Upper Tribunal
(Immigration and Asylum Chamber)

Oppong (visitor – length of stay) Ghana [2011] UKUT 00431 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 4 October 2011	.....

Before

UPPER TRIBUNAL JUDGE P R LANE
UPPER TRIBUNAL JUDGE PERKINS

Between

ELIZA OPPONG

Appellant

and

ENTRY CLEARANCE OFFICER - ACCRA

Respondent

Representation:

For the Appellant: Mr P Turner, Counsel, instructed by Sebastians Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

Paragraph 41(i) of HC 395 requires a person seeking leave to enter the United Kingdom as a general visitor (*other than to accompany an academic visitor) to show that he "is genuinely seeking entry as a general visitor for a limited period as stated by him, not exceeding 6 months*".

An application for a visit visa which, if granted, could result in permission to spend more than 6 of 12 months in the United Kingdom is likely to be scrutinised rigorously but it is wrong to refuse someone entry clearance as a general visitor just because they have spent more than six of the last twelve months in the United Kingdom. In certain circumstances a person can utilise

paragraph 41 in order to visit the United Kingdom to provide temporary care for a person present here.

DETERMINATION AND REASONS

1. The appellant is a citizen of Ghana. She was born on 31 May 1954 and so is now 57 years old. She appeals a decision of the First-tier Tribunal dismissing her appeal against a decision of the respondent on 2 November 2009 refusing her entry clearance as a family visitor.

2. It is an accepted fact in this case that the appellant has close relatives who are lawfully resident in the United Kingdom. A brother suffered a stroke and needs long term care. His family have been providing that care and this appellant has spent a lot of time in the United Kingdom to assist that end. The final paragraph of the Notice of Immigration Decision dated 2 November 2009 is apposite and we set it out below:

> "You have stated you wish to visit the UK for six months to provide care for your brother Jacob Oppong. You have submitted evidence and stated at interview he suffered a stroke and that Doctor's report shows that this occurred in August 2007. You stated your role in his care is to cook for him, wash and iron his clothes and administer insulin and assist his carer in washing and dressing him and checking his blood sugar levels. Home Office records indicate you have travelled to the UK for the same reason in October 2007, July 2008 and February 2009 each time for a period of six months. You have stated your brother Jacob also has two other brothers, Theodore and Cornelius, in the UK and that Cornelius is living with Jacob during your absence. You have stated Theodore has power of attorney over your brother Jacob and deals with the financial matters of your ill brother. Whilst I accept you have family in the UK and you have been providing care for them on previous visits, you have been [in] the UK since October 2007 for this purpose leaving the UK after almost six months and returning to the UK shortly after leaving for a further six months period. Your passport and your statement at Gatwick to the Immigration Officer demonstrate you have been in the UK between 6 July 2008 and 4 January 2009 and between 22 February 2009 and 22 August 2009. Since July 2008 you have been in the UK for two days short of twelve months. The duration and frequency of your previous travel to the UK and the reliance upon you of your other brothers to provide care for your ill brother mean I am not satisfied that you are genuinely seeking entry as a visitor or intend to leave the UK upon completion of a visit to the UK. I am satisfied that your ill brother has other family members in the UK to provide for him in your absence and therefore I am not satisfied your case carries a sufficient, compelling or compassionate reason to travel. I am therefore not satisfied that you meet the requirements of Paragraph 41(i) and (ii) of the UK Immigration Rules HC 395 (as amended)."

3. In short, the respondent decided that the appellant was not genuinely seeking entry as a general visitor for a limited period as stated by her not exceeding six months and that she had not shown that she intended to

leave the United Kingdom at the end of the period of the visit as stated by her.

4. After the notice of appeal had been sent the case was reviewed by an Entry Clearance Manager who said at paragraph 3.4:

> "However, I note from our own records and from the appellant's own admission that between October 2007 and October 2009, the appellant spent a total of about sixteen months in the UK. In light of this I consider that the appellant has been residing in the UK whilst having been granted leave to enter as a visitor only."

5. The immigration judge in the First-tier Tribunal disagreed with the respondent. He found that the appellant did intend to return to Ghana in accordance with the leave which she sought but he dismissed the appeal solely with reference to paragraph 41(i) of HC 395. The Immigration Judge expressed his sympathy for the appellant's difficult family circumstances but said at paragraph 14 of his determination:

> "I find that [the appellant] cannot use the visit visa rules in order to provide ongoing long-term care of her brother even if it results in the appellant returning to Ghana on each occasion before the expiry of her stay. The level of and frequency of her visits leads her not to be a "genuine visitor" but a "resident"."

