



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/26465/2011

THE IMMIGRATION ACTS

Heard at Field House, London
On 17th July 2013
Prepared

Determination Promulgated
On 5th August 2013

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MS OPHELIA KENA-AMOAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Bassiri-Dezfouli
For the Respondent: Mr Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Ghana (born 11th July 1964). This is the Respondent's appeal against the decision of a First-tier Tribunal Judge allowing the Appellant's appeal against the Respondent's decision to refuse her application for permanent

residence in the United Kingdom as the former spouse of an EEA national; and to revoke her current Residence Card valid up to December 2014.

2. Although this is the Respondent's appeal, for the sake of clarity, I refer to Ophelia Kena-Amoah as the Appellant and the Secretary of State as the Respondent.
3. The First-tier Tribunal Judge dismissed the Appellant's appeal under the EEA Regulations but allowed it under Article 8 ECHR (Private Life).

Background

4. The Appellant entered the United Kingdom in February 2001. By her own account she entered on a six month visa. In 2002 she met her husband Mr Dunker, who was in the United Kingdom employed as a motor mechanic. In March 2003 she and Mr Dunker married. As he was a Dutch citizen exercising Treaty rights in the UK, she applied for and was granted a Residence Card in August 2003.
5. In 2008 the Appellant sought to renew the Residence Card and she was granted a further Residence Card valid until December 2014.
6. However it is clear that things were not as straightforward as they appeared. She and Mr Dunker divorced in November 2008, the decree absolute being granted on 6th March 2009. In May 2011 the Appellant made application for permanent residence on the basis of retained rights as the former spouse of an EEA national. This application was refused and in addition following enquiry, the Appellant's Residence Card which was valid until 2014 was revoked. It was revoked because the Respondent did not accept that the payslips which had been produced showing the Appellant's former spouse as working were genuine. In addition the Appellant did not inform the Respondent of her divorce from the EEA national, until 2011 when she made application for permanent residence.
7. The Appellant appealed those decisions. Her appeals under the EEA Regulations were dismissed but allowed on Article 8 human rights grounds.
8. In summary the First-tier Tribunal Judge found that he was not satisfied that the pay slips submitted by the Appellant in respect of her former spouse were genuine, nor was he satisfied that the Appellant's former husband had been working at the time of the termination of the marriage, as well as not being satisfied that the Appellant's former husband was working in the United Kingdom for a continuous period of five years. For those reasons the First-tier Tribunal Judge found that the Appellant's Residence Card was appropriately revoked and that the application for permanent residence was correctly refused by the Respondent. I have outlined those findings because I shall refer to them later in this determination.
9. Having made those decisions, the First-tier Tribunal Judge then went on to look at any Article 8 claim that the Appellant might have. After summarising the Appellant's work history, her length of stay in the United Kingdom, her relationships and whether private life could be re-established elsewhere, the Judge concluded that

the Appellant's removal would be disproportionate to the need of proper immigration control. He therefore allowed the appeal under Article 8.

10. The Respondent appealed that decision. It is noted here that there was no cross-appeal from the Appellant on the Judge's decision to dismiss her appeals under the EEA Regulations. Permission to appeal was granted and DJ Coates having heard argument from both parties concluded the following,

"Judge Taylor found that the Appellant had reached a level of income and integration in the United Kingdom over a ten year period which she would not be able to replicate on return to Ghana. I am satisfied that this finding is speculative and no reasons have been given to substantiate it, given the fact that the Appellant is a 47 year old Ghanaian citizen who spent the majority of her life in that country. The Judge has also not explained why the Appellant would not be able to use the skills and experience which he has gained in the United Kingdom to her own advantage upon return.

*I am satisfied that no consideration has been given in the balancing exercise to the public interest in maintaining effective immigration control...The Judge has rightly referred to the **Razgar** guides but has not explained adequately why the Appellant's removal would be disproportionate to the need for proper immigration control.*

For these reasons I find that the Judge's reasoning for the decision to allow the appeal under Article 8 is flawed and that this amounts to a material error of law such that the determination falls to be set aside".

