



IAC-CH- CK-V1

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

Appeal Number: IA/43509/2013

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

On 24th October 2014

Determination

Promulgated

On 11th November 2014

Before

UPPER TRIBUNAL JUDGE POOLE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS ALICE MEAD
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Irwin Richards, Home Office Presenting Officer

For the Respondent: Ms B Asanovic

DETERMINATION AND REASONS

1. In this determination I will refer to the parties in the manner in which they appeared before the First-Tier Tribunal.
2. The appellant is a female citizen of Ghana, born 3 May 1965. She is married to a UK citizen, born 17 July 1943. They married in Ghana in September 1994. The appellant entered the United Kingdom in August 2008 with leave to enter as a spouse until June 2010. In May 2010 she

submitted an application for indefinite leave to remain as the spouse of a person present and settled in the United Kingdom, but this was refused on 24 August 2010. She was however granted discretionary leave until 23 August 2013. On 20 August 2013 the appellant applied for further leave to remain and this was refused on 25 September 2013 as the respondent was not satisfied that the appellant met the requirements of the Immigration Rules, and there were no grounds for leave to be granted outside the rules. It was noted that the appellant had not met the requirements of paragraph 276ADE or Appendix FM of the Immigration Rules.

3. The appellant appealed against that decision and her appeal came before Judge of the First-Tier Tribunal Archer sitting at Columbus House, Newport on 15 May 2014. There was an oral hearing and both parties were represented.
4. Whilst evidence was adduced to the effect that the appellant was a victim of domestic abuse, the judge at paragraph 14 found that the appellant and her husband continued to reside together and that the marriage was still in existence. In short the judge found that there was no evidence of abuse.
5. At paragraph 19 of the determination the judge found that the appellant could not succeed under the rules, including Appendix FM and paragraph 276ADE.
6. The judge then went onto consider the European Convention on Human Rights. He quoted **MF (Nigeria) v SSHD [2013] EWCA Civ 1192** and considered whether or not there were “sufficiently compelling” circumstances to outweigh public interest. He said he found that there were arguable grounds and that Article 8 could be engaged because of the existence of private life. The appellant’s appeal was dismissed under the rules, but allowed under “the 1950 Convention”.
7. The respondent sought leave to appeal. The grounds allege material misdirection of law. The respondent suggested that the Immigration Rules were a complete code (**MF Nigeria**) and that any Article 8 assessment could only be made after consideration under these rules, which had not been done in this case. Reference is also made to **Gulshan [2013] UKUT 00640 (IAC)** and that the judge had not identified any compelling circumstances. The Tribunal had failed to provide adequate reasons why the appellant’s circumstances were either compelling or exceptional. There was no evidence that the appellant’s removal would lead to an extremely harsh outcome, as suggested in paragraph 25 of the determination.
8. In granting leave to appeal another judge of the First-Tier Tribunal said as follows:

“1. This is an in-time application by the respondent seeking permission to appeal against the determination of Judge of the First-Tier Tribunal Archer who allowed, on human rights grounds, the appellant’s

appeal against the respondent's decision to refuse her further leave to remain".

2. It is arguable as set out in the grounds, in particular paragraph 5 and the last few sentences of paragraph 6 that the judge did not give adequate reasons for his findings. The appellant's stay of under six years in the UK would not itself appear to be particularly exceptional without further explanation, neither would her commitment to meet the spouse requirements. Whilst the fact that the appellant suffers from depression and PTSD caused by the psychological abuse from her husband could potentially amount to a compelling circumstance the judge does not explain why the appellant could not be treated in Ghana neither does he make findings on the impact which leaving the UK would have on her condition and therefore on her ability to re-establish a meaningful private life in Ghana".

9. Hence the matter came before me in the Upper Tribunal.
10. At the commencement of the case Ms Asanovic produced a handwritten Rule 24 response, which embodied an application for an extension of time. The document merely stated that the judge's decision on Article 8 ECHR did not disclose a material error of law the document then went onto allege an error of law in the way the judge dealt with the appeal under the rules. Reference is made to internal contradictions.
11. A discussion then took place as to whether this could be dealt with as a cross appeal. I indicated my preliminary view was that the determination of Judge Archer did contain a material error of law and that it should be set aside and remitted to the First-Tier Tribunal for re-hearing.
12. Neither representative objected to that. Initially Mr Richards sought preservation of the findings in respect of the appeal under the rules, but he then conceded that the argument offered in respect of that part of the decision was "not devoid of merit".
13. I therefore indicated that I found a material error of law contained in the determination. It would be remitted for re-hearing with no findings preserved.
14. I now give brief reasons.
15. Whilst correctly directing himself with regard to the guidance set out in **Nagre**, I find that the judge has failed to identify what is exceptional in the appellant's circumstances. The appellant has only been in the United Kingdom 6 years. While she suffers from certain health problems there was no consideration as to whether or not treatment was available in her home country. As highlighted by the judge granting leave, Judge Archer has not made findings with regard to the impact upon the appellant of leaving the United Kingdom so far as her medical condition is concerned. The judge does not explain the "strong evidence as to private life" referred to in paragraph 22 of the determination, neither does he explain (at paragraph 23) her removal would interfere with her private life.

16. The judge attempts (paragraph 25) to explain compelling circumstances, but such explanation is not sufficient to explain why the appeal should be allowed under Article 8 ECHR.
17. I regard the short comings as being material errors of law, to the extent that the determination and decision must be set aside. Extensive fact finding must be carried out before a decision can be remade and it is appropriate for this matter to be remitted back to the First-Tier Tribunal for a hearing de novo.
18. No application was made in respect of an anonymity order and I therefore do not make such a direction or order.

Decision

19. Material error of law.
20. Decision set aside to be remitted to the First-Tier Tribunal.

Signed

Date

Upper Tribunal Judge Poole

11th November 2014