



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

Appeal Number: HU/09296/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 26 September 2017**

**Decision & Reasons Promulgated
On 29 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR NANA AMOAH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer

For the Respondent: Mr K Siaw, R Spio & Co Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against a Decision and Reasons by First-tier Tribunal (Judge Robinson) (FTT) promulgated on 11 January 2011 in which he allowed the appeal on human rights grounds under Article 8. I shall refer to the parties as the Secretary of State and the Claimant.
2. The Secretary of State raised two grounds of appeal. The FTT applied the wrong and a less rigorous test under Ex 1, namely "very significant obstacles to family life being enjoyed in Ghana". The test under Ex 1 is insurmountable obstacles defined in Ex 2 as "... *very significant difficulties*

which would be faced by the appellant or her partner in continuing family life together outside the UK and which could not be overcome or would entail very serious hardship for the appellant or her partner". Further the FTT failed to carry out any proportionality assessment under Article 8 as the FTT regarded consideration of Ex 1 as determinative.

3. Permission to appeal was granted on the first ground and was silent on the second ground, on 21st July by FTJ Brunnen. He stated that it was arguable that a less demanding test was imposed. Had the correct test been imposed the decision might have been different.
4. As I indicated at the outset, I am satisfied that there was an error of law, by way of a misdirection as in the decision the FTT referred to the incorrect wording for the test in EX.1(b) although the test is correctly set out in the determination at [18]. The real question is whether this amounts to a material error of law. Having regard to all of the evidence I am satisfied that the evidence as a whole was capable of meeting EX.1(b) as defined in Ex 2, which states "or would entail very serious hardship for the appellant or his or her partner".
5. I am satisfied that the findings of fact (which are preserved and not disputed) made by the FTT on the evidence before it establish that the Claimant's partner would experience very serious hardship if her husband were to leave the UK [32]. These hardships are emotional in the light of the close and caring relationship as they would be separated. In terms of daily care there would be hardship as the Claimant provides most of the help for daily living activities. The GP stated that the Claimant provided the bulk of the care although some care is provided by an agency [26]. In Ghana there is not the high level of medical treatment available to which the Claimant's partner is entitled as a British citizen and there would be no suitable accommodation. The FTT found that the home had been adapted for wheelchair use [26]. The evidence was of very limited ties in Ghana. In light of the partner's medical conditions (a stroke, breast cancer and HIV) for which she requires on going treatment and medication as stated in the GP report [22] to be "chronic", in addition to which she has mobility problems. The GP stated that her conditions "which require very advanced medical treatment for the highly complex medical conditions in the UK". Having regard to the totality of the evidence I conclude that there would be serious hardship for the partner because the Claimant's removal would result in a significant decline in her level of function [25] as would the partner's move to Ghana in order to maintain family life. The FTT placed significant weight on the detailed report from the GP. I therefore conclude that on that basis that the first ground of appeal is not made out as the error is not material and to that extent the decision remains.
6. However, there is still the issue of whether or not Article 8 has been made out and proportionality. Based on the facts and reasoning above I am satisfied that there are compelling circumstances which justify

consideration of Article 8 outside of the Rules. I rely on the same in reaching my decision that there is family life, and there would be an interference to that family life and the partner's private life if the appellant were removed to Ghana. The decision is not lawful as the Claimant can meet the Rules under Ex1. My assessment of proportionality leads to the balance lying in favour of the Claimant by reason of the serious hardship that his partner would suffer. Whilst accepting that the public interest (as provided in section 117B of the Nationality, Immigration & Asylum Act 2002) is of significance and carries weight in the light of the Claimant's unlawful and precarious immigration status; he entered as a visitor in 2013 and in 2015 applied for leave as a partner, as does the economic argument given that the Claimant is presently unable to support himself independently. There is no additional recourse to public funds as the partner as a British citizen is entitled to receive care and NHS treatment.

Notice of Decision

7. The Secretary of State's appeal is dismissed. The FTT decision shall stand. The Claimant's appeal is allowed on human rights grounds.

Signed
G A Black

Date 28.9.2017

Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed

Date 28.9.2017

G A Black
Deputy Upper Tribunal Judge