Thus the matter comes before me as a resumed hearing on whether it would be disproportionate under Article 8 ECHR, to require the Appellant to return to Ghana.

The Hearing

11. At the hearing before me Miss Bassiri-Dezfouli appeared on behalf of the Appellant and Mr Avery on behalf of the Respondent. I confirm that I had before me the original documents which were sent under cover of Pan-African Legal Advisory Services letter of 21st February 2012 together with further supporting documents sent on 3rd May 2013 by the Appellant. Those documents included a witness statement from the Appellant together with various letters of support and importantly copies of the Appellant's wage slips for her employment at Hammerson Memorial Home and letters from the deputy manager and matron of that establishment.
12. The Appellant gave oral evidence before me. Her sister Agnes, her twin sister Olivia, Mrs Donkor (Pastor Donkor's wife) and Ebenezer Yaw Debra-Frimpong also attended the hearing and gave oral evidence.
13. The Appellant Ophelia Kena-Amoah told me that she lives at 52 Chingford Road Walthamstow London EC17 4PJ. She referred to a witness statement signed and dated 21st May 2013 and confirmed that she wished to rely upon that witness statement as her evidence-in-chief. In summary it sets out that she is a qualified senior healthcare assistant working at the Lewis W Hammerson Memorial Home. This is a home for elderly resident, and her duties include working with those

residents who have limited mobility, dressing and undressing them, helping them with toilet and personal hygiene matter.

14. The Appellant has worked her way up from care assistant to senior care assistant and it took her five years to reach that position. She has various certificates to show her expertise.
15. In addition to her employment, the Appellant is a member of her church and she has bought a property at 52 Chingford Road Walthamstow. She has bought this property together with her sister Olivia and there is a mortgage on the property.
16. The Appellant reports that she has been in the United Kingdom now for twelve years and has worked for the same employer for the last eight years.
17. She is clearly well thought of having obtained promotion in the five years she has worked at this particular home.
18. She told me that she could not obtain any similar employment to this in Ghana. Her certificates would not be applicable there and in addition from enquiries she has made, there is not residential care in Ghana in the same way as in the UK. Any similar work opportunities are limited and generally work is given to younger people.
19. She said that although she accepted she has spent the majority of her life in Ghana, she would be devastated to leave the UK. She will have no work and although her parents live in Ghana they are divorced and she is responsible for their financial maintenance. If she were returned there she does not know how she would maintain them nor herself.
20. She emphasised that she is purchasing a property in the UK, together with her sister Olivia. There is a mortgage of £180,000 on the property (interest only) I gained the impression that her sister would be unable to fund the mortgage on her own if the Appellant were returned to Ghana. That concluded her evidence.
21. I next heard from Agnes Kena-Amoah. Agnes Kena-Amoah told me that she is Ophelia's sister. She reported that she has three children one of whom is in Cyprus and two of whom are in the United Kingdom. She relied upon a letter that she had submitted dated 1st May 2013. In addition to that letter she said that her sister Ophelia is the one who is responsible for supporting their parents in Ghana. No one else is able to support them financially.
22. Her sister Ophelia helps her with shopping and cooking because she suffers from a prolapsed disk in her back.
23. In answer to Mr Avery she said that her son is in Cyprus with a friend. Another child is working and another is redundant but lives at home. She does not see their sister Olivia in the same way that she sees Ophelia. This is because Olivia is working and

when she comes home wants to spend time with her husband, rather than looking after her.

