



IAC-FH-CK-V1

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

Appeal Number: IA/03823/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 6 November 2014**

**Determination Promulgated
On 13 November 2014**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

SARAH ESI ANDOR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Afzal, Representative

For the Respondent: Ms C Johnstone, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, who is a national of Ghana, has been granted permission to appeal the determination of First-tier Tribunal Judge Foudy, who for reasons given in her determination dated 4 June 2014 dismissed the appeal against the decisions refusing to vary the appellant's leave to remain and to remove her. The appellant had relied on grounds under the Immigration Rules and Article 8. She was unrepresented at the hearing before the judge.
2. The appellant had made application for consideration outside the Rules based on her private life in the United Kingdom. She first entered this

country on 20 March 2003 and has had lawful leave throughout. That application was made in time on 25 January 2011; the refusal decision is dated 18 December 2013.

3. The judge did not accept the appellant's evidence that her sons who serve in the armed forces had as to one, British citizenship and in respect of the other, settled status. The appellant's husband had left her and no family life was advanced. The judge considered the case under paragraph 276ADE but considered that no exceptional factors had been raised in the evidence apart from the fact that her parents were dead and she had no close relatives in Ghana. Thus she concluded that it would not be unjustifiably harsh to require the appellant to return.
4. I invited Mr Afzal to summarise the grounds of challenge having regard to the somewhat discursive nature of those on which permission had been granted. He argued the correctness of the judge rejecting the claimed status of the appellant's sons in the light of her finding that the appellant had been a credible witness. New material now provided showed that the appellant had been telling the truth in this regard. As I observed to Mr Afzal, error on this basis would not be sufficient to persuade me that the decision required to be set aside.
5. On further examination of the determination however it became evident that the judge had not given any consideration to the length of the appellant's lawful residence in the United Kingdom from 2003 and the fact that by the date of the hearing pursuant to statutory 3C leave she had completed ten years' lawful residence. I gave permission to Mr Afzal to amend the ground to clarify this aspect of challenge to the Article 8 considerations.
6. Ms Johnstone took a sensible approach and agreed that the failure by the judge to address this aspect undermined the Article 8 consideration. She and Mr Afzal accepted that the determination needed to be set aside and remade in the First-tier Tribunal having regard to the necessity for clear factual findings and a consideration of the impact of ten years' lawful residence on the Article 8 claim.
7. The appeal in the Upper Tribunal is allowed on the basis that the decision is set aside and the case is remitted to the First-tier Tribunal for its reconsideration.

Signed

Date 12 November 2014



Upper Tribunal Judge Dawson