Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-003469**
HU/05039/2021

THE IMMIGRATION ACTS

Heard at Field House
On the 24th October 2022

Decision & Reasons Promulgated
On the 16 November 2022

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS TESSY DOE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr Kwaku Antwi-Boasiako instructed by Midland Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Sangha ("the judge"), who on 8th June 2022 dismissed the appellant's appeal against the Secretary of State's decision dated 21st October 2021 refusing the appellant's human rights claim made on 7th December 2020.

2. The appellant is a citizen of the Ghana born on 5th May 1955 and asserts she arrived in the UK on 4th February 2011 on a visit visa. She subsequently overstayed and her last application for leave to remain was refused on 21st June 2018. She lives with her daughter and three grandchildren with whom she maintains she has family life and on whom she depends financially; she states she has no family remaining in Ghana. She also experiences health problems.

3. On the judge dismissing the appeal, the appellant made an application for permission to appeal on the basis that:

   (i) The judge had failed to address family life when deciding the appeal and focussed only on the appellant's private life

   (ii) The judge failed to address section 55 of the Borders Citizenship and Immigration Act 2009_

4. Permission to appeal was granted, stating that it was arguable that the judge materially erred in not considering the appellant's family life

5. At the appeal Mr Antwi-Boasiako emphasised that the judge had ignored the family life of the appellant with her daughter and grandchildren, failed to apply the first step in **Razgar v SSHD** [2004] UKHL 27 and failed to assess the interests of the grandchildren. The judge focussed unduly on the immigration history of the appellant and also failed to consider **Beoku-Betts v SSHD** [2008] UKHL 9. The family were close knit and the judge's assessment had been clouded by the appellant's immigration history.

6. Ms Ahmed submitted that the judge had made some findings in relation to the family life but accepted that there were 'difficulties' with the decision. She could locate no clear findings in relation to 'very significant obstacles'.

   Analysis

7. Although the judge set out the approach to be taken under **Razgar** at [8] the judge did not make clear findings on whether the appellant had established a family life with reference to Article 8(1). The application to the Secretary of State made by the appellant referred to her family life with her daughter and grandchildren and the refusal letter addressed the appellant's family life. It was not argued either before the First-tier Tribunal or before me that family life was a 'new issue' and thus could not be considered without the consent of the Secretary of State. Nonetheless, there was no direct reference in the judge's decision to whether family life existed, and whether there were any unjustifiably harsh consequences to the appellant's removal in relation to her family life and thus whether the decision to refuse the human rights claim in relation to the appellant's *family life* was proportionate.

8. The judge recorded oral evidence that the appellant maintained she had a family life and set out the refusal letter which set out the circumstances of

the appellant but the judge, when dismissing the appeal on human rights grounds, essentially focussed his lens on paragraph 276ADE(1)(vi) of the Immigration Rules in relation to private life. Although the judge states that he has taken into account all the evidence [18], there was no finding in relation to whether family life existed or the strength of that family life when considering proportionality. The judge commences his findings with criticism of the appellant's immigration history and proceeds directly to Section 117B and considered that he was to give little weight to private life established when a person is in the UK unlawfully. Even when considering the grandchildren the assessment is made on the basis that the appellant had established only a private life.

9. I note the judge does reference Section 117B (6), which I agree is not relevant in this instance, but as a result of considering only private life in the article 8 analysis and not family life, when emphasising that Section 117B (4) and (5) required the him to give little weight to the appellant's article 8(1) claim, the judge, by default, impermissibly restricted his consideration and the weight to be attached to the family life. That was a material error of law. The judge finds that the appellant cannot succeed under the Immigration Rules, acknowledges that the appeal could only succeed under Article 8 European Convention on Human Rights but fails to address properly one of the grounds of appeal. The appellant's family life would also be relevant to very significant obstacles on removal.

10. Owing to the findings I have made in relation to the first ground, my view on the second ground falls away. I would note, however, that the judge failed to take into account **Beoku-Betts** and make findings on the interests of the daughter and grandchildren when considering proportionality. Those are relevant factors. That too was an error of law.

11. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed Helen Rimington Date 24th October 2022

Upper Tribunal Judge Rimington