



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/47082/2013

THE IMMIGRATION ACTS

Heard at Field House
On 3 September 2014
Prepared 3 September 2014

Determination Promulgated
On 10 September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

T A C K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Eteko, Legal Representative of Iras & Co
For the Respondent: Mr G Jack, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a national of Côte d'Ivoire (Ivory Coast), date of birth 3 June 1979, appealed against the Respondent's decision dated 23 October 2013 to refuse to vary leave to remain and to make a removal decision under Section 47 of the Immigration, Asylum and Nationality Act 2006.
2. The appeal against that decision came before First-tier Tribunal Judge L K Gibbs, who on 10 April 2014 dismissed the appeal under the Immigration Rules. The judge

also dismissed an application for the appeal to be considered under Article 8 of the ECHR outside of the Immigration Rules.

3. The basis of the challenge to the judge's decision was that the judge had not properly identified whether or not the case fell to be considered outside of the Rules. Permission to appeal that decision was given by Upper Tribunal Judge Peter Lane on 2 July 2014 in which he stated:

"1. It is arguable that, on the facts, the First-tier Tribunal Judge erred in law in truncating her Article 8 assessment in the way set out at [13] to [15] of the determination. At this stage it cannot be said that a full-blown proportionality assessment (if required) would have been bound to favour the Respondent; but the Appellant must be prepared to meet such an argument at the forthcoming hearing. ..."

4. Permission was therefore granted on the Appellant's grounds. The grounds assert as follows:

"5. It is submitted the FTJ erred in law as she failed to give adequate reasons as to why despite the Appellant's painstaking immigration history (9.5 years of lawful immigration in the UK), a steady employment, a law-abiding person, seven years of contribution as a taxpayer, the overall concerning situation in the Appellant's country and the very fact that she has never returned to her country since she arrived in 2004 and that all her family have fled her country since the war broke out in 2005, and despite showing sympathy to her situation, her case could not have been assessed outside the Rules or was unlikely to merit a grant of leave outside the Rules (sic)."

5. Paragraph 6 of the grounds made the following points:

“The findings that the Appellant’s child was a baby and would be returning with her and that they will both return to her country where she has spent the majority of her life was not an adequate reason to justify that consideration of Article 8 on a freestanding basis was irrelevant (emphasis put on *Haleemudeen v SSHD* [2014] EWCA Civ 558).”

6. The judge considered the Appellant’s claim and it is not said that the documents or the facts or matters recorded in the determination between paragraphs 6 and 9 contain any material factual omissions. It is accepted, for no issue was taken, that the judge summarised the submissions that had been made on behalf of the Respondent and those made by Mr Eteko, who appeared there. It was unsurprising that Mr Eteko correctly accepted then, as he did before me, that the Appellant could not meet the requirements of paragraph 276ADE of the Immigration Rules nor under Appendix FM.
7. The judge therefore moved to the question of whether or not in the light of the way it was expressed in *Gulshan* [2013] UKUT 640 (IAC) it was appropriate to look at this matter outside of the Rules. As has been identified through the cases of *MF (Nigeria)* [2013] EWCA Civ 1192 and *Nagre* [2013] EWHC Civ 720 there need to be clear circumstances that are not covered by the Rules and there needed to be an arguably good case that such a claim could succeed. As it is expressed in *Gulshan*, not only are there compelling circumstances not sufficiently recognised under the Rules but also the consequences for an individual are unjustifiably harsh so that the decision is disproportionate.
8. In the circumstances I find the position as expressed by Mr Justice Sales in *Nagre* of help insofar as the residual discretion to consider the requirements of Article 8 of the ECHR may arise and cannot be fully excluded. There needs to be sufficient evidence to be able to properly assess proportionality if Article 8 is to be considered.

9. In this case it is plain that whilst there are considerations of the length of time the Appellant has been in the United Kingdom, the fact that she has acted in accordance with the law and has not been guilty of crime or other matters and indeed generally has played some part in the society of those who live around here these are facts but they are not anything other than that which might reasonably be expected of a national in any event and as such they are not exceptional matters.
10. Similarly the issue of the Appellant's 17, 18 month year old child present in the UK with her is a consideration that falls under the Rules in terms of its impact on the Appellant but also is of materiality in the assessment under Section 55 BCIA 2009 of the impact of removal upon the child bearing also in mind the decision in ZH (Tanzania) [reference to be added].
11. There was unfortunately, bearing in mind the limited evidence, little of an exceptional case or of circumstances that demonstrated that the general issue of the removal of the child militated in favour of the Appellant remaining. In this case the child is very young, is not going to school and has no particular ties of any variety other than the connection with an uncle in the UK and plainly as a matter of approach the child's interests lie in being with their mother. Mr D Eteko equated as a comparator the differences between what life might be like in Côte d'Ivoire in terms of education, health, working circumstances and care provided and simply said it was unarguable that those matters would be different and would be better in the United Kingdom. Those may be matters that are pertinent to proportionality but I do not find that they indicate the kind of circumstances which are not covered by the Rules and by the broad consideration of the Rules and inevitably the issue of the public interest.
12. The judge found on the evidence, such as it was before her, that however sympathetic she might be to them, that is the child, and to the Appellant, they did not amount to matters sufficient to consider this case under Article 8 outside of the Rules. It has to be said that even on the evidence that was provided and confirmed

to me by Mr Eteko the evidence was very bare and brief concerning anything to do with the child and the child's personal circumstances let alone any health or other issues. The Appellant's statement simply says virtually nothing about the Appellant's private life in the UK and nothing about care or other needs which are related to the child, H M E N E, date of birth 11 October 2012.

13. I conclude that the judge made no arguable material error of law in the consideration of the matter. The original Tribunal's decision stands.

14. Anonymity Order.

The judge did not make an anonymity order but in view of the Presidential Statement in the First-tier Tribunal and the circumstances of this case involving a young child it seems to me that an anonymity order is to be made.

DIRECTION REGARDING ANONYMITY - RULE 45(4)(I) OF THE ASYLUM AND IMMIGRATION TRIBUNAL (PROCEDURE) RULES 2005

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Respondent and to the Appellant. Failure to comply with this direction could lead to contempt of court proceedings.

TO THE RESPONDENT FEE AWARD

In the circumstances of the appeal failing it is not appropriate to make a fee award in this case.

Signed

Date 5 September 2014

Deputy Upper Tribunal Judge Davey