Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00113/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6th November 2018	**On 30th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR DENNIS EDU-ARTHUR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp, instructed by Lester Dominic Solicitors
For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Ghana, appealed to the First-tier Tribunal against the decision of the Secretary of State of 27th November 2017 to refuse his application for leave to remain in the UK on the basis of his private and family life. First-tier Tribunal Judge Pooler dismissed the appeal in a decision promulgated on 8th June

2018. The Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Shimmin on 7th September 2018.

2. The background to this appeal is that the Appellant claims to have entered the UK on 11th September 2002 when he was aged 14. He claims that his father was naturalised as a British citizen and obtained his first British passport on 1st July 2003 when the Appellant was 15. The Appellant claims that he understood that he had leave to remain or status based on that of that of his father. In late 2006 the Appellant's father had a stroke which resulted in both physical and mental disability and he began to reside in a care home. The Appellant turned 18 in February 2006 but, as accepted by the judge, remained ignorant of his immigration status. The Appellant began a relationship with [CK] a British national, they first met in September 2014. It appears that the Appellant became aware of his lack of status in or about 2015 [38]. The Appellant's first application to the Secretary of State was made early in 2016.

3. The First-tier Tribunal Judge considered the appeal and decided that because they intend to marry the Appellant is the fiancé of Ms [K] and therefore a partner within GEN.1.2 of Appendix FM. However, the judge decided that the Appellant does not meet the eligibility requirements in E-LTRP.1.12 which requires in order to be granted leave to remain as a fiancé(e) an applicant must have been granted entry clearance as a fiancé(e). The judge considered the Appellant's private life under paragraph 276ADE(1)(vi) and found that it had not been established that there would be very significant obstacles to the Appellant's integration in Ghana. The judge went on to consider whether the Appellant's removal would give rise to a breach of Article 8 through GEN.3.2 of Appendix FM. The judge accepted that there was family life between the Appellant and his fiancée and that the Appellant has also established private life. The judge went on to consider proportionality considering the factors set out in Section 117B of the Nationality, Immigration and Asylum Act 2002. The Judge concluded that it had not been established that to remove the Appellant from the United Kingdom would have unjustifiably harsh consequence for the Appellant or his fiancée and found that the public interest in maintaining immigration control outweighs all of the factors on which the Appellant relies and dismissed the appeal.

4. There are four grounds put forward in the grounds of appeal. It is contended in the first ground that the judge erred in his assessment of whether there are "very significant obstacles" to the Appellant's integration in Ghana in accordance with paragraph 276ADE(1)(vi). Reliance is placed on the judgement of Sales LJ in **Kamara v SSHD [2016] EWCA Civ 813** at paragraph 18:

> "It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or Tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of

human relationships to give substance to the individual's private or family life.".

5. Mr Fripp contended that the judge had failed to do this and that the factors considered at paragraph 27 fall short of an assessment of the Appellant's ability to integrate in Ghana. He contended that there are three key factors within the Appellant's case which demonstrate that the Appellant, upon return, would not be enough of an insider in Ghana, these are the period of time since the Appellant left Ghana, around sixteen years; the fact that he was 14 when he left Ghana and accordingly had never lived there as an adult; and the fact that he had no family ties or friends in Ghana. Mr Fripp contended that the judge failed to get far enough into the question to address the issue as to whether the Appellant would be enough of an insider in Ghana. He further contended that the judge added a gloss to the statutory language and appeared to require exceptionality at paragraph 27 where he referred to there being "a relatively high threshold". He said that the test is "very significant obstacles" and that the imposition of the phrase relatively high threshold may suggest that the judge misunderstood the test. In his submission the appeal should have succeeded under 276ADE(1)(vi).

6. Mr Kandola submitted that the judge dealt with this issue adequately. He submitted that at paragraph 24 the judge set out the submissions made by Mr Fripp at the hearing in the First-tier Tribunal and dealt with the issue at paragraphs 25, 26 and 27.

