



IAC-AH-SAR-V1

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

Appeal Number: IA/24677/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 18 November 2015**

**Decision & Reasons Promulgated  
On 17 December 2015**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

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

Appellant

**and**

**KAREN HO MAN AU  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Miss Johnstone, a Senior Home Office Presenting Officer  
For the Respondent: Mr Wilford, instructed by Doyle Clayton, Solicitors

**DECISION AND REASONS**

1. I shall refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).
2. The appellant, Karen Ho Man Au, was born on 5 March 1990 and is a citizen of New Zealand. She appealed against the decision dated 13 May 2013 to refuse her application for leave to remain in the United Kingdom on the basis of ten years' long residence (paragraph 276B of HC 395 (as amended)). She appealed to the First-tier Tribunal (Judge Khawar) which, in a decision promulgated on 16 February 2015, allowed the appeal on

Article 8 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. The appellant is an organist at Blackburn Cathedral. Previously, she read music at Cambridge University where she was an organ scholar at Corpus Christi College. Judge Khawar considered the appellant's private life in some detail and concluded that, although she could not succeed under the Immigration Rules (neither party to the appeal suggests that she can do so), her appeal should be allowed on Article 8 ECHR (private life) grounds. The respondent challenges that decision on the basis that the judge *inter alia* failed to give adequate reasons. The respondent asserts that the judge placed too great a weight on the appellant's role within the Anglican Church. The respondent submits that,

“... the UK cannot be said to be both ‘secular and divine’. Human rights jurisprudence is to be neutral as between those of differing religions and those who eschew religion altogether. The religious value, or otherwise, of the appellant's activities as an organ scholar is accordingly an irrelevant consideration.”

The respondent accepts [5] that “it could in principle be permissible to find the appellant's activities affected the proportionality calculus by virtue of their objective value to society ... but not, as in the instant determination, on the basis of their religious values”. The respondent relied upon the judgment of the Court of Appeal in *McFarlane v Relate Avon Ltd* [2010] EWCA Civ 880.

4. I am not persuaded that the judge has allowed this appeal because he has attached excessive weight to the contribution made by this appellant to the lives of Anglicans as opposed to those espousing other religions (or no religion). The grounds of appeal indicate a misreading of the judge's decision. The judge stressed the cultural importance of the appellant's activities to the community as a whole (“the English Heritage” (*sic*)); the fact the appellant is an organist in an Anglican Church was clearly less relevant to the judge than the fact that she was contributing to the musical and cultural life of the community; there is no suggestion that one denomination of Christianity or indeed that Christianity itself is to be given special preference. The judge refers to the “Anglican choral tradition” [10] but not on account of its having any particular religious worth but because it is a “British cultural heritage which is sadly on the demise”. The grounds submit that the judge has shown a preference towards a follower of the Anglican Christian tradition by way of discriminating against those of other religions or no religion at all. That assertion is simply not borne out in the decision of the judge. It is also not apparent that the judge has placed excessive weight on the established status of the Anglican Church in England and Wales [6]. The judge found that the appellant's activities contributed to the United Kingdom's wider cultural heritage and achievement.
5. Having said that, it is of some concern that the judge has chosen to allow this appeal on Article 8 ECHR grounds. He was entitled to consider the

fact that the appellant has lived in the United Kingdom for a long period of time (her absences from the country led to the failure of her application under the Immigration Rules). The fact that she is a highly-talented, well-educated woman of impeccable character may be factors within the analysis but should not be given excessive weight. It could be said, having looked at the facts before the judge, that the appellant was fortunate that the judge has chosen to allow her appeal. Another judge, faced with the same factual matrix, may well have reached a different decision. However, that is not the point. The respondent's grounds of appeal challenge the decision not on grounds of perversity, but upon a basis which I have found to be invalid. Indeed, I asked Miss Johnstone, for the respondent, whether, on these facts, any decision to allow the appeal would be perverse. She did not submit that it would be. The First-tier Tribunal Judge was charged with considering all the evidence both written and oral and with robustly analysing that evidence in reaching findings of fact. He did not err in law in the manner asserted by the respondent's grounds of appeal to the Upper Tribunal. The judge supported the findings which he reached with clear and cogent reasoning. His decision, although perhaps generous, was not obviously perverse nor does the respondent claim that it is. In the circumstances, the Upper Tribunal should refrain from tinkering with the decisions of First-tier Tribunal Judges which have been reached after a proper consideration of the relevant facts and application of the appropriate legal principles. In the circumstances, I dismiss the respondent's appeal.

### **Notice of Decision**

6. The appeal of the Secretary of State is dismissed.

No anonymity direction is made.

Signed

Date 2 December 2015

Upper Tribunal Judge Clive Lane