



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/33746/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11<sup>th</sup> April 2016

Decision & Reasons Promulgated  
On 18<sup>th</sup> May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MISS IDA MBOGE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms G Peterson, Counsel, instructed by Stuart Karatas Solicitors  
(Edmonton)

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The appellant appeals, with permission, against a decision of First-tier Tribunal Judge James, who dismissed the appellant's appeal under Article 8 of the European

Convention on Human Rights. That challenge was made on the basis that there was no proper consideration of paragraph 276ADE (vi).

2. It was submitted by the appellant's representative that the Judge of the First-tier Tribunal had not made a proper Article 8 assessment, having accepted that the appellant had lived in the United Kingdom for almost twenty years at the date of appeal. The Tribunal should have made an assessment whether the appeal could succeed under paragraph 276ADE (vi) in that the appellant was

*"aged 18 years or above, has lived continuously in the UK for less than twenty years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK."*

This required a rounded assessment as to whether a person's familial ties could result in support to her in the event of her return, an assessment taking into account both the subjective and objective considerations and also consideration of what lay within the choice of a claimant to achieve.

3. It was asserted that the First-tier Tribunal Judge had erred in law in not making that assessment and the failure to assess the paragraph 276ADE(iii) also had rendered the Determination and Reasons unsustainable.
4. The appellant is a Gambian national born on 24<sup>th</sup> August 1971 and she arrived in the United Kingdom in September 1995 with a visit visa valid for six months. She made an application on 12<sup>th</sup> June 2013 which were the subject of judicial review proceedings, (followed by further representations by her solicitors on 11<sup>th</sup> August 2014) in which she asked to have her case considered under Article 8 of the European Convention on Human Rights. In a decision of 13<sup>th</sup> August 2014 the Secretary of State noted that she had applied for asylum on 10<sup>th</sup> July 1996 and on 25<sup>th</sup> November 1996 her application was refused with no right of appeal as she had failed without reasonable explanation to attend an interview. On 12<sup>th</sup> June 2013 her client submitted an application for leave to remain in the United Kingdom outside the Immigration Rules and on 10<sup>th</sup> July 2013 that application was refused with no right of appeal.
5. Further representations of 11<sup>th</sup> August 2014 were considered as part of an application for leave to remain on the basis of her private or family life and was considered under Appendix FM and paragraph 276ADE. In the reasons for refusal letter the Home Office noted that in order to be eligible for consideration for limited leave to remain under Appendix FM or paragraph 276ADE she must not be excluded on the grounds of suitability.
6. In particular S-LTR.1.7. was cited:

*"S-LTR.1.7. The applicant has failed without reasonable excuse to comply with a requirement to –*

- a) *attend an interview;*

- b) *provide information;*
- c) *provide physical data; or*
- d) *undergo a medical examination or provide a medical report."*

It was considered that the appellant failed to meet the requirements of S-LTR.1.7.(a) as she failed to attend an interview in respect of her application for asylum and has failed to provide a reasonable excuse for this. She implied that she was not kept informed by her solicitors but her subsequent conduct did not support the claim that her solicitors were not keeping her informed.

7. At paragraph 51 of his decision the First-tier Tribunal Judge specifically stated that he did not find it was plausible or understandable as to why the appellant had failed to make contact with the authorities if she was intent on pursuing her asylum claim. He stated:

*"The appellant is an educated person who was aware of her claim being presented to the respondent. She knew who the solicitors were and could have made contact with them to enquire as to the status of her claim. Whilst I accept she may have had a period of time when she was taking antidepressants there are long periods of time, such as between ceasing to take antidepressants and Mr Asante's letter, when she took no steps to pursue her claim without reasonable excuse. I am satisfied that the appellant was aware that she was illegally present in the UK and she was content to remain in that status."*

8. I find there was nothing to unsettle the conclusion in the respondent's reasons for refusal letter to the effect that the appellant had failed without reasonable excuse to comply with a requirement to attend an interview. The judge found at paragraph 47 that the appellant had failed to attend the appointment for an asylum interview on 9<sup>th</sup> August 1996 and she had failed to attend once again on 29<sup>th</sup> August 1996. The judge at paragraph 48 considered the reasons put forward as to why she did not seek to regularise her status in the UK before June 2013. She claimed that she was living with her uncle who was organising her claim for asylum and that she had a falling out with her uncle and that she stated that she was not informed of the correspondence. Thereafter she stated that she was not able to pursue her asylum claim because she was not mentally fit.
9. The judge rejected the appellant's claim that she was fearful of engaging with the authorities and indeed at paragraph 49 the judge found that the appellant was not fearful of contacting the respondent, only that she was not mentally fit or ready to make contact. He also found there were long periods of time after she ceased taking anti depressants and by implication would have been able to pursue her claim.
10. At paragraph 51 the judge stated: "I do not find that it is plausible or understandable why the appellant failed to make contact with the authorities if she was intent on pursuing her asylum claim."

