



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

Appeal Number: HU/11335/2016

THE IMMIGRATION ACTS

Heard at Field House

On 23rd March 2018

**Decision & Reasons
Promulgated
On 17th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**MRS AC (GHANA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant in person

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. **Direction Regarding Anonymity** - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 - Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. The Appellant is a citizen of Ghana whose date of birth is recorded as [] 1971. She made application for leave to remain in the United Kingdom which on 14th April 2016 was refused. She appealed. On 20th September 2017 the matter was heard by Judge of the First-tier Tribunal Black sitting at Taylor House. The Secretary of State had contended in her considerations that the Appellant had used fraud in a test (English language test). However, at the hearing of the appeal in the First-tier Tribunal she failed to provide the necessary evidence to meet the burden that was upon her and so the judge was not prepared to have regard to it. For the avoidance of doubt, therefore, the fraud was not made out.
3. The appeal turned ultimately on whether or not there were insurmountable obstacles to family life continuing in Ghana. The Sponsor has a number of medical conditions which are described in the medical evidence and which was before the judge.
4. I have had produced to me today, without objection, some additional evidence dated 14th February 2018 and 15th March 2018 which given what is to follow will fall to be considered by the First-tier Tribunal in due course.
5. Because the earnings threshold was not met and because the judge took the view, notwithstanding the medical conditions, that there were no insurmountable obstacles to family life continuing in Ghana, the Sponsor himself originally being Ghanaian and having regard to the wider application of Article 8 (although there appears to be no reference to the statutory obligation to consider Section 117B within the decision), that the appeal should be dismissed.
6. Not content with that decision the Appellant, whom I should say was not represented before the First-tier Tribunal, nor before me today, made application for permission to appeal to the Upper Tribunal on the basis of the Sponsor's medical conditions which it was said could not adequately be met in Ghana.
7. Judge of the First-tier Tribunal Robertson considered the application on 12th December 2017 and refused permission. There was a renewed application made on 23rd December 2017 in which Upper Tribunal Judge Coker granted permission on the basis that it was arguable that the First-tier Tribunal Judge had failed to consider that the Appellant's husband is a British citizen and although there may be adequate treatment for his medical condition in Ghana, as a British citizen he is entitled to receive such treatment as he requires under the NHS for which there is no charge. She went on to say, "that the removal of the Appellant in those circumstances although she does not provide him the necessary care that would otherwise be unavailable nevertheless would result in the cessation of family life". That, of course, cannot be a finding because Judge Coker was concerned only with the grant and on that basis whether or not the point was arguable.

8. When the matter came before me my preliminary view was that the appeal was virtually unarguable but recognising that the Appellant has not been represented at any stage it seems to me that it is right that if there is any obvious point I should have regard to it; especially if the point is "**Robinson** obvious", being a point, which would put the United Kingdom in breach of its international obligations. Dismissing an appeal on human rights grounds clearly is capable of putting the United Kingdom in breach of its international obligations.
9. What concerns me is that the Appellant first entered the United Kingdom with leave as a spouse. It follows that the Entry Clearance Officer was satisfied at that time that the Immigration Rules were met. What concerns me is that if, as in this case, a Sponsor becomes unwell, in circumstances which but for the illness would ordinarily have led to leave being continued, then unless that fact is properly put in the mix, the proportionality assessment is flawed. It seemed to me at least arguable that a person who enters the United Kingdom with the expectation that they will continue with their leave ought not ordinarily, absent any other significant factors, be required to leave because their partner is ill. I granted permission to the Appellant to broaden the grounds in order to deal with that point.
10. Ms Ahmad for the Secretary of State took exception to me extending the grounds on the basis that (i) the case had never been argued on that basis; (ii) the grounds did not take the point and (iii) no permission was granted on that basis. Notwithstanding her objections, Ms Ahmad fairly accepts that the point was not adequately addressed. That was not the basis upon which she resisted the expansion of the grounds. Her reasons were as I have already said.
11. It seems to me that the failure to consider that point is so fundamental to this decision taken together with a need to consider the Section 117B matters that this decision simply cannot stand and I set it aside for the error of law that I have identified, namely whether this Appellant who entered with leave as a spouse and found herself in circumstances such as the Appellant, can have it said against her that it would be proportionate nevertheless because their Sponsor has become unwell that they should now continue that family life outside of the United Kingdom. Because this will be fact sensitive with a need to look to all the circumstances it would not be appropriate for this matter to remain in the Upper Tribunal.
12. In remitting the case to the First-tier Tribunal which I do, I make plain that no findings of fact are preserved. That means that the Secretary of State will have the opportunity to deal with all points, which includes, for the avoidance of doubt, her allegation that there was deception used in an earlier application. Every aspect of the case must fall to be considered and if there is sufficient evidence, the burden being on the Secretary of State, that fraud was used, then it may well be that that will weigh sufficiently in

favour of the Secretary of State that notwithstanding the medical conditions of the Sponsor the appeal should be dismissed. That will be a matter for another day and for another judge.

Notice of Decision

13. The decision of the First-tier Tribunal contained a material error of law and is set aside. The matter is remitted to the First-tier Tribunal to be heard afresh before a judge other than Ms G A Black, at Taylor House, on a date to be fixed.

Signed

Date: 12 April 2018



Deputy Upper Tribunal Judge Zucker