

**Upper Tribunal
(Immigration and Asylum
HU/11299/2016**



Chamber) Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 17 October 2018

**Determination & Reasons
Promulgated**

On 9th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**MS GRACE OWUSU
(ANONYMITY HAS NOT BEEN DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Pipi, Counsel for Templeton Legal Services, Middlesex
For the Respondent: Mr Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana born on 13 July 1961. She appealed the respondent's decision of 13 April 2016 refusing her entry clearance to the United Kingdom on the grounds of at least 20 years residence here. Her appeal was heard by Judge of the First-Tier Tribunal Lawrence on 16 February 2018 and was dismissed in a decision promulgated on 7 March 2018.
2. An application for permission to appeal was lodged and permission was granted by Judge of the Upper Tribunal Allen. The permission states that the appellant claimed to be entitled to succeed under Article 8 on the

basis of her lengthy residence under paragraph 276ADE. Although the respondent has not accepted that that has been made out, this was still a matter before the Judge and he has made no reference to that aspect of the claim in his decision, other than noting that the previous long residence application had been refused. It is arguable that there is a material error of law as the Judge did not address this issue.

3. There is no Rule 24 response.
4. Counsel for the appellant submitted that there is an error of law as the Judge did not address the 20 years long residence in his decision. He submitted that what I require to decide is whether it is a material error. Counsel submitted that it is a material error.
5. He submitted that the appellant's evidence, both oral and in her two written statements, and in the statements of the two witnesses it is stated that the appellant's residence in the United Kingdom started in 1992.
6. He submitted that there is no documentary evidence of the appellant's stay in the United Kingdom from 1992 until 2002. He submitted that this is because during that period she moved about a lot and did not realise she should keep documents to prove this. I was referred to paragraph 23 of her second statement in which she states that she has never left the United Kingdom since arriving in 1992 as she has no place and nobody to return to in Ghana. He submitted that there is evidence from 2002 onwards but the Judge makes no mention of this and makes no mention of the 20-year rule. He submitted that had the Judge accepted the appellant's evidence the appellant would have been successful in her appeal, but the Judge does not say he has considered it or has accepted or rejected it. He submitted that the Judge has focussed only on paragraph 276ADE(1)(vi) of the Rules and this was not the issue before him.
7. He submitted that it must be material whether the Judge accepts that the appellant has been here for 20 years. If she has she can satisfy paragraph 276ADE(1)(iii).
8. The Presenting Officer submitted that the Judge has not mentioned the appellant's residence of 20 years in the United Kingdom in the decision and this must be an error of law.
9. He submitted that there is a preliminary point here. On the day of hearing the appellant had a different representative and the Home Office had a different representative. He submitted that there is nothing on file about what grounds were submitted to the First-Tier Tribunal Judge and it is not clear how this claim was argued before the First-Tier Tribunal.
10. I was referred to the refusal letter. This states that there was insufficient evidence to show that the appellant has been here for 20 years. He submitted that the appellant accepts that there is no evidence from 1992 until 2002 apart from her oral evidence but there is the evidence of two

witnesses who state that they have known the appellant from being in the United Kingdom since 1992. He submitted that as that is the only evidence of her being in the United Kingdom between 1992 and 2002 it is unlikely that the claim would have succeeded.

11. I was asked to find that this error of law is not material.
12. Counsel for the appellant submitted that the respondent states that there is insufficient evidence. The matter was heard before the Tribunal and although this point was argued the Judge did not mention 20 years residence in his decision. Counsel submitted that if someone comes to the United Kingdom illegally it is unlikely that there will be much evidence of them being here apart from oral evidence for the first few years. He submitted that it was up to the Judge whether he believed the appellant or not and the Judge has not said whether he believed her or not on this issue.
13. He submitted that this must be a material error of law.

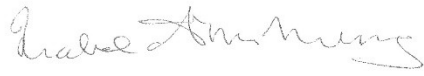
Decision and Reasons

14. This is a case where the appellant made a long residence application. She had previously made long residence applications which had been rejected. The basis of this application is her long stay in the United Kingdom and the Judge makes no mention of it throughout the decision apart from making reference to the previous rejected applications.
15. The Judge makes his decision based on paragraph 276ADE(1)(vi). Paragraph 276ADE(1)(iii) has not been considered anywhere in the decision. Although there is not any documentary evidence that the appellant was in the United Kingdom between 1992 and 2002, the Judge had the appellant's oral evidence and her statements and the evidence of two other witnesses who state they have known her from 1992 until 2002 from the United Kingdom.
16. The Judge should have considered this and accepted or rejected the 20-year application and appeal. There is evidence of her stay in the United Kingdom after 2002.
17. I find that this is a material error of law and I direct that the decision of the First-Tier Tribunal is set aside. None of its findings are to stand other than as a record of what was said on that occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to remit the case to the First-Tier Tribunal for an entirely fresh hearing.
18. The members of the First-Tier Tribunal chosen to consider the case are not to include Judge of the First-Tier Tribunal N M K Lawrence.
19. Anonymity has not been directed.

Signed

Date 1 November 2018

Deputy Upper Tribunal Judge IAM Murray

A handwritten signature in black ink, appearing to read "Iain Murray". The signature is written in a cursive style with a long horizontal stroke at the end.