



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/48566/2013

THE IMMIGRATION ACTS

**Heard at Birmingham hearing
centre
On 11 November 2014**

**Decision issued
On 12 December 2014**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

PRINCIA FRANTINE LOUBANZA TOULA

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation

For the Appellant: Mr A Pipe, instructed by Maya & Co Solicitors
For the Respondent: Mr N Smart, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Congo, born 9 March 1986. On 11 April 2012 she made an application for leave to remain, ostensibly on Article 8 grounds. At the time of such application the appellant had extant leave. This application was refused by the Respondent in a decision dated 3 July 2013. An appeal was brought to the First-tier Tribunal against such decision, and that appeal was dismissed by First-tier Tribunal Judge Ghani in a determination promulgated on 1 July 2014. The appellant sought, and obtained from Judge Holmes on 23 July 2014, permission to appeal to the Upper Tribunal. Thus the matter came before me.

2. Having heard detailed and careful submissions from both Mr Pipe and Mr Smart I concluded that the First-tier Tribunal's determination contains a number of errors of law capable of affecting the outcome of the appeal and I set the determination aside. For reasons which become apparent below I need do no more herein than summarise the errors that I found the First-tier Tribunal's determination to contain, which I do as follows.
3. The reasons given in paragraph 21 and 22 of the First-tier Tribunal's are not legally adequate or sufficient. In particular the Tribunal erred in failing:
 - (a) to provide legally adequate reasons for its conclusion that there are 'serious concerns over the relationship between the appellant and her husband'
 - (b) to consider the application of the *ratio* of the Upper Tribunal's decision in **Sanade** [2012] UKUT 00048, when determining whether the appellant's British Citizen child could reasonably be expected to travel or move to Pakistan – such issue being the subject of specific submissions before the First-tier Tribunal;
 - (c) to consider the relevance and application of the *ratio* of the decision in **Treebhowan and Hayat** [2012] EWCA Civ 1054 when attaching weight to the ability of the appellant to return to Pakistan and make a "proper" application for entry clearance.
4. Having set aside the First-tier Tribunal's determination at the hearing of 11 November I directed, without objection, that the decision under appeal should be re-made by the Upper Tribunal. I thereafter proceeded immediately to hear submissions in relation to this issue. The re-hearing of the appeal had, however, to be adjourned part-heard as a consequence of a potentially relevant recent policy authored by the Secretary of State coming to light during the course of hearing. Directions were given at the hearing for the further progress of the proceedings.
5. However, on the 25 November 2014 the Tribunal received a letter from Mr Smart, of the same date, identifying that the Secretary of State had decided to withdraw her "original decision" (which I take to mean the decision of the 3 July 2013) and that she intended to reconsider the appellant's application on the basis of the circumstances as they now appertain. A request was therefore made for consent to be given to the Secretary of State to withdraw her case before the Upper Tribunal.
6. I observe that a copy of the letter of 25 November 2014 was sent to Maya & Co on the same date. I put back the drafting of this decision so as to enable Maya & Co to make any representations they wished to make in relation to the contents of such letter and the course to be taken by the Upper Tribunal as a consequence of it. No representations have thus far been received, despite 2 weeks now having passed since the date of the letter. Neither has any application been made by the appellant for time to make such representations.

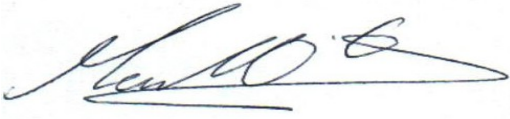
7. The Secretary of State does not require the permission of the Upper Tribunal to withdraw a decision she has made, even if such decision is the subject of the appeal before the Tribunal. The withdrawal of the decision underlying the appeal does not, however, extinguish the jurisdiction of the Upper Tribunal under section 12(2)(b)(ii) of the 2007 Act to re-make the decision in the appeal brought under the 2002 Act: See SM (Withdrawal of appeal decision effect) Pakistan [2014] UKUT 64 (IAC).
8. Having had regard, *inter alia*, to the matters identified in paragraph 72 of SM, and in particular observing that (i) the appellant's circumstances have significantly changed since the last time the Secretary of State gave substantive consideration to her case (ii) that the respondent should, ordinarily, be the primary decision maker in the immigration field and (iii) there are no matters of general legal or procedural guidance to be addressed in this appeal, I conclude, having also considered the overriding objective in the 2008 Rules that consent should be given the Secretary of State to withdraw her case.
9. Following the reasoning of the Tribunal in SM, I must formally dispose of this appeal. The normal course in such circumstances would be to dismiss the appeal, unless there are matters which points towards not doing so (SM - paragraph 72). In all the circumstances of this case, and having taken into account the reasons provided by the Respondent for withdrawing her decision i.e. to reconsider it based on the changes in the appellant's circumstances, I conclude that it is appropriate to formally dismiss the appellant's appeal. I make clear however that this is no reflection on the merits of the case of either party and is no more than a formality to bring these proceedings to an end.
10. Given the terms of the letter of 25 November it is prudent for me to emphasize that none of the findings of the First-tier Tribunal are to remain standing and the findings of that Tribunal should not be relied upon by either party in the future. For the avoidance of doubt this includes findings made as to the nature and doubtful quality of the appellant's relationship with her husband, as well as the 'history of the appellant's husband' [whatever meaning is to be ascribed to that phrase in the letter of 25 November].

Decision

The determination of the First-tier Tribunal is set aside for the reasons given above.

The appellant's appeal is formally dismissed, such conclusion having been reached without the Upper Tribunal having given substantive consideration to the merits of the appeal.

Signed:

A handwritten signature in black ink, appearing to read 'A. O'Connor', written over a horizontal line.

Upper Tribunal Judge O'Connor
Date: 11 December 2014