Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/34934/2015**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 27 September 2017	**On 13 October 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MRS EDNA BOYE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Ms M Cleghorn	(Counsel)
For the Respondent:	Mr M Diwnycz	(Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal, brought with permission, to the Upper Tribunal from a decision of the First-tier Tribunal (hereinafter "the tribunal") whereupon it dismissed her appeal against the Secretary of State's decision of 22 April 2015 refusing to grant her indefinite leave to remain under Article 8 of the European Convention on Human Rights (ECHR).

2. For the reasons set out below, I have decided to allow the claimant's appeal to the Upper Tribunal, to set aside the tribunal's decision and to remake the decision myself in the claimant's favour.

3. The claimant is a national of Ghana. She says that she was brought to the United Kingdom when she was an 11 year old child and that she has been here, without any break, ever since. She sought indefinite leave to remain on the basis of her claimed long residence but relying, in

particular, on paragraph 276 ADE of the Immigration Rules, asserting in that context that she has lived continuously in the United Kingdom for at least 20 years.

4. The Secretary of State did not dispute that she had been in the United Kingdom since a date in 1997 (see paragraph 36 of the "Reasons for Decision" letter) but that was not sufficient to give her the required 20 years residence which has to be assessed as at the date of the application. The Secretary of State also concluded that she could not establish entitlement under Article 8 of the ECHR outside of the rules.

5. As to the claimant's personal circumstances, she is married to one Richard Tsenoukpor, a national of Ghana. That marriage took place in the United Kingdom in 2005. The couple are still together and have three children who are aged two years, five years and seven years respectively. None of the children are British citizens.

6. The tribunal, like the Secretary of State, concluded that the claimant had demonstrated that she had been in the United Kingdom since 1997 but not before. It heard evidence from her, from one Doris Blavo with whom she had lived for a period of seven years from 1998, and from her brother Dennis Boye. It found her not to be credible and did not believe she had told the truth about having been in the United Kingdom at any stage prior to 1997. The tribunal explained all of that in this way:

> "How Long Has the Appellant Been Continuously in the United Kingdom?
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> 17. The appellant's case is that she arrived in the United Kingdom in 1992 with her brother Dennis and sister Nina when she was 11 years old. She had lived in Ghana until then. Her father died. Someone arranged for her to be brought to the United Kingdom. She travelled with a lady called Mavis who was her aunt. The respondent does not accept that the appellant was in the United Kingdom before 1997 or 1998.
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> 18. The appellant relied upon her own evidence, the evidence of Mrs Doris Blavo, and of her brother Dennis. She produced written statements made by number of witnesses who did not attend to give evidence. She also produced documents in support of her appeal. There were problems with all of these areas of evidence.
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> 19. None of the documents which the appellant produced shows her to be in the United Kingdom earlier than 1997. A letter dated 11 April 2011 from South Thames College. Is indicated that the appellant was enrolled as a student there between 8 September 1997 and 26 June 1998. A document from the DVLA showed that she had applied for a provisional driving licence which had been issued on 28 August 1997. It gave the appellant's address at that time as [ ]. The appellant had provided copies of her GP medical notes. The earliest date in them was 20 January 1999. The notes showed the appellant to be registered with a GP in Leeds.
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> 20. People leave documentary evidence of their presence. I accept that for someone recently in the United Kingdom there may be little documentation especially if as the appellant says she arrived in the United Kingdom as an 11-year-old. The obvious records one would expect for an 11-year-old are those from a school and from a GP. None of this is available. The appellant's explanation is that she did not go to school apart from three months at school called St Mark's. She had registered there using a false name. She stopped going to that school. She did not see a doctor between her arrival in the United Kingdom in 1992 and 1999.
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> 21. It is difficult to believe that an 11-year-old could remain in the United Kingdom for five years and not see or be registered with a GP or attend school. It would be remarkable if she had attended school under a false name for three months and then stopped going. This would be bound to attract attention.
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> 22. The appellant and her brother gave evidence. I am entitled to regard anything they say on the matter of their immigration status with circumspection. Both of them have been in the United Kingdom illegally for a long periods although the appellant's brother has now been granted discretionary leave. The appellant has made a number of applications for leave all of which have been refused.

23. The appellant's case is that she initially moved to Shrewsbury in 1992. In 1993 she moved to London and lived at [ ], Battersea with her grandmother's sister Phyllis Vanderpuje. She then moved in with Mrs Doris Blavo in 1998. She lived with her at [ ], London for seven years until she moved to Leeds in 2005. The medical notes would seem to indicate that she had been in Leeds in 1999. They refer to attendances at the York Road Surgery. The appellant was not able to give any explanation for this. I accept however that some of these entries were shown to have been entered later and it may be that they refer to earlier attendances at a different GP.

