**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/06603/2015

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination & Reasons Promulgated** |
|---|---|
| **On 19th October 2017** | **On 09th November 2017** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MRS WILHEMINA ANSONG**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Harding (Solicitor), Grange & Castle Solicitors
For the Respondent: Mr C Avery (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge J Bartlett, promulgated on 27th October 2016, following a hearing at Taylor House on 18th October 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## The Appellant

2. The Appellant is a citizen of Ghana, a female, and was born on 7th July 1963. She appealed against the decision of the Respondent dated 16th September 2015, refusing her application to remain in the UK on the basis of her family and private life.

## The Appellant's Claim

3. The Appellant's claim is that, although she had entered the UK as a visitor initially on 26th November 2000, she had then gone on to marry a British citizen by the name of Mr Francis Katey in 2012, and that he was settled in the UK and worked as a builder. Additionally, the Appellant also claims that whilst in the UK, she has been looking after her sister who had been diagnosed with cancer, and she helped to bring up her niece and nephew.

## The Judge's Findings

4. The judge found the Appellant to be a credible witness. He accepted that she came to the UK in 2000 and intended a visit for one month only. Thereafter circumstances changed where her sister was diagnosed with cancer. She began to look after her sister and her niece and nephew. The judge noted how the Appellant's nephew attended the oral hearing in support of her (paragraph 12). However, the judge went on to hold that the Appellant had a mother and siblings in Ghana with whom she was in contact (paragraph 13).

5. As far as her husband was concerned, he was a British citizen and the judge observed that, "however he is originally from Ghana and has, on his own evidence, been in the United Kingdom for ten years" having spent the first 40 years of his life in Ghana where he was educated and had a career (paragraph 14). He also observed that Mr Katey would not want to wish to return to Ghana, "however a preference is not the same as there being insurmountable obstacles" (paragraph 15).

6. In relation to the Appellant caring after her sister and her family, the judge observed that, "there are no such compelling circumstances in this case", even though it was the case that the circumstances do "demonstrate that she has a caring nature and it is without doubt that the care that she gave to her sister and her niece and nephew was invaluable". Even so, the judge held that "those circumstances, even when combined with the sixteen years she has been in the United Kingdom, and her marriage to a British citizen are not such to create compelling circumstances ...." (paragraph 18).

7. The appeal was dismissed.

## Grounds of Application

8. The grounds of application state that the judge did not give proper weight to the fact that the Appellant's husband was a British citizen settled in the UK when in the same breath he observed that the Appellant's husband

was also from Ghana and therefore could relocate there. Such a conclusion fell foul of the statement by Sedley LJ in **VW (Uganda) [2009] EWCA Civ 5** where it was held that,

> "If the Appellant's partner, for example, was familiar with Uganda, the consequences of removal might be that much less severe; but the impact on the rights attending his citizenship of this country would still weigh heavily in the scales." (paragraph 31).

9. Here the judge did not weigh heavily in the scales the impact of the rights attending upon the Appellant's husband's citizenship upon him.

10. Second, the judge failed to recognise that in considering the Appellant's "exceptional circumstances" in relation to the way in which she was looking after her sister and family, that the words "exceptional" did not mean "unusual or unique" (see **Agyarko [2017] UKSC 1** at paragraph 60).

## The Grant of Permission

11. Permission to appeal was granted on 16th August 2017 on the following basis. First, that the judge had accepted (at paragraph 14) that the Appellant's husband was a British citizen but continued by stating that, "however he is originally from Ghana ...". From this it was unclear where the judge was qualifying the fact of British citizenship held by the Appellant's husband.

12. Second, the judge created doubt as the weight to be attached to the marriage of the Appellant to a British citizen, given the reference at the outset of paragraph 14, notwithstanding the fact that the Appellant had been living in the UK for sixteen years, was married to a British citizen, and had been looking after her sister and her children. Accordingly, it was argued that compelling circumstances did exist in relation to Article 8 outside the Immigration Rules, which was not considered by the judge.

13. On 11th September 2017, a Rule 24 response was entered by the Respondent Secretary of State. It was said that there was nothing on the face of the determination to demonstrate that the judge was "devaluing" the British citizenship of the Appellant's partner. He was merely acknowledging the fact that the husband has a connection to Ghana. This was relevant to whether there were insurmountable obstacles in this case. Further, the judge has considered Article 8 outside of the Immigration Rules and he had referred to Section 117B of the NIAA 2002. The Appellant's adverse immigration history would have weighed heavily against her.

## Submissions

14. At the hearing before me on 19th October 2017, Mr Harding, appearing on behalf of the Appellant, submitted that the judge had erred in law for the following three reasons.

15. First, he should have considered the position outside the Immigration Rules, both in relation to the Appellant's British citizen husband, who did not wish to return to Ghana, and in relation to the Appellant herself, who had been looking after her sister and her children.

16. Second, the Supreme Court in **Agyarko** had established that "compelling circumstances" did not mean "unusual or unique" (at paragraph 60), and the tenor of the judge's determination appeared to indicate that this was how he had interpreted exceptional circumstances. Third, there was no proper consideration given to the Appellant's circumstances in relation to her care of her sister, which the judge had described as "invaluable" (paragraph 18).

17. For his part, Mr Avery submitted that there was no error of law. There was nothing to indicate that the judge had devalued the Appellant's husband's citizenship. The judge was merely looking at the consequences of relocation for the Appellant to Ghana.

18. Second, as far as Article 8 was concerned, the judge did consider whether there were exceptional circumstances and no doubt had in mind the observation in **Agyarko** (at paragraph 67) which had referred to "precarious family life" which required very strong circumstances. The judge did take into account the fact of the Appellant looking after her sister and children at paragraph 18.

19. In reply, Mr Harding submitted that there was nothing in paragraph 18 to show that the judge had applied the test of **Agyarko** requiring exceptional circumstances not to be treated as something unusual or unique.

## Error of Law

20. I am satisfied that the making of the decision by the judge did involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

21. First, the judge has recognised that the Appellant provided caring services to her sister and niece and nephew, "and it is without doubt that the care that she gave to her sister and her niece and nephew was invaluable" (paragraph 18). As against that, the judge has created a doubt as to the weight to be attached to marriage with a British citizen, Mr Francis Katey, and this is significant in the light of Sedley LJ's observation in **VW (Uganda)** that "the impact of the rights attending his citizenship of this country would still weight heavily in the scales" (paragraph 31).

22. Second, this doubt is exacerbated by the fact that the judge has observed of the Appellant's husband that, "however he is originally from Ghana …", because although this may simply just have been an observation of a factual position before the judge, it is not clear whether in so stating, the judge was qualifying the fact of British citizenship held by the Appellant's husband. What follows in paragraph 14 does not help clarify the matter in

this respect. This was important given that the Appellant's husband had been in the UK for ten years.

23. Finally, the fact that the Appellant gave care to a sister and niece was a matter that should have been properly weighed in the balance in relation to Article 8 outside the Immigration Rules because it does not find a proper location within the Immigration Rules itself.

24. Ultimately, the judge had to decide whether returning to Ghana for the purposes of obtaining entry clearance was disproportionate to the Appellant's rights and this evaluation was not properly conducted.

**Notice of Decision**

25. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be heard by a judge other than Judge J Bartlett so that a proper evaluation can be made on Article 8 considerations in the light of the facts found by the judge.

26. No anonymity order is made.

27. The appeal is allowed.

Signed Date

Deputy Upper Tribunal Judge Juss 8th November 2017