11. In sum the judge refused to accept the explanation for the rejection of the appellant's claim on the suitability grounds and as such the appellant cannot comply with paragraph 276ADE as she was rejected on the suitability grounds. The further reasons for refusal by the Secretary of State are set out for the sake of completeness only and this is made clear in the letter of refusal.
12. Although the judge did not cite the suitability requirement specifically and it was an error not to specifically make a decision in relation to the Immigration S-LTR.1.7, I find on the basis of the findings of that judge [47 - 51], and which I preserve, that the respondent's rejection of the application under paragraph S-LTR.1.7. (the suitability requirement) albeit that it is a discretionary paragraph under the Immigration Rules was effectively upheld by the judge and found by him to be justified
13. I have noted the skeleton argument before the First-tier Tribunal from Ms Peterson but this is based essentially on an application in relation to Paragraph 276ADE (iii) and to Article 8 outside the Rules.
14. The judge did not specifically cite the Immigration Rule Paragraph 276ADE (iii) such that the appellant had not complied with the ability to show twenty years' residence by the date of the application, but this would only undermine the appellant's case further. There is no doubt that the judge considered the fact that the appellant has been in the UK for nearly twenty years prior to her application and there is no doubt that the judge was aware that the appellant entered the UK in 1996 [63]. By the date of her application the appellant had not been in the UK for 20 years. She could not succeed under the Immigration Rules Paragraph 276ADE (iii). The rules specify that time is to be calculated as at the date of the application.
15. Albeit that the judge did not specifically cite paragraph 276ADE (vi); at the date of the decision the test would be whether there would be "very significant obstacles to the appellant's integration into the country to which she would have to go if she was required to leave the UK". But the suitability requirements were not met and thus the appellant could not comply with this rule.
16. The judge proceeded, possibly generously, to a consideration of the appeal outside the rules in relation to Article 8. The judge did consider whether the circumstances of the appellant "make it disproportionate to remove her from the UK" and that would be the correct test to apply, **Huang v Secretary of State for the Home Department [2007] UKHL 11** . The judge specifically states at paragraph 63:  
  
*"The circumstances on which she relies are her presence in the UK for nearly twenty years, waiting to regularise her status for four years and the fact that her only family are in the UK, referring to Mr Asante."*
17. The judge was not satisfied at paragraph 55 that the appellant's witness Mr Asante was credible or that there was a genuine and ongoing subsisting relationship between him and the appellant.

18. The judge therefore rejected the fact that the appellant had family life with Mr Asante although accepted, contrary to the permission granted, that she had a private life of which that relationship was part, but noted, applying Section 117B (4) and (5) that the relationship had been formed at a time when the appellant remained illegally in the UK and whilst her status was precarious.
19. The judge considered that there was no risk to the appellant's return in relation to her asylum claim or that she would face severe persecution and harassment and that the judge concluded that she did not face the risks that she had stated which were in existence in 1998.
20. Specifically the judge cites **Huang** and considered the evidence of the appellant when deciding the issue of proportionality. He made reference to 'exceptionality' but in practice applied **Huang** as can be seen from [66] and the correct test and took account of the relevant factors. He was fully aware of the length of time the appellant had spent in the UK [63] and referred to this and he considered the point made that her time in the UK inhibited her ability to live a full and fulfilling life in Gambia [65]. He factored in that she did not have any ongoing medical conditions, appeared to be in good health and had not been waiting four years to regularise her status [63] but found that her position in Gambia was not different from her status in the UK whereby she had no means of supporting herself other than working illegally or receiving financial support from Mr Asante which was considered to be precarious.
21. An overall reading of the decision showed that the judge has addressed his mind to whether there were significant obstacles to the appellant's return and clearly found that there were not and he included a consideration of all the circumstances including those of the appellant in the United Kingdom. He effectively considered the matter with regards the Immigration Rules, and also considered the matter outside the Rules, and, weighing all the relevant factors, the judge found the decision to remove was proportionate.
22. I find that there is no material error of law in the First-tier Tribunal Judge's decision and the decision shall stand.

Signed

Date 18<sup>th</sup> May 2016

Deputy Upper Tribunal Judge Rimington