24. The same GP notes refer to her as living at [ ] before moving to Leeds. This is not an address which the appellant said that she had lived at. She was asked about this. She said that this was the address which the appellant said that she had lived at. She was asked about this. She said that this was the address of Mrs Blavo's daughter Roberta. Another address had been given in the application for the driving licence referred to above. This is not an address that the appellant gave evidence she had lived at. She was asked about this. She said that Mrs Blavo's husband lived there and that she sometimes lived there as well.

25. Mrs Blavo gave evidence. She initially said that she had first met the appellant in 1998 or 1999. She then said that she had met her in 1996. She then said that the appellant used to come to her house she thought in 1999. The appellant had lived with her for two or three years before moving to Leeds. Her evidence was at best vague. She had a brain injury in 2015 which may account for this. Her account of the appellant moving in with her in 1998 for two or three years is clearly inconsistent with what the appellant says. The appellant says that she was there between 1998 and 2005 when she moved to Leeds.

26. A number of other witnesses provided statements or letters to confirm the date of the appellant's presence in the United Kingdom. These are Phyllis Vanderpuje, Irene Adams, Roberta Hassan, and Deborah Akrong. None of these witnesses attended to give evidence or be cross examined. It was not possible for their evidence to be tested. I consequently put little weight upon what they say.

27. The appellant has known since at least 2006 that there was a dispute about the date that she arrived in the United Kingdom. She might have been expected to make further efforts to establish when she came here. She arrived by plane. She must have travelled with some documentation. The Ghanaian authorities could have been contacted to ask about the date of issue of a passport. The appellant claims not to have been in school in the United Kingdom. She will have been in school in Ghana until the age of 11. Her school could have been contacted to see if they had records of when she left. This has not been done. Her case is that she came to the United Kingdom because her father had died. A copy of his death certificate would have established when he died.

28. Ultimately the responsibility of proving that she had been in the United Kingdom for 20 years prior to the application is on the appellant. The absence of documentary evidence before 1997, the failure to make reasonable attempts to obtain other evidence, the inconsistencies in the documentary evidence she has produced, and the inconsistencies in the oral testimony leave me to find that she has not done so. I do not find that she entered the United Kingdom as she claims in 1992. I find that the earliest she can establish that she was in the United Kingdom was when she started her college course on 8 September 1997. The appellant does not succeed under paragraph 276 ADE(1)(iii) of the Immigration Rules."

7. The tribunal then went on to reject some further arguments concerning the best interests of the children and concerning article 8 outside the scope of the Immigration Rules but it is not necessary, for the purposes of this decision, for me to set out what it had to say about those particular aspects.

8. The claimant's appeal having been dismissed, she sought and obtained permission to appeal to the Upper Tribunal. There were four separate grounds of appeal but I have found it necessary only to focus upon those which relate to her credibility and to the reasoning of the tribunal which I have just set out above.

9. Having heard from the representatives I indicated that I had decided that the tribunal had erred in law. I shall now explain why I have reached that view.

10. The tribunal, at paragraph 21 of its written reasons of 13 December 2016, observed that it was "difficult to believe that an 11 year old could remain in the United Kingdom for five years and not see or be registered with a GP or attend school". Another way of looking at it might be to think that, as is said to be the position here, adults looking after a young child who was in the United Kingdom illegally, would not wish that child to have very much contact with authorities such that there might not be very much in the way of a paper trail created at all. The claimant's evidence was to the effect that she had not attended school in the United Kingdom except for a very brief period and under a false name. Of course, I cannot find an error of law simply because I might have perceived things somewhat differently to the tribunal. But the tribunal did not, at any stage, consider the obvious possibility that those looking after an unlawfully present child might not want that child to have very much in the way of contact with medical practitioners or providers of education or indeed other branches of officialdom.

11. At paragraph 22 of the written reasons the tribunal observed that it was "entitled to regard anything" which the claimant or her brother had said regarding their respective immigration status "with circumspection". Ms Cleghorn was heavily critical of that passage. It seems to me, however, that the tribunal was entitled to exercise some caution when receiving evidence from knowing overstayers. The claimant was, of course, a knowing overstayer at some point after her arrival. But what the tribunal did not do was consider the possibility that, in all the circumstances including the circumstance (the claimant says) of being brought to the United Kingdom as a child, that a reluctance to approach the Home Office to regularise status might be in some respects understandable if not excusable. It did not consider the possibility that, against that background, her credibility might not be seriously damaged on that account alone.

12. The tribunal, at paragraph 27 of the written reasons, expressed concern and took a point against the claimant for what it perceived to be a failure to obtain or at least try to obtain documentary evidence from Ghana which might support her account of having come to the United Kingdom at the age of eleven. Whilst, in general terms, a tribunal is perfectly entitled to draw adverse inferences from a failure to obtain easily obtainable corroborative evidence, its apparent expectation that there might be records kept of her attending a school in Ghana up to the age of eleven and then ceasing to attend seems to me to have been significantly optimistic. There was no material before the tribunal suggesting it likely that such records might be kept and indeed, what material there was rather seemed to point the other way. I would make a similar point with respect to the tribunal's apparent belief that a copy of her father's death certificate would also have been readily obtainable.

13. The tribunal, at paragraph 28, referred to what it described as "the inconsistencies in the oral testimony". I am not entirely sure what inconsistencies it had in mind though both representatives appeared to think it related to differences between her recollection of where she had lived at various times when compared with that of Doris Blavo. But the tribunal itself recognised that a brain injury which Doris Blavo had suffered might account for any confusion. Further, I am not able to detect any particular inconsistencies which might reasonably have been thought to be of any real significance bearing in mind any understandable difficulty in recollecting precise detail of matters which occurred a considerable number of years ago.

14. I do not think that any one of the above considerations, when taken in isolation, would be sufficient to justify setting aside the tribunal's decision. However, those points when taken together gain cumulative force. I am satisfied that the credibility assessment is inadequate or, at least, that the negative credibility conclusion has been inadequately explained. In truth, Mr Diwnycz did not seek to strenuously persuade me otherwise.

15. So, it was on the basis of the above reasoning that I decided to set aside the tribunal's decision. It was then agreed that matters could immediately proceed to the remaking of the decision.

16. After it was verified that I had before me all of the documentation which had been before the tribunal, I heard oral evidence from the claimant only. In evidence in chief she simply adopted the content of her witness statements of 24 September 2013 and 1 December 2016. In response to cross-examination and some questions put by me, she said that she had tried very hard to find documentary evidence of her presence in the United Kingdom prior to 1997 but had been unsuccessful. She had come to the UK in 1992. She had arrived some time before her birthday (she was born on 23 September 1980). It had been difficult to get all of the required documentation together because she had resided at different places during different times. She has lived in Shrewsbury, London and Leeds. She could recall starting to ask questions as to why she was not going to school when other children were. She did not understand at the time why she could not go to school. She had not been in the United Kingdom very long before she started asking such questions but she did not get satisfactory answers. She would say that she used to be a very healthy child. She had gone to school in Ghana but did not know if there might still be any record of that now.

17. I then heard submissions from the two representatives albeit that both were very brief. Mr Diwnycz said that he would rely upon the content of the "reasons for decision" letter. It was accepted that the claimant had been in the United Kingdom during 1997 and since. No further submissions were made by him. Ms Cleghorn simply said she would rely upon the evidence before me.

18. It is common ground between the parties that if the claimant is able to demonstrate she has lived continuously in the United Kingdom for at least 20 years as at the date of the relevant application, she will succeed under paragraph 276 ADE of the Immigration Rules. The relevant application was made, as I understand it, on 4 April 2014.

19. The claimant gave oral evidence, barely challenged before me, to the effect that she had come to the United Kingdom in 1992. That is consistent with what she has always asserted. Although she has not been able to provide documentation spanning the years 1992-1996, she has been able to provide documentation from 1997 so has, at least, been able to corroborate her residence since that time.

20. In my judgment it is credible that she would have been here since 1992 yet would be unable to provide documentary evidence of it. I think it is entirely plausible that those looking after her might not have wanted her to come into contact with officialdom of any sort. I find her account of not having been able to go to school (save for three months under a false name) and her account of becoming concerned by that and asking questions about it to be credible. I find her assertion that she never received any satisfactory answers to the questions she posed about this to be entirely credible too.

21. In general terms it is understandable that anybody, including a child, present in the United Kingdom illegally is less likely than a person present here lawfully to generate and be able to produce corroborative documentary evidence of presence. An illegal immigrant would plausibly wish to remain below the radar as far as possible and those assisting a child illegal immigrant would wish for that child to do so too. That is for obvious reasons with respect to the risk of detection.

22. In the above circumstances I conclude it is more likely than not that the claimant has been in the United Kingdom for a continuous period since 1992 and that, therefore, she had clocked up the requisite 20 year period by the time her application was made. Accordingly, her appeal against the Secretary of State's decision succeeds.

Decision

23. The decision of the First-tier Tribunal involved the making of an error of law. That decision is set aside. In remaking the decision I allow the claimant's appeal against the Secretary of State's decision of 10 September 2015 under the Immigration Rules.

Signed: Date: 12 October 2017

Upper Tribunal Judge Hemingway

Anonymity

I make no anonymity direction. None was sought.

Signed: Date: 12 October 2017

Upper Tribunal Judge Hemingway

TO THE RESPONDENT
FEE AWARD

I make no fee award.

Signed: Date: 8 October 2017

Upper Tribunal Judge Hemingway