



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01906/2016

THE IMMIGRATION ACTS

Heard at Field House
On 27th April 2018

Decision & Reasons Promulgated
On 24th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MS MACIA EVON JOHNSON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Allen, Counsel, instructed by Nandy & Co

For the Respondent: Mr J McGirr, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Jamaica whose date of birth is recorded as 30th September 1957. On 14th March 1999 she entered the United Kingdom lawfully as a visitor but overstayed. On 6th June 2003 she applied for indefinite leave to remain but it was not until 13th May 2011 that that application was refused.
2. Within two weeks the Appellant invited the Secretary of State to reconsider the decision yet it was a further five years or so that the Secretary of State refused the application. It is of note that the renewed application by way of reconsideration was

on the basis of the Appellant having entered into a relationship with the Sponsor. That was in 2008. The relationship began in 2005, yet, I am told that the Appellant did not raise those matters with the Secretary of State until the matter fell to be reconsidered in 2011.

3. The Appellant appealed. Her appeal was heard by Judge of the First-tier Tribunal Jerromes sitting at Taylor House on 6th September 2017. She dismissed the appeal on all grounds. She found, having looked at those factors which favoured the public interest and those which favoured the interests of the Appellant, that the period of delay by the Secretary of State in making her decision did not, using her words, “tip the balance” in the Appellant’s favour. It is clear to me, looking at the words used by the judge, that the judge found the matter finely balanced but favoured the Secretary of State.
4. It follows that if more weight had been given to the period of delay the balance would have *tipped* in the other direction. The question for me first of all is whether the judge erred in law.
5. This matter comes before me with permission of First-tier Tribunal Judge Shimmin, who in granting permission said:

“It is arguable that the judge has erred in law in failing to give weight or sufficient weight to the nearly thirteen-year delay between the application and decision. It is also arguable that the judge has failed to give reasons for the failure to give weight to this issue.”
6. Mr McGirr for the Secretary of State submits that the decision was well-reasoned, that the judge has taken into account the various considerations in the proportionality assessment which make the decision appropriate. He points to paragraphs 32 and the various subparagraphs within it. However, for the Appellant Ms Allen submits in short that the period of delay was unconscionable, so much so that it outweighs the other factors which exist in this case, which are no more than the sort of factors that one might generally expect in a case of this nature where someone has overstayed and formed a relationship.
7. Although a period of delay sufficient to outweigh other factors will be case-specific it is clear from case law that the longer the period of delay the less the public interest can be prayed in aid by the Secretary of State. If authority is needed for that proposition then it is given in the case of **EB (Kosovo) [2008] UKHL 41**, relied upon by the Appellant and referred to by the judge in the decision.
8. It follows also that considerations such as the precariousness of the status of an Appellant weighs less in the Secretary of State’s favour the longer the delay. People simply cannot be left waiting for a decision to be made. People have a right not only to a family life but to create a family life and people’s lives cannot be put on hold. Whilst s117B(1) of the Nationality, Immigration and Asylum Act 2002 points to immigration control being in the public interest, when the Secretary of State sits back then clearly the weight to be given to that factor becomes less. This was not a case of a person who simply “went to ground”. This was a person who had made an

application and received in response a reply saying that she did not need to leave the United Kingdom until a Decision was made.

9. It is not for me, and I do not in this case say where the tipping point came, but I can say that a period of thirteen years overall, given all the other factors in this case, was such that it was not open, in my judgment, to say that the weight was insufficient to outweigh the other factors, all of which are set out in the decision of the First-tier Tribunal Judge and which I do not need to rehearse.
10. The question then, having found that the judge materially erred, is whether I remake the decision or remit it. I invited Mr McGirr on the basis of my having found an error of law to address me as to whether the matter should be remitted or remade. He was content for me to remake it and I do so.
11. I find, having regard to all of the factors in this case, that the balance tips heavily in the Appellant's favour and in those circumstances the decision of the First-tier Tribunal is set aside, there being an error of law. The decision is remade such that the appeal is allowed under Article 8.
12. It is not necessary for me, I should say, to deal with the specifics as to whether the appeal was allowed under Appendix FM or 276ADE because of the way in which this matter was presented and dealt with before me.

Notice of Decision

The appeal is allowed. The decision of the First-tier Tribunal is set aside and remade such that the appeal to the first -tier Tribunal is allowed.

No anonymity direction is made.

Signed

Date: 15 May 2018



Deputy Upper Tribunal Judge Zucker

TO THE RESPONDENT
FEE AWARD

As the appeal has been allowed and as Mr McGirr did not have any observations to make I make the full fee award in the Appellant's favour in the sum of £140.

Signed

Date 15 May 2018

A handwritten signature in black ink, appearing to be 'AZM' with a long horizontal stroke extending to the right.

Deputy Upper Tribunal Judge Zucker