



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

Appeal Number: IA/16821/2014

THE IMMIGRATION ACTS

Heard at Field House

On 6th March 2015

Determination

Promulgated

On 10th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

**MRS VICTORIA AKIINYI ONYANGO
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Gore, Counsel, instructed by Prime Solicitors

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant is a citizen of Kenya born on 30th May 1976. She arrived in the UK on 17th August 2002 as a student. She had leave until 30th November 2009 and then made a number of applications which were rejected. On 6th March 2014 she made a human rights application to remain. This was refused on 19th March 2014. Her appeal against the decision was dismissed by First-tier Tribunal Judge Mitchell in a determination promulgated on the 11th November 2014.

2. Permission to appeal was granted by Judge of the First-tier Tribunal PJM Hollingworth on 8th January 2015 on the basis that it was arguable that the First-tier judge had erred in law as the private life of the appellant and her daughter had been established when they were lawfully present in the UK and at paragraph 20 of the determination Judge Mitchell had said that little weight should be given to their private lives as they had been established when their leave was precarious.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions

4. Ms Gore relied upon her grounds of appeal. In her grounds of appeal she argues that the appellant had not established her private life in the UK when her leave was precarious and therefore the First-tier Tribunal had erred in law in stating this was the case. Insufficient weight had been given to the seven years the appellant had been in the UK lawfully. Leave as a student was not precarious as it was possible to extend the leave, work permission had been granted and it was possible to get indefinite leave to remain after ten years in this capacity.
5. The First-tier Tribunal had also failed to give sufficient weight to the appellant's daughter's six years of residence in the UK. It was also not open to the Tribunal to hold that she had not shown she would not be a burden on tax payers when the evidence before the Tribunal was that the appellant and her daughter had lived supported by friends and charity organisation and that they had never received benefits.
6. Mr Kandola relied upon the Rule 24 notice. The Secretary of State defined precarious leave for s.117B of the Nationality, Immigration and Asylum Act 2002 as any sort of immigration status which is temporary in nature or limited or finite. This was the definition in the Home Office Immigration Directorate Instruction Family Migration: Appendix FM Family and Private Life 10 Year Routes, November 2014 at paragraph 3.6. As such all of this appellant's leave was precarious. There was no error of law in Judge Mitchell defining precarious leave as he does at paragraph 38 of his determination.
7. Mr Kandola submitted that it was a matter for the judge to decide how much weight to accord to any particular matter and so there could not be an error of law in failing to give sufficient weight to any particular matter. Judge Mitchell was clearly aware of how long the appellant had been in the UK. At paragraphs 9 and 15 of his determination he notes the age of the appellant's daughter and her period of residence.
8. The appellant had conceded she could not meet the Immigration Rules for herself or her daughter and Judge Mitchell had gone on to consider Article 8 ECHR outside of the Immigration Rules. He had given good reasons for dismissing the appeal.

Conclusions

9. Judge Mitchell was required to have regard to s.117B of the Nationality, Immigration and Asylum Act 2002 when considering the appellant's appeal under Article 8 ECHR. He was guided by this legislation at s.117B (4) and (5) to give little weight to private life established when the appellant's leave was unlawful or precarious. There is no statutory definition of precarious leave, nor was I pointed to any guidance from the Upper Tribunal or higher courts. I do not find the definition placed on this term at paragraph 35 of Judge Mitchell's determination, which included student leave as precarious leave as the appellant had had to apply for a number of extensions of that leave which had on a couple of occasions been initially refused, irrational.
10. Judge Mitchell is clear at paragraph 16 that the appellant had been in the UK with student leave until November 2009; he is also clear that the appellant's daughter had been born in the UK and lived here for six years at paragraph 15. I find that he gave consideration to these matters and was fully aware of their period of lawful presence. As Mr Kandola argues it is not an error of law to fail to give this matters particular weight. Likewise it was not irrational to find that the appellant had not shown she would not be a burden on taxpayers, as Judge Mitchell does at paragraph 38, given that Ms Gore submits that she had been reliant on charity and friends whilst in the UK.

Decision

11. The decision of the First-tier Tribunal did not involve the making of an error on a point of law.
12. The decision of the First-tier Tribunal dismissing the appeal is upheld.

Deputy Upper Tribunal Judge Lindsley
6th March 2015