



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

Appeal Number: HU/24382/2016

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 12 February 2019**

**Decision & Reasons Promulgated
On 20 June 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**FUNMILAYO FOLASHEWA OJEDOKUN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adebayo, David and Vine Solicitors

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

DECISION AND REASONS

1. The appellant, Funmilayo Folashewa Ojedokun, was born on 14 March 1989 and is a female citizen of Nigeria. She first entered the United Kingdom in January 2006 as a student. Following further extensions of leave in the same capacity she applied for leave to remain outside the Immigration Rules which was refused on 20 August 2015. A reconsideration request resulted in a further rejection on 7 November 2015. There is in the papers a consent order relating to a judicial review (JR 14288/2015) which is dated 5 July 2016 and concerns the withdrawal of the decision of 7 November 2015 and followed by a reconsideration. It is

not entirely clear from the papers which decision the First-tier Tribunal addressed itself. Judge Devittie, in a decision promulgated on 23 July 2018, dismissed the appellant's appeal against a decision dated 20 August 2015; that is the only decision to which he refers [1].

2. The appellant now appeals with permission to the Upper Tribunal. I notified the representatives at the Upper Tribunal hearing at Manchester on 12 February 2019 that I intended to set aside the decision. My reasons for doing so are as follows. Both parties agreed that the judge erred in law by failing to consider the appellant's circumstances as at the date of the hearing before the First-tier Tribunal as regards the appeal on Article 8 ECHR grounds (Section 85 of the 2002 Act, as amended). There is also a great deal of confusion as to the basis of the appellant's Article 8 appeal. The decision of 10 October 2016 deals only with the appellant's private life. This is strange given that the appellant had, in the form of a letter from her solicitors dated 26 August 2015 raised the matter of her family life. Having said that, no detail is provided other than the assertion that the appellant had established family life with her aunt, a British citizen. Mr Bates, who appeared for the Secretary of State before the Upper Tribunal, helpfully told me that, on remittal to the First-tier Tribunal, both the appellant's private and family life should form the subject of the human rights appeal. That should be the case notwithstanding that there may remain an argument that no human rights application in respect of family life has ever actually been made.
3. The First-tier Tribunal Judge was not assisted by the fact that there was no Presenting Officer before him in Taylor House in June 2018. Oddly, his decision does not record the attendance of one of Mr Adebayo's colleagues before him at the hearing. What is clear is that the judge has misapplied Section 85, as both parties now agree. I find that he was also led into error by his failure to deal with submissions, which the judge had directed to be filed, concerning the length and nature of the residence of the appellant in the United Kingdom. Those representations were made in writing by the appellant's solicitors on 19 June 2018 but appear to have been overlooked by the judge.
4. It will be apparent from my decision that this litigation has fallen into a state of some confusion. I am satisfied, however, that the judge has erred in law and that I should set aside his decision. Given the problems that have arisen, I find that the appeal should be remitted to the First-tier Tribunal for that Tribunal to remake the decision. I direct that both parties may file at the Tribunal and serve on each other fresh evidence, upon which they may respectively seek to rely, no later than 10 days prior to the First-tier Tribunal hearing. For the avoidance of any doubt, the appellant is at liberty to appeal on both private and family life Article 8 grounds. The circumstances of the appellant will be considered as at the date of the next First-tier Tribunal hearing.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 23 July 2018 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Devittie) for that Tribunal to remake the decision. Both parties may rely on fresh evidence provided that that evidence is filed at the Tribunal and served on the other party no later than 10 days before the next hearing.

Signed

Date 3 March 2019

Upper Tribunal Judge Lane