nothing about the Appellant’s family save that his father abandoned him. The Appellant’s states, as I have noted at [3] above, that his father is dead, he does not know the whereabouts of his mother and has no idea about his other family members. He does not expressly say that he does not have any family in Ghana; he does not know.

14. I turn then to consider the evidence given to the Judge which is cited at [13] to [19] of the Decision. The Judge noted the content of the short statements to which I refer above. He then notes that Mr Amoah gave a very different version in his oral evidence ([13]). It appeared from that evidence that the source of the Appellant’s information that his father is dead came from Mr Amoah and yet Mr Amoah had said nothing of this in his written statement. The Appellant also expanded on his evidence as to his family circumstances, stating that he used to

live with his grandmother (when he had previously said that he did not have any idea about his grandparents). He also says that he was told that his grandmother was dead ([19]). That is the first mention of this. Mr Amoah too further elaborated on his evidence by stating as recorded at [19] that he had made enquiries on return to Ghana in 2009 and found that the Appellant's grandmother was dead and that he had no family. This had never been mentioned previously.

15. The Judge then went on to consider that evidence at [20] to [27] of the Decision. Whilst it is the case that the family proceedings which led to the Appellant being placed with Mr Amoah do form the central focus of that consideration, this is not the only factor which led the Judge not to accept the Appellant's and Mr Amoah's evidence (besides the obvious point that their oral evidence was inconsistent or significantly elaborated upon their statements). The Judge gave the Appellant the benefit of the doubt as to the inconsistency between his evidence and that of Mr Amoah about the date of the Appellant's father's death due to his young age. However, as I have already pointed out, the evidence about the deaths of both the Appellant's father and latterly his grandmother was evidence which came late in the day and was expanded on considerably. The Judge was entitled therefore to be sceptical about the truth of those allegations.

16. As the Judge notes, it is for the Appellant to make out his case. That he did not do. The reference to the lack of the section 7 report also has to be read in context. It is noted that Mr Amoah was the person who referred to that report when giving evidence ([26]). The Judge was entitled to draw inferences from the fact that, although Mr Amoah raised this in evidence, he did not produce the report.

17. The Judge also noted other evidence which could easily have been produced, particularly in relation to the death of the Appellant's father and grandmother. If they were dead, as the Judge observed at [27], it would have been an easy matter to obtain death certificates.

18. The section at [20] to [27] when read as a whole does not indicate that the Judge placed great weight on the failure to produce the section 7 report or that the failure to produce it gave rise to the adverse credibility findings on this issue. What is there noted is the failure to produce any evidence to substantiate the lack of family in Ghana. That was a factor dealt with in evidence at the hearing and evidence which I have already noted went way beyond what was in the written statements for the hearing. It is also a factor which does not appear to have been raised with the Respondent. Given the elaboration of the evidence at the hearing and the failure to corroborate it, the Judge was entitled to reach the conclusion that the evidence was not credible.

19. Even if I had been prepared to find that there was an error in the Judge's reliance on the failure to produce the section 7 report and to accept the Appellant's case at its highest, that error is not material. That is because what the Appellant has to show is that there are very

significant obstacles to his reintegration in Ghana. That is what the Judge went on to consider at [32] to [34] of the Decision. Although the Judge makes mention that the Appellant has "in all likelihood" got family relatives and contacts in Ghana, that is only partly based on a finding that his father and grandmother may well not be dead. It is based also on the fact that his foster parent is from Ghana and apparently retains contacts there since he said that he returned in 2009 to look for members of the Appellant's family. Even if the Appellant has no family left in Ghana, the fact remains that he has been raised in this country by another Ghanaian national who retains contact with that country and, it could reasonably be assumed, would make the Appellant aware of Ghanaian customs. That is not speculative.

20. Further, and in any event, it was not for the Judge to ascertain whether there are very significant obstacles to the Appellant's return. It is for the Appellant to make his case as to what those obstacles are. Other than pointing to his education in the UK and lack of family in Ghana, his evidence does not make out a case of very significant obstacles.

21. Turning then finally to the Appellant's second ground concerning proportionality, that follows on from the Judge's finding that there are no very significant obstacles to the Appellant's return to Ghana, a finding which I have already noted as being open to the Judge on the (limited) evidence. The Judge sets out at [35] to [37] the matters giving rise to the Appellant's claim to a private and family life. The Judge accepts that the Appellant has formed a private and family life, interference with which the Respondent has to justify.

22. The Judge then goes on to consider the public interest. In so doing, the Judge correctly identifies the relevant factors in section 117B Nationality, Immigration and Asylum Act 2002. He notes that he can give little weight therefore to the Appellant's private life. He also notes the fact that the Appellant has been educated at public expense and is not financially independent. Mr Akomene criticised reliance on that factor as being something for which the Appellant is not to blame. That may well be right but the fact remains that he has been educated and cared for to some extent at least at taxpayer's expense. That is a factor to which the Judge was entitled to and indeed right to refer.

23. The critical paragraphs in relation to the second of the Appellant's grounds are at [43] and [44] as follows:-

> "[43] The maintenance of effective immigration controls is in the public interest. Although it is not the fault of the appellant it is nonetheless the case that he was brought to the United Kingdom illegally. He was left here for the United Kingdom to take responsibility for. This cannot be in the public interest. Such conduct would leave the immigration policy of the United Kingdom in chaos. It would be unfair on everyone else who makes a legal application to come to the United Kingdom. It is also criminal activity and puts at risk those children who are illegally brought

into the United Kingdom and whose welfare the respondent is obliged by statute to have regard to.

[44] All of these matters weigh heavily against the appellant when considering the question of proportionality. Whilst I accept that there will be an interference with the appellant's right to family and private life and that Article 8 is engaged I find that the interference is in accordance with the law. I further find that such interference is necessary in a democratic society both for the economic well-being of the country and for the protection of the rights and freedoms of others and that the interference is proportionate to these legitimate public ends on the facts of this appeal. The appellant does not succeed under article 8"

24. Although at first blush I was inclined to agree with Mr Akomene that there appeared to be an inconsistency between saying at [43] that the Appellant should not be held responsible for being in the UK illegally whilst at [44] saying that those matters weighed heavily against him, on further reflection I do not consider that this is what the Judge there intends. Paragraph [43] is simply a statement of the public interest in immigration control which is a factor which the Judge was bound to take into account. I agree with Mr Wilding that the Judge has noted that the Appellant was not responsible for his illegal entry as he was a child. However, the fact remains that the public interest requires effective immigration control and it is a facet of that public interest that the bringing of children into the UK illegally should be discouraged. That does not mean that the Judge is holding the Appellant personally responsible, merely that the public interest weighs against the Appellant's case as a result.

25. For those reasons, I find that there is no error of law either in relation to the second of the Appellant's grounds.

26. For the foregoing reasons, I am satisfied that there is no material error of law in the Decision and I uphold it.

DECISION

The First-tier Tribunal Decision did not involve the making of an error on a point of law. I therefore uphold the First-tier Tribunal Decision promulgated on 26 October 2015 with the consequence that the Appellant's appeal is dismissed.

Signed

Upper Tribunal Judge Smith
Date 27 July 2016