24. I then heard briefly from Olivia Kena-Amoah she confirmed that she lives at 52 Chingford Road which she said is a flat that she and her sister Ophelia have purchased together. She confirmed that she could not help her parents financially because has children in university in Ghana.
25. She was asked by Mr Avery to confirm how she knew that there would be no possibility of employment for Ophelia in Ghana, in the same type of work that she is doing in the United Kingdom. She replied that she has a friend and was discussing this with her friend and was informed that there are simply not the same sort of care homes in Ghana as there are in the United Kingdom.
26. Olivia confirmed that she works in the same place as her sister but that she works shift work. She said there is no time for her to spend at home and her children are at university in Ghana as they were never brought to the United Kingdom.
27. I next heard from Mrs Donkor who is the wife of Pastor Donkor, of the King's Temple. She told me that the Appellant is a church member and a very active one. She said that she helps out greatly, by visiting people when there is a need and giving help and support when called upon. In addition she is a member of the choir attends Sunday worship services and special events. She carries out these duties voluntarily and receives no remuneration. Mrs Donkor confirmed that if the Appellant were to be returned to Ghana, it would be difficult to replace her because of the help which she gives to the church community.
28. Finally I heard from Ebenezer Debra-Frimpong. He told me that he lives at 114 Sweets Way London N20 0NT. He confirmed that he is originally from Ghana and that he knows the Appellant through her church membership. He told me that he has a brother who is a doctor in Ghana and he had enquired of his brother the possibility of the Appellant being able to access similar work in Ghana to that which she does in the United Kingdom. He said that he was informed that in Ghana there are no Homes or Home Carers. It is the immediate family who looks after people and what his brother reports is that it would be difficult for the Appellant to obtain employment - she is 49 years of age and most employment is taken up by younger people. That concluded his evidence.
29. I confirm that I have also taken into account the character references submitted in support of the Appellant.

Assessment of Evidence and My Findings

30. Both representatives agree that what was before me was an Article 8 claim. I keep in mind the questions posed in **Razgar [2004] UKHL 27** since essentially the question before me is whether any interference with this Appellant's Article 8 rights, could be deemed to be proportionate to the interests in a democratic society, of national security, public safety or the economic wellbeing of the country for the prevention of

disorder or crime the protection of health or morals or the protection of the rights and freedoms of others.

31. Proportionality involves the need to balance the interests of society with those of individuals or groups and brings in the concept of a fair balance between the rights of the individual in the interests of the community.
32. In this Appellant's case I accept that what is against her is the unchallenged finding from the First-tier Tribunal Judge's determination, that the Appellant, from 2008 remained in the United Kingdom without leave and that she failed to notify the authorities of her divorce from her husband.
33. Balanced against that however I accept that she was lawfully in possession of a Residence Card from 2003 to 2008 and that she had an expectation at that time that her future life would be conducted in the United Kingdom.
34. I accept that the United Kingdom has a right to control migration, but balanced against this the Appellant has been in country now for twelve years and has integrated well here.
35. She is in employment, pays her taxes and cannot be said to be a burden on the United Kingdom. She is buying her property with a mortgage and from the evidence before me there is no suggestion that the mortgage repayments are not up-to-date.
36. Her employment is one which provides a valuable service to elderly UK residents and she has gained promotion in that employment.
37. I also take into account that she is someone who works voluntary as a helper in her church and to a lesser extent her help to her sister Agnes.
38. I accept that there is a contention from the Respondent that the Appellant can return to Ghana and use her skills there to gain employment. Balanced against that, I am satisfied that, although he could be said to be a partisan witness, the evidence of Mr Ebenezer Yaw Debra-Frimpong, came across as credible. He informed me that his brother is a doctor in Ghana and from his enquiries, there would not be the opportunity for the Appellant to engage in any similar employment. I also take into account that the Appellant told me that any employment goes to younger people and I see no reason to disregard that evidence. I am therefore satisfied that the Appellant would not find employment of a similar nature in Ghana and that factor also has to be weighed in the balance.
39. Weighing all factors into the balance and accepting that matters are finely balanced, nevertheless in my judgement when I look at all the matters, those against and for the Appellant, I find in her favour. I am therefore satisfied on the evidence before me, that it would be disproportionate to this Appellant's Article 8 rights, to return her to Ghana.

DECISION

40. The decision of the First-tier Tribunal Judge contained an error of law such that the decision had to be set aside. I hereby remake the decision. The appeal is allowed.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated