

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: HU/25489/2016**

**THE IMMIGRATION ACTS**

|  |  |
| --- | --- |
| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 30th May 2018** | **On 12th June 2018** |
|  |  |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**mrs mary mprerh agyepong**

(ANONYMITY order not made)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Seehra, Counsel instructed by Hunter Stone Law

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Ghana who is sponsored by her husband Mr Robert Chubb a British citizen. She submitted grounds for consideration on 27th October 2016 for leave to remain here on the basis of her private and family life which was refused and her subsequent appeal to First-tier Tribunal Judge O’Rourke dismissed in a decision promulgated on 1st March 2018. The Appellant sought to appeal that decision and in the grounds of application it was said that no consideration had been given to the fact in relation to the Appellant’s husband that COPD (chronic obstructive pulmonary disease) was a progressive illness. The judge had failed to make any findings in relation to that. It was said the judge had failed to make adequate findings upon the impact upon the Appellant’s husband with his known medical conditions were he to live in Ghana. It was repeated that COPD is a progressive illness. Moreover, there was no evidence that the Sponsor would be able to enter Ghana and the judge had failed to consider that the Appellant’s husband had a criminal conviction which would bar him from entry there.
2. Permission to appeal was granted by First-tier Tribunal Judge Page noting that it could not be argued that the judge had failed to give weight to the medical condition of the Appellant’s husband but it was arguable, possibly, that the judge did not consider the progressive nature of the illness and the effect upon him within the short and long term should he go to live in Ghana with the Appellant.
3. Thus, the appeal came before me on the above date.
4. For the Appellant Ms Seehra argued that there was considerable material in the medical notes that the condition was a serious one and that the judge had not considered the fact that the disease was a progressive one and this was a material error in law. There was also the point that the judge had not considered the difficulty of the Appellant’s husband gaining entry to Ghana and there was a point about whether or not the air pollution would harm him. I was asked to set the decision aside and remit the appeal to the First-tier Tribunal for a fresh hearing.
5. For the Home Office it was said there was no error. The judge had looked at the medical evidence. The judge was not bound to make findings on every single aspect of the case. It was known that COPD was a progressive disease but there was no expert report to say that this would have an immediate impact to the Appellant’s husband on entry to Ghana. Essentially this was an attempt to re-argue the case and the decision should stand.

**Conclusions**

1. The judge heard evidence from the Appellant and Sponsor both of whom provided witness statements. The judge did consider the Sponsor’s medical condition as set out in paragraph 19 of the decision. It was said that the Sponsor did not require either full-time or day-to-day care from the Appellant and in fact he said that he wished she would be allowed to go out to work to bring in money. Neither the Appellant’s statement nor the medical notes described such care needs beyond making him tea and cooking his meals and there was no evidence before the judge that he would be unable to do so himself. He did not use a wheelchair. Despite him stating that his medical problems went back to the 1980s he is described in a letter from his GP in 1996 as having no significant medical history and takes no regular medication.
2. The judge noted that he was diagnosed with COPD in 1999 and the same letter in 2010 stated that his heart sounds were normal and his chest entirely clear and his lung function being “pretty good” and the doctor’s suspicion that there was “a degree of anxiety here”. The judge noted the GP notes and that he had mild peripheral arterial disease. He made some further comments on that aspect. He noted that at paragraph 19(ix) the medical objective evidence did not state that persons suffering from COPD could not travel by air but that due precautions should be taken. He concluded that while the Sponsor certainly did have some medical conditions he was exaggerating their effect upon him.
3. The grant of application emphasised that COPD is a progressive illness and permission was granted because the judge failed to make any findings in relation to that element of the illness. However it cannot be said that the judge ignored the medical evidence and there was nothing before the judge to say how quickly the disease might progress generally or in the particular case of the Appellant’s Sponsor. There was nothing to say that any imminent issue would arise. The degree or extent of the progressive illness was not established and of course many diseases are progressive and appear over a lengthy period. There was no evidence to say that something was about to escalate and as Ms Everett put it there was nothing to say there was going to be an immediate impact on the Sponsor’s husband. In my view there are no further findings in relation to the medical evidence that the judge was required to make particularly in circumstances when there was no up-to-date medical report on the Sponsor setting out his condition and how that might impact on him if he was returned to Ghana. The judge did consider the significant medical notes that were before him as he referred to these fully in paragraph 19.
4. Whatever air pollution there might be in Ghana is somewhat unclear but there is nothing to suggest that this would cause a judge to be required to make any comment on it. It does not appear to have been really argued before the judge that the Sponsor could not gain entry to Ghana and I do not think there is any materiality to this point as the point is speculative.
5. In my view the judge dealt adequately with the Appellant’s Sponsor’s medical condition and made further findings in terms of “insurmountable obstacles” in paragraph 20 which are not challenged before me. Similarly, in paragraph 21 he noted there were no very serious obstacles to the Appellant’s reintegration into Ghana.
6. In all the circumstances it seems to me the judge gave clear and cogent reasons for finding as he did. As such there is no error of law in the judge’s decision which must stand.

**Notice of Decision**

1. The making of the decision in the First-tier Tribunal did not involve the making of an error on a point of law.
2. I do not set aside the decision.
3. No anonymity order is made.

Signed *JG Macdonald* Date 11th June 2018

Deputy Upper Tribunal Judge J G Macdonald

**TO THE RESPONDENT**

**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed *JG Macdonald*  Date 11th June 2018

Deputy Upper Tribunal Judge J G Macdonald