



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: HU/19057/2019 (V)

**THE IMMIGRATION ACTS**

**Held at Field House *via Skype for Business* Decision & Reasons Promulgated  
On 1 March 2021 On 8 March 2021**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**SUE BROWN ZELENITZ**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms. S Akinbolu, Counsel, instructed by Breytenbachs  
Immigration Consultants

For the Respondent: Ms. S Cunha, Senior Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision of Judge of the First-tier Tribunal Roots ('the Judge') sent to the parties on 17 March 2020 by which the appellant's appeal against the decision of the respondent to refuse her leave to remain on human rights (article 8) grounds was refused.
2. Upper Tribunal Judge Coker granted the appellant permission to appeal on all grounds.

## **Hearing**

3. The hearing before me was a Skype for Business video conference hearing held during the Covid-19 pandemic. I was present in a hearing room at Field House. The hearing room and the building were open to the public. The hearing and its start time were listed in the cause list. I was addressed by the representatives in the same way as if we were together in the hearing room. I am satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate.
4. The appellant did not attend the hearing.

## **Anonymity**

5. The Judge did not issue an anonymity direction and neither representative requested one before me.

## **Background**

6. The appellant is a national of the United States of America and aged 78. She worked in the United States until 1995, and then worked in Germany for her US based employer until 2002.
7. She entered the United Kingdom on 15 March 2002 having secured entry clearance as a visitor. She enjoyed leave to enter until 15 September 2002.
8. On 12 June 2003 she applied for leave to remain as an overseas government employee, which was granted from 27 June 2003 to 30 April 2004.
9. On 24 March 2004 she applied for leave to remain as a Work Permit holder. This was granted from 3 April 2004 to 3 April 2009. She was employed in fostering teams by local authorities.
10. On 31 January 2006 she applied for leave to remain as a Work Permit holder. This was granted from 14 February 2006 to 14 February 2011. She continued her local authority work until returning to the United States in June 2010 following her initial retirement.
11. She was granted entry clearance as a Tier 2 (General) Migrant, arriving in this country on 3 November 2013. She enjoyed leave to remain until 28 October 2016. She worked in a social work post in the south of England until returning to the United States in September 2014.

12. She was again granted entry clearance as a Tier 2 (General) Migrant, arriving in this country on 25 December 2014. She enjoyed leave to remain until 12 January 2019. By a decision dated 2 August 2016 the respondent curtailed the appellant's leave, to expire on 4 October 2016.
13. After several applications for leave to remain were refused, the applicant applied for leave to remain on human rights (article 8) grounds on 13 August 2019. The respondent refused the application by a decision dated 5 November 2019. The appellant enjoyed attendant appeal rights.

### **First-tier Tribunal decision**

14. The appellant's appeal came before the Judge sitting at Taylor House on 10 March 2020.
15. The Judge's consideration of the article 8 appeal outside of the Immigration Rules ('the Rules') runs to 9 paragraphs. The first 7 paragraphs primarily recite relevant case law. The primary findings are at [51]-[52]:

'51. For the avoidance of any doubt I have also taken into consideration in relation to the appellant the provisions of the 2014 Act, which change the 2002 Act, section 117. This is a case where, notwithstanding the operation of statute, I would find that the respondent's lawful aim carries very considerable weight in the balancing exercise. The Secretary of State's decision pursues a legitimate aim, namely the maintenance of effective immigration control. The appellant had no expectation that they would be permitted to remain here. She does not meet the Rules to stay here. She is returning to the USA where, I find, she is familiar with life. Any private life ties she has formed can be replicated in the USA.

52. In conclusion I find that any interference with any private life would be wholly proportionate to the lawful aim pursued; namely the need to maintain a fair and effective immigration control so as to safeguard the economic well-being of the country. The application of article 8 principles outside the Rules would inevitably lead to the same results given that the public interest in removal is likely to prevail given the limited weight to private life established will leave is precarious. I dismiss the appeal on article 8 grounds.'

### **Grounds of appeal**

16. The appellant relies upon two grounds of appeal:
  - (i) In assessing the evidence before him, the Judge failed to make any assessment of the elements of, and quality of, the appellant's current private life.

- (ii) The Judge overlooked, without adequate reason, the recent medical evidence produced on behalf the appellant.

17. In granting permission to appeal UTJ Coker succinctly reasoned:

‘3. Although the outcome of this appeal may not be different to the decision reached by the first-tier tribunal judge, it is arguable that it is not clear that the judge had regard to all of the medical evidence that was before him and this may have impacted upon the final conclusions reached by him as to reintegration and proportionality.’

### **Decision on error of law**

18. By means of Ground 2, the appellant observes that a key part of her claim is that she suffers from a range of medical complaints that render her particularly dependent on her network of support in this country and given the difficulties she has previously experienced on return to the United States, separation from her network of support would have a grave impact upon her ability to reintegrate or settle if she were now to return to her country of nationality.

19. This ground focuses on para. 30 of the Judge’s decision:

‘30. I accept that she has some medical conditions which are evidenced in the papers. They are summarised in the letter at page 174 from her GP, although this is some 16 months old. I accept that she has the conditions set out there. She does not have any diagnosed mental health conditions.’

20. The grounds detail that neither statement made by the Judge was correct, namely as to the medical evidence relied upon being at least 16 months old and that there was no medical evidence as to any diagnosed mental health condition. Consequently, it is said that the Judge’s assessment of both the nature of the appellant’s private life in this country and the impact separation from her support network would have upon her were flawed.

21. I observe the mental health diagnosis of Dr Stevens, consultant psychotherapist, which was before the Judge.

22. At the outset of the hearing before me Ms. Cunha appropriately confirmed the respondent’s position to be that the error identified by the appellant in respect of ground 2 was a material error of law. In the circumstances the respondent accepted that the decision of the Judge was fatally flawed and should properly be set aside.

### **Remaking the decision**

23. Ms Cunha requested on behalf of the respondent that the appellant's appeal be allowed on article 8 grounds outside of the Rules. She confirmed that the respondent accepted upon considering the medical evidence provided in this appeal, coupled with the appellant's age, her accepted difficulties in accessing appropriate medical care upon return to the United States and noting her private life rights as established during lengthy periods of lawful residence in this country, that her removal would be a disproportionate interference with her article 8 rights.
24. Ms. Akinbolu was understandably in agreement with the position adopted by the respondent.
25. Upon considering the evidence filed in this matter I am satisfied that the respondent adopted the correct approach in requesting that the appeal be allowed.
26. The appeal is therefore allowed on article 8 grounds outside of the Rules.
27. I am grateful to Ms. Cunha for the careful and thoughtful approach she adopted in this matter.

### **Notice of Decision**

28. The decision of the First-tier Tribunal, dated 17 March 2020, involved the making of a material error on a point of law and is set aside.
29. The decision is remade by the Upper Tribunal and the appeal is allowed on human rights (article 8) grounds, outside of the Immigration Rules.

Signed: D. O'Callaghan  
**Upper Tribunal Judge O'Callaghan**

Dated: 1 March 2021