IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001151

First-tier Tribunal No:
HU/51364/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 June 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

LAWRENCIA ACKUAKU
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Afame Offiah, solicitor of JDS Solicitors Ltd
For the Respondent: Ms Julie Isherwood, Senior Presenting Officer

Heard at Field House on 7 June 2023

DECISION AND REASONS

1. The appellant appeals, with the permission of First-tier Tribunal Judge Grant-Hutchison, against the decision of First-tier Tribunal Judge Davey. By his decision of 9 February 2023, Judge Davey ("the judge") dismissed the appellant's appeal against the respondent's refusal of her human rights claim.

Background

2. The appellant is a Ghanaian national who was born on 14 August 1984. She entered the United Kingdom as a visitor on 1 April 2004. She overstayed upon the expiry of her visa on 21 July that year.

3. In 2009, the appellant applied for a Residence Card under the Immigration (EEA) Regulations 2006. The application was refused in November that year.

4. The appellant remained unlawfully for a further seven years. She was served with an IS151A – which is a notice to an overstayer – on 22 September 2016. That prompted her to make an application for leave to remain on human rights grounds. That application was rejected on 5 November 2016.

5. On 12 November 2016, the appellant made another application for leave to remain on Article 8 ECHR grounds. The application was refused and certified, affording the appellant only a right of appeal after removal.

6. The appellant made another application in December 2017 which was rejected on 26 April 2018. She then made a valid application on 24 May 2018. That application was refused with a right of appeal.

7. The appellant exercised her right of appeal. Her appeal was dismissed by the First-tier Tribunal. Permission to appeal was refused by the FtT and the Upper Tribunal and the appellant had exhausted her appeal rights by 18 February 2020.

8. The appellant made her final application for leave to remain on Article 8 ECHR grounds on 15 July 2020. In that application, she stated that she wished to remain with her partner, Mr Kelvin Adu, a British citizen with whom she had begun a relationship in December 2017. The application form stated that Mr Adu was still married to a British citizen but that there were pending family proceedings which prevented him from divorcing his wife. It was suggested that Mr Adu could not live with the appellant in Ghana, despite being a dual Ghanaian/British national, because he had children from his relationship as well as ‘work and other community ties’. Mr Adu was said to be a Revenue Officer for a London Borough earning £30,000 per annum and renting a council property for £400 per month.

9. The appellant’s application was refused on 10 April 2021. She did not accept that the appellant could meet the Immigration Rules or that her removal would be contrary to Article 8 ECHR. I note that one of the grounds for refusal under the Immigration Rules was that the appellant was said to owe a litigation debt to the respondent.

The Appeal to the First-tier Tribunal

10. The appellant appealed. In preparation for the appeal, the respondent filed and served a bundle which contained the refusal letter, the application form and the evidence provided in support of the application. The appellant's solicitors filed and served a bundle which contained a skeleton argument, short witness statements made by the appellant and the sponsor, some poor photocopies of the sponsor's children's birth certificates and a letter from the appellant's Pastor.

11. The appellant was represented by Mr Offiah before the judge. He heard evidence from the appellant and the sponsor and submission from Mr Offiah. He found that there were no very significant obstacles to the appellant's re-integration to Ghana; that there were no insurmountable obstacles to the appellant and the sponsor relocating to Ghana; and that the appellant's removal would not be contrary to Section 6 of the Human Rights Act 1998.

The Appeal to the Upper Tribunal

12. The grounds of appeal are as follows. Firstly, that the judge failed to consider the issue of the appellant's alleged litigation debt to the Home Office. Secondly, that the judge gave inadequate reasons for the findings he had reached about the continuation of the relationship in Ghana. Thirdly, that the judge had failed to consider adequately or at all the obstacles which faced the appellant on return to Ghana (paragraph 276ADE(1)(vi) of the Immigration Rules refers).

13. Judge Grant-Hutchison considered each of these grounds to be arguable.

14. I heard Mr Offiah in amplification of the grounds of appeal. I did not need to call on Ms Isherwood.

Analysis

15. As Mr Offiah quite properly accepted during oral argument, the difficulty with each of the grounds of appeal is that there was nothing before the judge which began to justify a conclusion that the appellant's appeal could be allowed on human rights grounds.

16. The judge noted at [8] that "the presentation of the appeal and the evidence needed got to grips with the substantive issues". That observation was entirely justified.

