



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/29452/2015

THE IMMIGRATION ACTS

Heard at Field House

On 17 July 2017

**Decision &
Promulgated
On 01 August 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

**MS VIDA AMOAKO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Akohene, instructed by SLA Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ghana who was born on 17 April 1969. Her application for leave to remain was refused by the Secretary of State under the partner route, the parent route and under the private life route in a decision dated 13 August 2015. The Appellant appealed the Secretary of State's decision under section 82 of the Nationality, Immigration and Asylum Act 2002 and her appeal was dismissed by First-tier Tribunal Judge Moxon in a decision promulgated on 7 November 2016. The Judge noted at paragraph 3 of the decision that the Appellant conceded that she did

not meet the requirements of the Immigration Rules and argued her case on Article 8 grounds only outside the Rules. Judge Moxon dismissed the appeal on all grounds.

2. The Appellant then sought permission to appeal to the Upper Tribunal and permission was granted by First-tier Tribunal Judge Hollingworth on 18 May 2017. The grant of permission states that evidence was provided to Judge Moxon of the ill-health of the Appellant's partner and that the Judge had not referred to it. Judge Hollingworth found it was arguable the Judge fell into error by not setting out a consideration of that factor.

The Hearing

3. I heard submissions from both representatives. Mr Akohene on behalf of the Appellant submitted that the Respondent had accepted that there was a genuine and subsisting relationship between the Appellant and her partner and that fell to be considered under the partner route. At this point I reminded Mr Akohene that at the hearing before the First-tier Tribunal it had been conceded on behalf of the Appellant that she could not meet the requirements of the Immigration Rules. Mr Akohene then submitted that the Judge accepted at paragraph 24 that the Appellant's partner suffered from liver problems. There was evidence that the partner had not been working and he had become a British citizen in 1998. He further submitted that the Appellant had been caring for her partner at home and that he had been receiving treatment as a British citizen in the UK and that care would have to continue in Ghana which would prevent the Appellant from working. He submitted it was not reasonable that they be placed in that position due to her partner's alcoholism.
4. In response Mr Tufan referred me to the Supreme Court case of **R (on the application of Agyarko) v SSHD [2017] UKSC 11**. The mere fact that the Appellant's partner was a British citizen and had a job here could not constitute insurmountable obstacles. The question of precariousness was assessed in **Agyarko** and it was concluded that it was a stringent test and there had to be very strong compelling factors in order for her claim to succeed.
5. Mr Akohene responded that the test of reasonableness had not been adequately considered as the Appellant was caring for her husband.

Discussion

6. I concluded that there was no error of law in the decision of the First-tier Tribunal. The grounds seeking permission to appeal assert that the First-tier Tribunal failed to place sufficient weight on the effect of the British Citizenship of the Appellant's partner and failed to have regard to his medical problems. I find that there is no substance in either of these allegations. It is manifestly evident that due consideration was given to the Appellant's partner's health in the decision of the First-tier Tribunal.

The First-tier Tribunal referred at paragraph 11 to his ill-health when recording the evidence. The Judge noted that the Appellant's partner had fallen ill and lost his job and she was required to care for him. The Judge also noted that the Appellant had adduced a fitness at work statement for her partner dated 19 April 2016 which stated that her partner suffered from atrial fibrillation and would benefit from a phased return to work. He further noted that a further statement of fitness for work stated that her partner was not fit to work due to alcoholic cirrhosis of the liver. At paragraph 13 of the decision the Judge noted that the Appellant adduced medical documents to show that her partner suffered liver problems as a result of alcoholism and then at paragraph 16, in recording the Appellant's oral evidence, stated that the Appellant confirmed that save for his liver, her partner had no other current medical conditions and that she did not know if he could be treated in Ghana.

7. The First-tier Tribunal then proceeded to make a number of findings of fact which then subsequently fed into the Article 8 assessment. At paragraph 24 the Judge found that given the various types of medical documents he had seen he was satisfied that the Appellant's partner suffered liver problems on account of his alcoholism and noted that he had seen no cogent evidence that he would not be able to relocate or that he would not be treated for any medical conditions in Ghana. On the basis of those findings of fact he conducted an Article 8 assessment noting that the Appellant was in a genuine and subsisting relationship with a British partner, addressing all the relevant considerations under s117B of the Nationality, Immigration, Asylum and Asylum Act 2002, and finding that little weight could be given to a relationship with her partner as she was present in the United Kingdom unlawfully when it commenced. He further took into account that the Appellant's partner was a British citizen at paragraph 38 and attached considerable weight to that fact at paragraph 41. He also took full account of the fact that the relationship had been established precariously.
8. The grounds also assert that the First-tier Tribunal erred in failing to accept that a birth certificate, purportedly for the Appellant's child, was authentic. I find that the First-tier Tribunal gave a full and adequately reasoned decision as to why the Appellant was not a credible witness and did not accept that the Appellant was a parent (paragraphs 18 to 25). The Appellant had given an inconsistent account and made no reference to having children in her application. Further, she gave inconsistent evidence as to her purported child's age.
9. In my judgment therefore it is clear the Judge did consider the evidence regarding the state of health of the Appellant's partner and weighed it in the balance when considering the reasonableness of relocation. He made a specific finding, which was open to him on the evidence, that he had seen no cogent evidence that her partner would not be able to relocate or that he could not be treated for any medical conditions in Ghana. The Appellant's representative had conceded that the Appellant could not

meet the requirements of the Rules and it was implicit in this concession that she did not meet the requirements of paragraph EX.1 (b) of Appendix FM and did not argue that there were insurmountable obstacles to family life with that partner continuing outside the UK. In conducting the Article 8 assessment the First-tier Tribunal took all relevant factors into account, weighed them in the balance and gave them appropriate weight. I conclude there is no error of law in the decision of the First-tier Tribunal and I dismiss the Appellant's appeal.

Notice of Decision

There is no error of law in the decision of the First-tier Tribunal and I do not set it aside.

No anonymity direction is made.

Signed

Date 31 July 2017

Deputy Upper Tribunal Judge L J Murray