



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

Appeal Number: IA/49251/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 18th August 2014**

**Determination Promulgated
On 1st September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

**MS KARET NATALIE MITCHELL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Lane instructed by Rotherham & Co
For the Respondent: Mrs K Heath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Jamaica born on 9th December 1972. She appealed against the Respondent's decision dated 7th November 2013 to issue removal directions under Section 10 of the Immigration and Asylum Act 1999 and to refuse further leave to remain on private life grounds under Article 8. Her appeal was dismissed by First-tier Tribunal Judge Hawden-Beal on 19th March 2014.

2. Permission to appeal was granted in the First-tier Tribunal by Judge McDade on 29th April 2014. Permission was granted on the basis that Judge McDade considered it arguable that the First-tier Judge had failed to deal with the Immigration Rules and Article 8 in the light of the law that applied at the date of application, namely 23rd August 2011, but instead considered the matter as if the application had been made on or after 9th July 2012.
3. The Respondent's representative filed a Rule 24 response on 16th May 2014. The response argues that the Appellant's grounds are disingenuous and misleading to the extent that her Article 8 claim does not fall for consideration under the old Immigration Rules. An extract from the Respondent's refusal letter is then quoted which sets out a chronology concluding with a letter from the Appellant dated 18th March 2013 requesting a reconsideration of her case. It is then stated that having requested reconsideration the Appellant failed to comply with her reporting conditions and the decision under appeal is in respect of her application for reconsideration dated 18th March 2013, which would bring her appeal squarely under the new Immigration Rules relating to Article 8. In those circumstances it is submitted that the First-tier Judge made no arguable error of law.
4. Thus the matter came before me in the Upper Tribunal on 18th August 2014. The Appellant was present and representation was as mentioned above.
5. For the Appellant, Mr Lane submitted that there were three reasons why the First-tier Judge had erred in law in her decision. Mr Lane submitted that the decision under appeal is dated 7th November 2013 (which is accepted) and the application was made when the old Rules were in force. Therefore, the First-tier Judge was wrong to refer to Appendix FM and paragraph 276ADE of the current Rules. The application should have been considered in accordance with established case law such as Huang and Razgar. The error was material because the Appellant's case is based on her relationship with her aunt and uncle.
6. Secondly, Mr Lane submitted that even if the matter were to be considered under the new Rules there had been no Article 8 assessment. Thirdly, Article 8 should have been considered on a "standalone" basis.
7. For the Respondent, Mrs Heath relied upon the Rule 24 response to which I have already referred. She pointed out that the Appellant has still not been in the UK for fourteen years and therefore there is no material error of law in the determination. Mrs Heath referred to paragraph 19 of the determination and submitted that the guidance given by the Upper Tribunal in Gulshan had been followed correctly. Even after the decision in MM Gulshan remains good law. The First-tier Judge had made a detailed summary of the evidence from paragraph 14 onwards and at paragraph 19 had correctly applied the relevant law, including the guidance given in Gulshan.
8. I am satisfied for the following reasons that the Respondent was correct in considering the original application against Appendix FM and paragraph 276ADE of the Immigration Rules. The Respondent's reasons for refusal letter states that on 1st February 2011 the Appellant was served with a notice advising her of her liability to removal. On 10th May 2011 she submitted an application for further leave to remain which was refused with no right of appeal on 7th July 2011. On 18th August the Appellant requested a reconsideration and she then failed to report to East Midlands

Reporting Centre on 24th August and 7th September 2011. She was then sent a letter on 8th September 2011 reminding her of her obligation to report as per the conditions of her temporary admission. A letter was then received from the Appellant on 18th March 2013 requesting a reconsideration of her case. That request was refused on 7th November 2013, which is the decision under appeal. Therefore, the Respondent was correct to apply the amended version of the Immigration Rules which came into force on 9th July 2012.

9. The Respondent's reasons for refusal point out that the Appellant came to the United Kingdom as a visitor in 2003, was given an extension until 2004 and had been an overstayer ever since. She was noted to be an absconder when she failed to maintain her reporting condition in 2011. There is no category within Appendix FM which would cover the Appellant's relationship with her aunt and extended family members unless she came to the UK in a dependent relative capacity and remained within that category. The refusal letter also explains why the Appellant failed to qualify under paragraph 276ADE.
10. The First-tier Judge found that the material facts relevant to the appeal were that, at the date of decision, the Appellant was a single woman aged 40, who had applied for leave to remain in the UK to help care for her aunt. She lived with her aunt and her aunt's husband and they gave her £150 per month for her personal needs. Applying the relevant law to the established facts, the First-tier Judge found that the Appellant could not meet the requirements of Appendix FM in respect of her family life or the requirements of paragraph 276ADE in respect of her private life, and that the Appellant and her representatives had conceded as much by making an application for leave to remain outside the Rules. Therefore, following Gulshan, that should be the end of the matter unless there were arguably good grounds for going on to consider for Article 8 purposes whether there are compelling circumstances not sufficiently recognised under them. This is dealt with at paragraph 19 of the determination. At paragraph 20 the First-tier Judge refers to a letter dated February 2014 from the aunt's consultant physician who confirms that, without the Appellant's help, the aunt would have to have a care package funded by Social Services. A grant of leave to remain outside the Rules to save Social Services from having to pay for care for the aunt is not, the judge found, a reason to grant leave to remain outside the Rules. The Appellant had known since 2004 that she should not be in the UK and was told clearly that her last extension of leave was only to enable her to make alternative arrangements for her aunt's care. The judge found that the Appellant had done nothing about that and had overstayed by ten years.
11. The First-tier Judge concluded that it would not be unjustifiably harsh for the Appellant to return to Jamaica or that there were any insurmountable obstacles in her way to prevent her from doing so. There was nothing particular to the Appellant's case which merits consideration of her Article 8 rights outside of the Immigration Rules.
12. I am satisfied that the judge's self directions as to the law are correct. She has made findings which were clearly open to her on the evidence and which are supported by cogent reasons. The determination contains no material error of law.

DECISION

The making of the decision by the First-tier Tribunal did not involve the making of a material error on a point of law. I uphold the determination and dismiss the appeal.

Signed

Date 28th August 2014

Deputy Upper Tribunal Judge Coates