Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04938/2015

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons promulgated**
on 6 March 2018	**on 30 April 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

PAUL DUFFOUR
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Farryl, Counsel.
For the Respondent: Mr C Bates Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Alis, promulgated on 27 June 2016, in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a national of Ghana who entered the United Kingdom as a visitor on 9 October 2003. His leave to enter expired on 4 March 2004 and he has remained unlawfully as an overstayer ever since. The appellant claimed asylum on 12 March 2014 and a decision for his removal pursuant to section 10 Immigration and Asylum Act 1999 was served on 10 March 2015. On 23 March 2015 the appellant lodged his appeal which is the matter before the Judge.

3. At [19] the Judge writes "*The respondent accepted in her refusal letter the appellant's account is credible but argued that either his claim was not a Convention reason or there was a sufficiency of protection or internal relocation was available. Additionally, she submitted the appellant did not satisfy the Immigration Rules as it was not disproportionate to require him and, if necessary, his wife and child to relocate to Ghana or Zimbabwe*".

4. The Judge noted the evidence provided with the required degree of anxious scrutiny before setting out findings of fact between [37] and [73] of the decision under challenge. The Judge's findings can be summarised, inter-alia, in the following terms:

    i. The appellant claims his account of his problems in Ghana started after he came to the United Kingdom. He suspected his wife of having an affair. In October 2003 he was unable to contact his wife and eventually in January 2004 he was told she had moved Mr Kwame into what was his family home [37].

    ii. The appellant had not spoken to or seen Mr Kwame since he arrived in the United Kingdom but believed him to be a "notorious criminal" who the police will not take action against [38].

    iii. The appellants fear is simply that his wife has a new partner and that he would be at risk from him. The appellant has failed to show he is a member of a particular social group and advanced no evidence that would demonstrate this man has any control anywhere other than where he lived. [43].

    iv. At best, Mr Kwame is a non-state actor and no evidence was adduced to support the claim that the police would not do anything about him. It is also the case internal relocation will be available. The appellant accepted he could live in Accra. The Judge did not find it reasonably likely that the appellant would bump into someone who lived in a city 150 miles away [44].

    v. The appellant is healthy, in a fresh relationship, with a young child. No adverse medical evidence was produced about the child [46].

vi. The appellant's wife is HIV-positive but the Judge was provided with no evidence regarding the same. The Judge found it appears this was something she contracted a number of years ago and now has twice yearly check-ups and receives medication to control her condition [47].

vii. The refusal letter addresses both the question of whether the appellant's wife and child would be allowed into Ghana and the availability of medication in Ghana [48]. The Judge finds the Country of Origin Information Report for Ghana, May 2012, confirms the appellant's wife be allowed to accompany him as long as she applied in the manner prescribed. The Judge concludes she will be able to accompany the appellant as will their child [49].

viii. The Judge found that sufficient treatment for the wife's HIV is available in Ghana [50] and that as Ghana is English-speaking there will be no language issues [51].

ix. Relocation other than to the appellant's home area was not found to be either unreasonable or unduly harsh [52].

x. The Judge finds the appellant is not a refugee or a person entitled to a grant of humanitarian protection and that the appellant failed to establish he faces a risk of serious harm.

xi. The Judge finds there is no evidence the appellant would not receive protection in his home state, if required, and had not established risk of serious harm. There has been no direct contact between the appellant and his wife in Ghana [59].

xii. The Judge notes the appellant's representative accepted in his oral submissions the appellant did not satisfy the Immigration Rules. The Judge finds the appellant had failed to establish insurmountable obstacles to family life continuing outside the United Kingdom [62]. The Judge finds the appellant had failed to show the existence of significant obstacles to reintegration into Ghana [63].

xiii. Adopting the structured approach set out in *Razgar* and considering section 117 of the Nationality, Immigration and Asylum Act 2002, the Judge found it a proportionate decision as medical facilities for HIV are available in Ghana and the appellant's wife (the child's mother) has no lawful status in the United Kingdom [71].

xiv. The child's mother is a national of Zimbabwe. The Judge finds the child would remain with his parents and there is nothing before the Judge to suggest that requiring the whole family to move to either Ghana or possibly Zimbabwe will be disproportionate.

5. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 8 January 2018. The matter

comes before the Upper Tribunal for the purposes of assessing whether an error of law has been made material to the decision to dismiss the appeal.

Error of law

6. The appellant asserts the Judge erred as his wife and child are Zimbabwe nationals whereas the appellant is Ghanaian. The appellant claims that other members of the family have no right to reside in Ghana and claims that his wife and child will not be able to settle with him in his home state. The appellant also claims the child has been born in the United Kingdom and attends school here and questions whether the Judges carried out the correct assessment regarding whether the appellant can return.

7. The appellant asserts he has a right to know how the decision is made and that the Judge failed to show it was not in the child's best interests to remain in the United Kingdom with both parents. The appellant states the Judge should have made such a finding.

8. A reading of the Reasons for Refusal letter shows the respondent's case was that the parties can relocate to either Ghana or Zimbabwe. The appellant claims that his wife and child will not be able to travel to Ghana with him but a response to a question asked of the appellants representatives was that no application had been made to the Ghanaian authorities to ascertain whether they were willing to grant the appellant's wife and child leave to enter and remain if they accompanied him from the United Kingdom.

9. The reality is that no member of this family unit has any right to reside in the United Kingdom. In addition, there was no evidence that the appellant could not return with his wife and child to Zimbabwe.

10. The child is not a qualifying child. Although Mr Bates raised the question of whether the child is a duel national, this was not pursued before the First-tier Tribunal.

11. The evidence does not show the child has health or developmental difficulties and had only just started school at the date of the hearing before the First-tier Tribunal.

12. It is clear the Judge considered the evidence with the required degree of anxious scrutiny and has given sufficient reasons in support of the findings made. As such the weight to be given to the evidence was a matter for the Judge.

13. The best interests of the child are clearly for the child to remain with both parents. The burden remained upon the appellant to prove his case and the finding by the Judge that the appellant had not discharged this burden on the evidence made available is within the range of findings reasonably open to the Judge. It was not for the respondent to prove the

appellant could do something but rather for the appellant to prove he could not if this is what he was alleging as part of his appeal.

14. It was not made out before the Judge that the appellants partner would be unable to secure the necessary permission to enter and to remain in Ghana provided she remained living with him and that he had lawful rights of residence in Ghana. The reference in the grounds seeking permission to appeal that a woman married to a man who is a national of Ghana can apply for registration as a citizen is different from the question of whether a person can secure entry to Ghana to accompany their spouse.

15. In relation to Zimbabwe, no evidence was provided to the Judge to show the appellant could not accompany his wife and child or that it would be unreasonable to expect him to relocate to that country, if required.

16. Section 55 and the best interests of the child were clearly considered as was the appellant's wife HIV status.

17. On the basis of the evidence before the decision-maker, it is not made out the Judge erred in law in a manner material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering in this decision.

Decision

18. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

19. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 26 April 2018