7. In my view, the judge dealt with this issue adequately. The judge set out the Respondent's position at paragraph 23 and the Appellant's position at paragraph 24. At paragraph 25 the judge considered the factors in the Appellant's favour taking into account the factors pointed out by Mr Fripp including the fact that when the Appellant lived in Ghana he was a child and that he has never lived independently in Ghana but was dependent there upon his parents. The judge accepted that, although the Appellant will have retained memories of Ghana, those will be of little or no assistance to him in establishing himself in Ghana because he has no experience of the workings of Ghanaian society as they apply to a young adult who needs employment and accommodation in order to survive. But on the other hand the judge took into account factors set out in paragraphs 26 and 27 including the fact that the Appellant has a great deal of support from his friends and family in the UK and that they would be able to support him when he returns in Ghana including introducing him to people there who might be able to assist him in financial terms. This finding is based on the evidence before the judge consistent with the assertion made by the Secretary of State that the Appellant has lived in a diaspora community from Ghana in the UK and retains cultural ties to Ghana.

8. The judge went on at paragraph 27 to say that he did not doubt that the Appellant would experience difficulty if returned to Ghana but that it was for the Appellant to prove not merely that the difficulties would be significant but that they would be very significant, a test which the judge said "implies a relatively high threshold". I do not accept that the judge can be criticised for using this phrase to highlight the

word 'very' in the test which elevates the threshold beyond significant. In my view, this does not indicate that the judge applied the wrong test.

9. The judge also took into account the fact that Appellant appears to be relatively well-educated; that he has no health problems or disability and concluded that there would not be very significant obstacles to the Appellant integrating in Ghana. In my view, this conclusion was open to the judge on the basis of the evidence before him.

10. The judge went on to consider GEN.3 of Appendix FM of the Immigration Rules, which states as follows:

> GEN.3.2.(1) Subject to sub-paragraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.
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> (2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.

11. Mr Fripp contended that the judge erred in his assessment of the Appellant's private life under Article 8 because he failed to take account of the Appellant's lack of knowledge of the precarious nature of his immigration status. He highlighted that at paragraphs 10 and 11 the judge accepted that the Appellant was unaware of the immigration process or that he had no status in the UK when he was 15 and that his father had a stroke in 2006 and that the Appellant remained ignorant of his immigration status when he became 18 in 2006. The judge found at paragraph 38 that it is likely that the Appellant first became aware of his lack of status in about 2015.

12. Mr Fripp relied on paragraph 53 of the Supreme Court's decision in **R (Agyarko) v SSHD [2017] UKSC 11** where the court was considering the precarious nature of immigration status in the assessment of proportionality in relation to Article 8 and said:

> "Finally, in relation to this matter, the reference in the instruction to "full knowledge that their stay here is unlawful or precarious" is also consistent with the case law of the European court, which refers to the persons concerned being aware that the persistence of family life in the host state would be precarious from the outset (as in *Jeunesse*, para 108). One can, for example, envisage

circumstances in which people might be under a reasonable misapprehension as to their ability to maintain a family life in the UK, and in which a less stringent approach might therefore be appropriate."

13. In this case the judge undertook an assessment as to the Appellant's knowledge of his immigration status in the context of his family life and his developing relationship with Ms [K] and found at paragraph 39 that the relationship was still in its relatively early stages when the Appellant became aware of his lack of status and that he and Ms [K] did not become partners until a time when he was well aware of his immigration status. At paragraph 12 of the decision the judge found that "the Appellant was somewhat vague in his statement as to his early adult life. He spent time with his family (including some time with his father) and with friends and he attended church". This finding has not been challenged. I note that paragraph 31 the judge accepted that the Appellant had established private life, he had had established relationships with others with whom he has social relationships, including those in friendship groups and in the church which he attends and the relationships he has with adult relatives. However Mr Fripp did not point to evidence of any aspect of private life which was particularly weighty in the Appellant's favour. There was nothing before the judge to highlight any aspect of his private life developed up to 2015 to which particular weight would have been attached. In my view it is clear that the judge had in mind the Appellant's lack of knowledge of his immigration status up until 2015 and specifically took that into account at paragraph 38 of the decision. In my view this ground discloses no material error of law.

14. It is contended in the third ground of appeal that the judge erred in his assessment of the Appellant's failure to meet the Immigration Rules. Reliance is placed on **SSHD v SS (Congo) and Others [2015] EWCA Civ 387** where Richards LJ in the Court of Appeal at 55 to 56 indicated that the degree of distance from the requirements of the Immigration Rules was a relevant factor for the purposes of the proportionality assessment. It is contended that it is solely paragraph E-LTRP.1.12 which prevented consideration of the Appellant's appeal under Appendix FM and EX.1 in particular. It is contended that the weight to be attached to the failure to meet paragraph E-LTRP.1.12 required express consideration. Mr Kandola contended that the judge undertook an adequate assessment of this issue.

15. At paragraph 28 the judge highlighted the provisions of GEN.3.2 and the requirement to consider whether the refusal would result in unjustifiably harsh consequences for the Appellant, his partner or other family member. The judge went through the steps set out in **R v SSHD ex parte Razgar [2004] UKHL 27** and reached conclusions from paragraph 35 onwards, reaching the ultimate conclusion at paragraph 44 that the decision to remove the Appellant would not have unjustifiably harsh consequences for the Appellant or Ms [K]. In my view, it is clear from the assessment at paragraph 42 in relation to the entry clearance issue that the judge was fully aware of the fact that the Appellant could not meet the Rules simply on the basis of the lack of entry clearance. This is clearly a factor which was in the judge's

mind in the assessment of proportionality. In my view this ground has not been made out.

16. It is contended in the fourth ground that the judge erred in the conclusions at paragraph 42 that where the judge said:

> "I raised in the hearing the possibility of the appellant returning to Ghana in order to apply for entry clearance. Ms [K] said in evidence that she was working part-time and earning around £11,000 to £15,000 per annum. If she worked full-time, she said that she would earn probably £15,000 to £19,000. She had been hoping to start a master's degree course in September 2018; she had been offered a place at university but would not be able to pursue the course if she had to work full-time."

The judge went on at paragraph 44:

> "On her evidence, she would probably be able to earn enough to sponsor an application for entry clearance and any separation would be for a limited period during which it would be possible for them to keep in contact and to meet in the course of visits. She would have to postpone her further education; but nothing in the evidence suggested that such a course would be unduly harsh".

17. Mr Fripp contended that the judge's conclusion was not supported by the evidence. However, there is no challenge to the recording of the oral evidence at paragraph 42. He contended that Appendix FM requires that the partner has a gross annual income of at least £18,600 and that has to be maintained for at least six months prior to application. It is contended that the range given in oral evidence was one which had only at the very top end reached and exceeded the £18,600 required. It is contended that the judge ignored the effect of the evidential requirements at Appendix FM-SE. It is further contended that the partner expressed an entirely legitimate commitment to her education and that, in deciding that it would not be unduly harsh if she had to postpone further education, the judge treated this too lightly or provided insufficient reasons for finding that a delay or abandonment of education is not a significant matter deserving real weight in the proportionality assessment.

18. However, I find that it was open to the judge, on the basis of Ms [K]'s oral evidence, to find that she could earn sufficient funds to bring her within the Entry Clearance requirements. This is a factor the judge was entitled to take into account. I find that the judge's findings at paragraph 44 that it was for Ms [K] to potentially postpone her studies in order to work on a full-time basis was open to him on the basis of the evidence before him. In my view, this ground has not been made out.

19. Having considered all of the grounds put forward I conclude that none of the grounds have been made out. In the circumstances the judge made findings open to him based on the evidence. There is no material error of law disclosed in this decision.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law.

The decision of the First-tier Tribunal will stand.

No anonymity direction is made.

Signed Date: 24th November 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

As the appeal has been dismissed there can be no fee award.

Signed Date: 24th November 2018

Deputy Upper Tribunal Judge Grimes