17. At [9], the judge set out what were said by the sponsor to be the insurmountable obstacles to family life continuing in Ghana. There was reference by the judge to the sponsor's children and to the mental health of his ex-wife but there was little evidence of either limb of this claim. There was nothing before the judge to provide anything other than the

identity of the sponsor's estranged wife. There was no evidence about her mental health or of the sponsor's ongoing role in her life. Had the judge concluded on the basis of the evidence presented to him that there were insurmountable obstacles to the continuation of the relationship in Ghana, he would have reached an irrational conclusion. That was self-evident in this case, and it is clearly the reason that the judge's conclusions were expressed as concisely as they were at [9] of his decision.

18. The preparation of this appeal was so poor that the only evidence of the existence of the sponsor's children were two birth certificates which appear to have been photographed on a duvet by a mobile phone. I was not able to read those birth certificates, nor were the advocates. The sponsor was in attendance before me and he confirmed that his two children were born in 2002 and 2005.There was no further written evidence before the FtT to suggest that the sponsor had any relationship with these children, or that they even saw him at all. In any event, given their ages and the age of the oldest in particular, there was no evidence to show that the children and their father enjoyed a relationship which displayed more than normal emotional ties. The judge evidently reached the only conclusion which was properly open to him on the evidence.

19. At [10], the judge engaged with the submission that the appellant would experience very significant obstacles to her integration on return to Ghana. He was evidently aware of the fact that she had been in the UK for many years. At [7], he also made reference to her family situation in Ghana and the fact that she had 'no property holdings, no savings or business interests there'. At [10]-[11], the judge made remarks which again indicated his concern about the preparation of the appeal, noting that there might have been 'other evidence that was not called on behalf of the appellant'. At [11], he made the only finding which was rationally open to him on the evidence, which was that the appellant could not meet the comparatively high threshold presented by paragraph 276ADE(1)(vi) of the Immigration Rules.

20. The grounds complain about the brevity of the judge's reasoning and his failure to direct himself in accordance with authority. It is nothing short of extraordinary, however, that the sections of the authorities which are cited in the grounds (YM (Uganda) v SSHD [2014] EWCA Civ 1292 and Ogundimu [2013] UKUT 60 (IAC)) relate to the previous version of the Rules. The judge would have erred if he had referred to those cases; as was explained at [55] of AS (Iran) v SSHD [2017] EWCA Civ 1284; [2018] Imm AR 1698, the tests are materially different. There is no reason on the face of the decision to think that this experienced judge was not aware of the authorities on the current version of this provision, including SSHD v Kamara [2016] EWCA Civ 813; [2016] 4 WLR 152 and Parveen v SSHD [2018] EWCA Civ 932.

21. Mr Offiah readily accepted the fundamental difficulties with this case when I put the absence of evidence to him. He accepted that there was nothing he could realistically say to persuade me that there was evidence

before the judge which could properly have generated a different conclusion, whether in relation to paragraph 276ADE(1)(vi) or paragraph EX1 of the Immigration Rules. He accepted that there was nothing before the judge which could have begun to justify a conclusion that the removal of the appellant after nineteen years of overstaying would be a disproportionate course. These aspects of his submissions therefore withered on the vine.

22. Mr Offiah nevertheless expressed some concern about the respondent's suggestion in the letter of refusal that the appellant owes a litigation debt to the Home Office. Whilst consideration of this point could not have made a difference to the outcome of the appeal, he was concerned that it had been left 'hanging' by the absence of reference to it in the decision of the First -tier Tribunal.

23. Given my conclusion that the appellant's other grounds are not made out, and that the judge would have reached an irrational conclusion if he had allowed this human rights appeal, this is not a point which could have had any material impact on the outcome of the appeal. I should note the following, however.

24. The litigation debt alleged in the refusal letter is not particularised in any way. There is no indication of when it was incurred or of how much it is said to be. As contended by Mr Offiah throughout the life of this appeal, the respondent has acted contrary to her own policy in failing to provide these basic details.

25. Ms Isherwood sought to give those details at this stage, as they were apparently available on the Home Office systems all along. Those details are immaterial to my conclusion that there is no material error of law in the judge's decision, however, and it will be for the respondent to persuade any subsequent judge that she should be allowed to rely on that debt notwithstanding her failure throughout the life of this appeal to particularise the point. In that connection, regard might be usefully be had to what was said by Phillips LJ (with whom Underhill LJ and Sir Stephen Irwin agreed) at [46] of R (Al -Sirri) v SSHD [2021] EWCA Civ 113; [2021] 1 WLR 2137.

Notice of Decision

The decision of the FtT did not involve the making of an error on a point of law and the appellant's appeal is dismissed.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 June 2023