6. Here the First-tier Tribunal echoes the respondent's reasons and implies that both "visitor" and "resident" are precise terms in the Immigration Rules. Neither the word "resident" nor the word "visitor" is defined in the Immigration Rules. Various species of visitor, such as "business visitor", "support visitor" and "special visitor" are defined but the word "visitor" is not. Similarly the word "resident" or related words feature commonly in the Rules but there is no definition. We accept that the word "resident" implies a degree of permanence but this helps rather than hinders the appellant. An essential requirement of entry clearance as a visitor is an intention to leave the United Kingdom after the period of the visit. The proposed stay in the United Kingdom is not permanent but transient, even if an applicant is likely to want to make a fresh application very soon after the proposed visit has ended. The Rules give little opportunity for a person present in the United Kingdom as a visitor to switch to a different category and a visitor is not admitted to the United Kingdom for a purpose leading to settlement. A person who meets the requirements of the Rules for admission to the United Kingdom is not resident there.

7. Mr Turner submitted that the definition of "visitor" could be deduced from paragraph 41, which identified the "requirements to be met by a person seeking leave to enter the United Kingdom as a general visitor". These include intending to stay for a period of less than six months, intending to leave the United Kingdom at the end for the period stated, not intending to take up employment or engage in providing goods or services or undertaking a course of study, and being maintained and accommodated without recourse to public funds. A general visitor must

not intend to receive private medical treatment and must not be in transit.

8. There is an apparent tendency towards circularity in the Rule because one of the requirements for leave to enter as a general visitor is that the applicant is seeking entry as a general visitor (see paragraph 41(i)) but this does no more than require a person seeking entry as a general visitor to apply for entry clearance in that capacity. It does not, we find, illuminate the meaning of the phrase "general visitor".

9. Mr Melvin argued that the appellant was not a general visitor but a carer. Her reasons for coming to the United Kingdom were to care for her brother and the rest of her family. However laudable the appellant's motives might be she was not, he submitted, intending to travel to the United Kingdom for the purpose of the visit but for the purpose of being a carer and so she was outside the scope of the Rules.

10. Mr Melvin's argument depends on the status of "general visitor" being incompatible with the role of "carer". A problem with this argument is that it is contrary to the guidance published at paragraph 17.2 of the IDIs. This states:

> "There is no provision in the Immigration Rules for leave to enter to be granted solely to allow a person to care for a friend or relative in the UK. Where an applicant wishes to care for a friend or relative for a short period, s/he must first satisfy the requirements for the Immigration Rules relating to general visitors."

11. As it is a requirement of those Rules that a person must be genuinely seeking entrance as a general visitor it is impossible to give meaning to the IDIs unless it is accepted that being a general visitor is compatible with being a carer. This is not a surprising finding. Whilst a person intent on simply metabolising in the United Kingdom might come within the definition of "general visitor" most visitors are likely to have a more specific purpose, typically the pursuit of a certain kind of leisure. There is nothing about intending to care for a relative that is inherently incompatible with admission as a general visitor.

12. We agree with Mr Turner. If, in fact, a person who applies for entry clearance as a general visitor meets the requirements for admission as a general visitor then, that person is a general visitor and is entitled to entry clearance as a general visitor.

13. It may well be that a person who spends little time in his country of nationality will find it hard to prove that he satisfies the requirements of the Rules for entry clearance to the United Kingdom as a visitor. Certainly such a person should expect his application to be subject to rigorous scrutiny and a person who does not have a clear reason for wanting to make frequent visits may well find that his claims about the duration and purpose of the visit and his intention to return are not believed; but there

is nothing about a prolonged stay in the United Kingdom punctuated by return trips to the country of origin followed soon by a further application for entry clearance as a visitor which in itself as a matter of law disqualifies an applicant from being a visitor.

14. We have seen policy guidance entitled “General visitors Frequency and duration of visits” suggesting that “a visitor should not normally spend more than six out of any 12 months in the UK unless they have a good reason, such as receiving private medical treatment”. No doubt this is useful guidance but it does not state the law and it would be wrong to refuse someone entry clearance as a general visitor just because they have spent rather more than six of the last twelve months in the United Kingdom.

15. We are aware that Entry Clearance Officers can, in some circumstances, issue multiple entry visit visas. These are issued in accordance with policies that are not part of the Rules and, we understand, include a requirement that a person with a multiple entry visit visa does not spend more than 180 days of any one year in the United Kingdom. Nothing that we say here impacts on that practice.

16. It follows from this that the First-tier Tribunal’s finding that the appellant is not a general visitor is perverse. She can be both a carer and a general visitor. She has shown that she satisfies each of the requirements of paragraph 41 of the Rules and is, accordingly, entitled to entry clearance under the Immigration Rules.

17. We set aside the decision of the First-tier Tribunal and substitute a decision allowing the appeal.

Signed

Upper Tribunal Judge Perkins
Immigration and Asylum Chamber