Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/35000/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7 May 2014	**On 22 May 2014**
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Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MS EUNICE BLANKSON

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representative
For the Respondent: Mr C Avery, HOPO

DETERMINATION AND REASONS

1. The appellant appeals with leave against the determination of First-tier Tribunal Judge Hands dismissing her appeal against the respondent's refusal to grant her leave to remain in the United Kingdom outside of the Immigration Rules.

2. The appellant entered the UK on 26 December 2011 with entry clearance which conferred leave to enter as a visitor with leave until 15 June 2012. Her conditions of entry were that she had no right to work and no recourse to public funds. She returned to Ghana briefly in April 2012. On 3 May 2012 she made an application to remain in the UK to enable her to support her daughter and grandchildren when her daughter goes to work at night as her daughter is finding it difficult to find someone to look after the children at night. The application was refused by the respondent on 5 July 2013.

3. The respondent was not satisfied that the family life the appellant claimed to have with relatives in the UK constituted a family life as set out in Appendix FM of the Immigration Rules. Her claim was considered under Article 8 which, from 9 July 2012, fell under paragraph 276ADE of the Immigration Rules. The appellant has not lived continuously in the UK for at least twenty years. At the time of the decision she was 55 years of age and had spent 54 years in Ghana and had not lost ties with her home country in the time she had been in the UK. The respondent took the view that there were no exceptional circumstances which would justify the grant of leave outside the Immigration Rules.

4. In her grounds of appeal against the respondent's decision, the appellant claimed that the respondent had not given sufficient consideration to her application in respect of the caring responsibilities she has as a grandmother. Her daughter's hours are sometimes during the night and without the appellant's support, the children would need childcare from outside the home. Her daughter has started a midwifery course and the combination of her busy work schedule and college work will be very stressful and demanding hence she cannot care and support her children alone without the support of t he appellant. They live in a two bedroom house and are provided for by the appellant's daughter and there will be no need for the appellant to depend on public funds.

5. The appellant's appeal was considered on the papers by the judge as requested by her and to which the respondent raised no objection. There was a letter of support from the appellant's daughter confirming her circumstances. The letter was considered by the judge.

6. The judge also considered a letter at Appendix F of the respondent's bundle which was a letter written by the appellant's the son-in-law, Emmanuel Kondonu to the UKBA. It was dated 15 August 2012. It talked of the eldest child as his son. He referred to the appellant's visit to Ghana in April 2012 when she found out about her husband's health problems and his inability to care for himself. The son-in-law said he had received calls from members of the wider family asking to send the appellant home and that the appellant's daughter Agatha was ignoring the family conflict that may arise if the appellant did not return home immediately.

7. The judge said this letter could only be given the same evidential weight as that from the appellant's daughter and taken at face value it told her three things. Firstly, the appellant has family in Ghana and ties to that country that have not been severed. Secondly, there are alternative arrangements for the care of the children that can be put in place during the appellant's daughter's night shift commitments and that day care for the children is already in place. Finally the appellant's daughter may not work the number of hours she claims and can be at home to care for the children.

8. The judge found that the appellant had provided evidence of her daughter's work and study which she accepted were genuine. The evidence did not tell her the hours the appellant's daughter is expected to work and the two pay slips presented were for the same period in respect of two different jobs. The rosters did not give any indication of who the roster was for. A letter from Redbridge College states the student's attendance at college would exceed 21 hours due to extracurricular activities, study sessions and enrichment. It did not say that these were mandatory or that they could not be done at home. In any event, the course referred Access to Higher Education Diploma and not a midwifery course as claimed by the appellant and her daughter.

9. The judge found that the appellant has not discharged the burden of proof on her to demonstrate that her circumstances were such that she ought to be afforded preferential treatment to enable her to remain in this country to look after her grandchildren.

10. The judge found that there was insufficient evidence before her to establish that she cares for her grandchildren on a regular basis. Such care may be classed as work and the appellant, by terms of her current leave to remain in this country, is prohibited from work. While she may not receive payment for caring for the children, she is remunerated by being provided with accommodation free of charge and being maintained by her daughter free of charge. The letter from Emmanuel Kondonu indicated that he is available to provide care for the children in her absence and that childcare is available to the eldest child, at least, during the day. The appellant has family ties to Ghana where her husband and other family members reside. She arrived in this country on 26 December 2011 and therefore has not been in this country for any substantial length of time. She has spent 54 years in Ghana prior to this. The two children were born prior to her arrival and there is no indication her daughter was unable to manage these children prior to her mother's arrival.

11. The judge considered the appellant's appeal under Article 8 and dismissed it on the basis that an appellant does not by virtue of Article 8 get to choose where they live. The appellant has no legitimate expectation to remain in this country. Whilst her removal would interfere with a family life she currently enjoys, her removal would be in accordance with the law

and proportionate when balanced against the implementation of a proper system of immigration control.

12. The appellant attended the hearing without legal representation. She spoke through a Twi interpreter.

13. She claimed she was not aware of the hearing before the First-tier Tribunal. I find that she had indeed requested that her appeal be considered on the papers, which is what the First-tier Judge did.

14. I got the interpreter to read the letter her son-in-law had sent to the UKBA to her and also paragraphs 9 and 10 of the determination where the judge had considered the letter. This was because the grant of permission said that the appellant was not aware of the correspondence considered by the judge. Permission was granted in the light of the factors referred to and the issues arising from the correspondence from Mr Kondonu.

15. Mr Avery said that the appellant should have been aware of the letter from her son-in-law as it was included in the respondent's bundle. The respondent's bundle would have been served on the appellant as she did not have a legal representative.

16. In a letter written by the appellant to the First-tier Tribunal dated 11 March 2014 she denied the allegations made by Mr Kondonu. She maintained that she would like to remain in the UK to care for her two grandchildren.

17. I find that on the evidence before the judge, she did not make an error of law. The letter from Mr Kondonu was written to the Secretary of State and formed part of the Secretary of State's bundle at Annex F. The judge would not have known that the appellant was not aware of this letter. As the appellant was without legal representation, I accept Mr. Avery's submission that the respondent's bundle would have been served on her. The appellant had asked for the appeal to be determined on the papers. In the circumstances I find that the judge was entitled to consider all the evidence that was before her from both the appellant and the respondent. I find that the judge did not err in law in considering the letter from Emmanuel Kondonu. In any event, the judge was right to say that the letter could only be given the same evidential weight as the letter from the appellant's daughter. I find that the judge reached conclusions that were open to her on the evidence.

18. I find that the judge's decision dismissing the appellant's appeal does not disclose an error of law. The judge's decision shall stand.

Signed Date

Upper Tribunal Judge Eshun