Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/08894/2018**

THE IMMIGRATION ACTS

Heard at: Field House	**Decision & Reasons Promulgated**
On: 19 November 2018	**On: 27 November 2018**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SANDRA [D]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Spurling, instructed by Clapham Law LLP
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana born on 29 March 2000. She has been given permission to appeal against the decision of First-tier Tribunal Judge Pacey dismissing her appeal against the respondent's decision to refuse her human rights claim.

2. The appellant entered the UK on 14 February 2017 with entry clearance as an EEA family member of [SS], her step-mother, valid until 9 May 2017. On 24 April 2017 she submitted an application for an EEA residence card as the family member of [SS] but her application was refused on 9 October 2017. On 20

November 2017 she applied for leave to remain on the basis of her family life with her father and step-mother.

3. The appellant's application was refused on 27 March 2018. The respondent considered that she could not meet the eligibility relationship requirement in paragraph E-LTRC.1.2 to 1.6 because neither of her parents had been given leave to remain under Appendix FM and accordingly she could not meet the requirements of paragraph R-LTRC.1.1(d)(iii). The respondent considered further that the appellant could not meet the requirements in paragraph 276ADE(1) on the basis of private life and that there were no exceptional circumstances justifying a grant of leave outside the immigration rules. The respondent noted the appellant's claim to fear return to Ghana on the basis that she was abused by her stepfather there, that her mother did nothing to protect her and that she was no one else available to take care of her in Ghana. The respondent considered that the appellant had provided no evidence in support of her claim and noted that she had stated that she did not wish to claim asylum. It was considered, in the absence of evidence to the contrary, that there was nothing to suggest that her welfare would be at risk if she returned to Ghana.

4. The appellant appealed against that decision. In her grounds she submitted that her father had sole responsibility for her and met the requirements of paragraph E-LTRC.1.2 to 1.6, as her mother neglected her and her father was the person who provided the majority of her financial and emotional support.

5. The appellant's appeal was heard by First-tier Tribunal Judge Pacey on 17 August 2018. The appellant and her father, [GD], gave evidence before the judge. The judge also had a letter from the appellant's brother in Ghana to the sponsor advising him that the appellant should not go back to Ghana as he could not support her, since he was living with a friend following their mother and step-father's departure from Ghana. The evidence before the judge was that the appellant's father and step-mother had separated, with her step-mother leaving shortly after she came to the UK. The appellant had been refused a residence card as her step-mother refused to produce her passport, but the sponsor had since become a British citizen and therefore was sponsoring her himself. The appellant claimed to have been sexually abused by her step-father in Ghana and her father therefore came to Ghana and brought her back to the UK with him. It was said that the sponsor had only learned that he had a daughter when he went on holiday to Ghana in 2012 and since then they had kept in constant touch and he had been supporting her.

6. On the basis that the appellant could not meet the requirements of the immigration rules the judge considered the issue under Article 8 outside the rules. The judge did not accept that there were more than the normal emotional ties between the appellant and her father and she considered that the appellant's removal was proportionate and did not breach Article 8. She dismissed the appeal on human rights grounds.

7. Permission to appeal to the Upper Tribunal was sought by the appellant. The grounds are unclear and poorly drafted, but in essence they assert that the judge's finding, that there was nothing more than the normal emotional ties between the appellant and her father, was irrational, that the appellant's case was exceptional and it would be disproportionate to remove her and that the judge failed to consider whether a short period leave should be granted to the appellant to allow her to finish her studies.

8. Permission was granted in the First-tier Tribunal on 16 October 2018 on the basis of an arguable failure by the judge to follow a Razgar structured assessment of private and family life.

Appeal Hearing

9. At the hearing the parties made submissions.

10. Mr Spurling submitted that the judge had failed to take a structured approach. She failed to make clear findings on whether Article 8 was engaged. In so far as she found that there was nothing more than the normal emotional ties between the appellant and her father, she failed to start with the question of whether there was previously family life between the appellant and her father when she was a child and whether that was severed when the appellant turned 18. The judge failed to make a finding on whether the appellant's father was solely responsible for her and wrongly relied on the fact that she had previously lived with her mother, which was irrelevant to the question of sole responsibility. The judge ought to have concluded that Article 8 was engaged on the basis of family and private life. The judge ought then to have considered whether the immigration rules were met. She provided no explanation as to why the appellant could not meet the requirements of Appendix FM and failed to consider sole responsibility under paragraph 298 of the rules. The judge's balancing exercise consisted of observations but no findings. She made negative observations which were not relevant, such as the reference to the sponsor's relationship with his son, the appellant's relationship with her father before 2012, the appellant's English language ability and the appellant's step-father no longer being in Ghana. The judge did not undertake a proper assessment of the public interest factors in section 117B of the Nationality, Immigration and Asylum Act 2002 and failed to consider those factors in the appellant's favour. There was no proper proportionality balancing exercise and the appellant was not able to know how the decision to dismiss her appeal was reached.

11. Mr Lindsay submitted that the judge made clear findings that the appellant's father was not solely responsible for her and therefore the requirements of paragraph 298 could not be met. The judge clearly found that Article 8 was not engaged on family life grounds and applied the correct test in so doing. There was nothing irrational or perverse in such a finding. The judge found that there was some degree of private life but that was not capable of outweighing the public interest.

12. Mr Spurling reiterated the points previously made in response, maintaining that the judge erred in failing to consider paragraph 298(c) and failing to factor in relevant matters when considering family life. The challenge was not a perversity challenge but was a challenge on the grounds of inadequate reasoning.

Consideration and findings

13. As a starting point I would observe that permission was not actually granted on the grounds of challenge but on a different basis which in itself is of some concern. In any event the basis of the grant of permission has not been made out.

14. Contrary to the assertions made in the grant of permission and the submissions made by Mr Spurling, the judge did indeed follow the correct structured approach in a human rights appeal. She directed herself properly at [25], noting that the appeal was on human rights grounds, but that consideration of the appellant's ability to meet the immigration rules was necessary as part of the proportionality assessment. At [30] she properly observed that an ability to meet the requirements of the immigration rules was a weighty factor in an appeal based on human rights, but only became relevant if Article 8 was engaged.

15. Mr Spurling submitted that the judge failed to give reasons for her finding at [26] that the appellant could not meet the requirements of the immigration rules, but it seems to me that in doing so he was making submissions on issues which had not been before the judge. With regard to his submissions on paragraph 298 of the rules, it is of note that at no point in the grounds of appeal before the First-tier Tribunal, at the hearing in the First-tier Tribunal or in the grounds seeking permission was there any suggestion that the requirements of paragraph 298 was a relevant consideration or that those requirements could be met. Clearly they could not. The appellant was an overstayer who had never been granted leave to enter or remain under the immigration rules. She had not made her application under the immigration rules, but had applied for leave outside the rules on family and private life grounds. Likewise, the appellant clearly could not meet the requirements in Appendix FM as a child as she was not the child of a parent who had limited leave under Appendix FM. Again, the grounds seeking permission did not include any challenge to the judge's findings in that regard. The grounds were based solely upon the judge's findings on Article 8 outside the immigration rules and it was on that basis that the appeal proceeded.

16. The judge, in following the relevant steps in Razgar, considered first of all whether Article 8 was engaged. It is asserted that she failed to make any finding as to whether Article 8 was engaged on family life grounds, but it is plain from [33] that she found it was not. The judge properly observed that there was no bright line at the age of 18 between a child and an adult but went on to give reasons why she considered that the appellant's relationship with

her father did not constitute family life for the purposes of Article 8. She applied the correct test in so doing, as set out in Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31. Contrary to Mr Spurling's assertion, the ground of appeal in respect of the judge's findings in that regard was indeed a perversity challenge, as is clear from [12] and [25] of the grounds, in which it was asserted that the judge's finding was irrational. I agree with Mr Lindsay that the high threshold for meeting such a challenge has not been met and in any event it seems to me that the judge's findings in that regard were fully reasoned and were entirely open to her for the reasons given at [33] and [34].

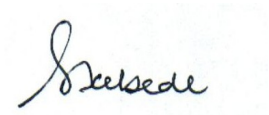
17. The judge went on to consider proportionality on the basis that Article 8 was engaged. Whilst I have to agree with Mr Spurling that the judge did not make the clearest of findings in the paragraphs that followed, from [35] onwards, the tenor of her observations in those paragraphs was that she did not believe the appellant's account of her circumstances in Ghana to be a credible and genuine one. The judge plainly had concerns about the reliability of the appellant's account of her brother's circumstances and his inability to accommodate and support her in Ghana and did not believe her claim to fear returning to Ghana. She plainly rejected the appellant's account of the abuse from her step-father and did not accept that that was a credible reason for her not wishing to return there, particularly as her evidence was that he had since left Ghana. Whilst the judge accepted that the appellant had a relationship with her father, and that her father had since acquired British citizenship, she provided cogent reasons for concluding that that relationship was not of sufficient strength to outweigh the public interest in her removal as an overstayer, when taken together with the totality of her circumstances in the UK and Ghana.

18. Accordingly, and contrary to Mr Spurling's submissions, the judge did not err in her approach to the consideration of the appellant's Article 8 claim. She followed the correct steps in considering the appellant's claim within and outside the immigration rules and took account of all relevant matters in assessing proportionality. It is clear why she dismissed the appeal and it is also clear that she was entitled to dismiss the appeal on the basis that she did.

19. For all these reasons I find no material errors of law in the judge's decision requiring it to be set aside. I uphold the decision.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed 
Upper Tribunal Judge Kebede Dated: 21 November 2018