



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

Appeal Number: HU/16342/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 13th March 2018**

**Decision & Reasons
Promulgated
On 28th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**MISS SHIRLEY ANN PARSONS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Choudhary, Counsel instructed by UK Migration Lawyers Ltd

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Miss Shirley Ann Parsons, who was born on the 30th November 1966 and is a citizen of the United States of America. She appeals against the decision of Judge Devlin, promulgated on the 28th February 2017, to dismiss her appeal against refusal of her application for leave to remain in the United Kingdom on private and family life grounds.
2. The background to this appeal can conveniently be summarised as follows.

3. The appellant entered the United Kingdom on the 25th September 2015 with limited leave to remain as a visitor until the 25th March 2016. Upon her arrival she began to cohabit with Mr Paul Keith Holland (hereafter, "the sponsor") who she had met online and who had visited her in the USA a few months earlier. They have cohabited in the UK ever since. The sponsor has two young sons by a previous relationship, both of whom are British citizens. He sees one of those son's (Joe) at the home of the child's mother, but his other son (Jack) has avoided contact with his father since the time he began cohabiting with the appellant. The appellant relinquished all her assets in the USA upon divorcing her former husband in November 2015.
4. The respondent had refused the appellant's application under the Immigration Rules on two grounds: (a) the parties had not cohabited for continuous period of 2 years at the time of the application and did not therefore qualify as 'partners' in a relationship akin to marriage, (b) the appellant was in the UK as a "visitor" and was therefore required to make an appropriate application for entry clearance from the USA.
5. In a lengthy and detailed decision, Judge Devlin found that (a) there was insufficient evidence to prove that the appellant had resided continuously with the sponsor in the UK for a period of 2 years, (b) she did not have a parental relationship with either of the sponsor's children, (c) she did not meet the 'financial eligibility requirements' in respect of the sponsor's income for either leave to enter or to remain in the UK, and (d) given all the circumstances, including the best interests of the sponsor's children, the appellant and the sponsor could reasonably be expected to continue their relationship in the USA.
6. Permission to appeal was granted by Judge Shimmin on grounds that Judge Devlin had arguably erred by (a) attaching "excessive weight to the public interest in the appellant's removal from the United Kingdom", and (b) "failing to give sufficient weight to the best interests of the sponsor's children".
7. The judge noted that given that the appellant had only been granted leave to remain as a visitor for a period of 6 months, both she and the sponsor knew or ought to have known from the outset that their relationship may be unable to continue in the United Kingdom beyond the period of that leave. He therefore concluded that, "something very compelling (which will be 'exceptional') will be required to outweigh the public interest in her removal" [paragraphs 216 to 218].
8. Ms Choudhary submitted that absent a criminal record, the judge had placed undue emphasis upon the public interest in the appellant's removal. She further submitted that there was no authority for the proposition that additional weight attaches to the public interest if a person has a poor immigration history. I reject both submissions.
9. The public interest in removal, as reflected in the terms of the 'immigration eligibility requirements' of Appendix FM, is to prevent circumvention of the stringent requirements for settlement by entering the

United Kingdom as a short-term visitor and thereafter seeking to remain indefinitely on family life grounds. That policy will obviously not apply where it is established that the person concerned would in any event meet the requirements for settlement were they to make the appropriate application (**Chikwamba** [2008] UKHL 40). However, as the judge observed at paragraph 2014, this was "not a Chikwamba case".

10. One of the clearest statements of support for the approach taken by the judge (albeit not one cited in his scholarly analysis of the law from paragraph 26 to paragraph 78 of his decision) can be found in **Konstantinov v The Netherlands** (Application no. 16351/03) 26th April 2007

48. The Court further reiterates that, moreover, Article 8 does not entail a general obligation for a State to respect immigrants' choice of the country of their residence and to authorise family reunion in its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest. Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them and whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion. Another important consideration will also be whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would be precarious from the outset. The Court has previously held that where this is the case it is likely only to be in the **most exceptional circumstances** that the removal of the non-national family member will constitute a violation of Article 8. [Emphasis added]

11. Neither is it the case that the judge failed to give adequate weight to the best interests of the sponsor's children. These were addressed in considerable detail at paragraphs 228 to 269 of his decision. The judge was entitled to find, in the circumstances summarised at paragraph 3 (above), that the interests of the children were only marginally better served by the sponsor remaining in the United Kingdom and thus to conclude that those interests were outweighed by the considerable public interest attaching to
12. The Appellant's removal as summarised at paragraphs 9 and 10 (above).

Notice of Decision

13. The appeal is dismissed.

No anonymity direction is made.

Judge Kelly

Deputy Judge of the Upper Tribunal

Date: 26th March 2018