



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

Appeal Number: IA/47834/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 13 November 2015**

**Decision & Reasons Promulgated
On 25 November 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ZUCKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**JANET PRISCILLA ARTHUR
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer
For the Respondent: Mr M Ume-Ezeoke, instructed by the Legal Resource Partnership, London

DECISION AND REASONS

1. The Respondent, Ms Arthur is a citizen of Ghana whose date of birth is recorded as 15 July 1958. On 4 March 2011 Ms Arthur made application for leave to remain in the United Kingdom outside the Immigration Rules relying upon Article 8 of the European Convention of Human Rights and Fundamental Freedoms. On 29 March 2011 a decision was made to refuse the application. That refusal was followed, on 6 April 2011 by a request on behalf of Ms Arthur's solicitors for re-consideration of the application to which the Secretary of State responded by letter dated 21 July 2011

indicating that the request for re-consideration would be dealt with in due course. Thereafter Ms Arthur's solicitors wrote to the Secretary of State asking for an update on no less than four occasions, 24 February 2012, 20 April 2012, 4 October 2012 and 11 June 2013. On 2 July 2013 the Secretary of State replied but only to apologise for the delay. On 17 February 2014 the Secretary of State (via CAPITA) requested completion of a proforma form. The following day Ms Arthur's solicitors again requested an update on the re-consideration of the application and on 3 March 2014 they sent the completed form to the Secretary of State.

2. It was not until 14 November 2014 that the Secretary of State finally responded with the decision, the subject matter of this appeal. The Secretary of State refused the application and so Ms Arthur appealed to the First-tier Tribunal. On 2 June 2015 her appeal was heard by Judge of the First-tier Tribunal Veloso sitting at Hatton Cross.
3. Judge Veloso considered the basis upon which the Secretary of State had refused the application. It is of note that the Secretary of State was not represented.
4. There is no issue about the fact that Ms Arthur was an overstayer. She entered the United Kingdom in May 2002 with a visitor's visa valid only until 25 October 2002. However, given the length of time which Ms Arthur had been living in the United Kingdom Judge Veloso considered that Paragraph 276ADE(1)(vi) of the immigration rules applied. That provides a route for applicants to obtain leave to remain in the United Kingdom on the grounds of private life where they are aged 18 years or above and have lived continuously in the United Kingdom for less than twenty years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which [she] would have to go if required to leave the United Kingdom.
5. Judge Veloso did not consider that Ms Arthur met the requirements of the rule because he was of the view that Ms Arthur would be able to reintegrate into her home country.
6. Judge Veloso went on to consider the wider application of Article 8 making reference to the guidance in ***SS (Congo) v Secretary of State for the Home Department [2015] EWCA Civ 387*** and in particular paragraph 43. Judge Veloso found compelling circumstances to justify consideration of Article 8 and gave "greater weight than as merely a starting point" to the fact that Ms Arthur did not meet the Immigration Rules. He went on to consider Sections 117A-D with the focus in this case being upon the relationship of Ms Arthur to Ms Willis in respect of whom Ms Arthur had become, after first knowing her in 2007, in 2010, her live in carer. Notwithstanding no permission to work, tax and national insurance was paid on Ms Arthur's behalf. The judge went on to have regard to Section 117B(4) which provides that little weight should be given to any private life established at a time when a person is in the United Kingdom unlawfully but gave considerable weight to the fact that Ms Arthur had

attempted to regularise her status with the Secretary of State taking over three years then to consider the application notwithstanding the letters that were then sent on her behalf. Even after the apology for the delay there was still more delay which Judge Veloso took into account. He then went to consider the five questions of the “*Razgar test*” noting the “very strong bond and friendship in the context of a very high level of dependence on the part of Ms Willis” and indeed the judge in noting the very close and strong bond observed that Ms Willis and Ms Arthur, “came to consider themselves as sisters.”

7. Over and above those matters, the judge took into account the increasing weakening condition of Ms Willis and considering all the evidence in the round found removal in the particular circumstances of the case to be disproportionate and allowed the appeal therefore on Article 8 ECHR grounds.
8. Not content with that decision the Secretary of State made application for permission to appeal to the Upper Tribunal. Reliance was placed on the fact that little weight is to be attached to private life established during unlawful presence in the United Kingdom. [See Section 117B(4)]. Further exception was taken to the weight given by the judge to the delay on the part of the Secretary of State, it being submitted that the public interest in removing Ms Arthur still remained strong given the statutory presumption in Section 117B(4). Finally it was submitted that the judge had misapplied the guidance in ***SS Congo***; there was no sufficient basis for the judge to look to the wider application of Article 8 on the facts of this case.
9. On 15 September 2015 Judge of the First-tier Tribunal Coates granted permission thus the matter comes before me.
10. Ms Everett for the Secretary of State took what I considered to be a very sensible and realistic approach to her own appeal. She relied on the grounds which she submitted spoke for themselves. She submitted that so far as the delay was concerned though the solicitors for Ms Arthur had contacted the Home Office on a number of occasions, the delay on the part of the Secretary of State had to be seen in the context of Ms Arthur having been in the United Kingdom unlawfully from 2002 though she accepted that the delay of three years was “not good practice”.
11. Mr Ume-Ezeoke drew my attention to the consideration by the judge of Section 117B at paragraph 32 of the Statement of Reasons and indeed not only did the judge do that but made an adverse finding in respect of Ms Arthur’s contention that she had attempted in 2005 to regularise her status. The point Mr Ume-Ezeoke was making was that this demonstrated a very balanced approach by the judge to the issues to be considered. Still further at paragraphs 28-30 the judge had clearly set out the reasons why in his view the wider application of Article 8 fell to be considered on the facts of the case. Mr Ume-Ezeoke also reminded me of the guidance by the House of Lords in the case of ***EB Kosovo v Secretary of State for the Home Department [2008] UK HL41***.

- “14. It does not, however, follow that delay in the decision making process is necessarily irrelevant to the decision. It may, depending on the facts, be relevant in any one of three ways. First, the applicant may during the period of any delay develop closer personal and social ties and establish deeper roots in the community and he could have shown earlier. The longer the period of the delay, the likely this is to be true. The extent that it is true, the applicant’s claim under Article 8 will necessarily be strengthened. It is unnecessary to elaborate this point since the Respondent accepts it.
15. Delay may be relevant in a second less obvious way. An Immigrant without leave to enter or remain is in a very precarious situation, liable to be removed at any time. Any relationship into which such an applicant enters is likely to be, initially, tentative, being entered into under the shadow of severance by administrative order. This is the more true where the other party to the relationship is aware of the applicant’s precarious position...
16. Delay may be relevant, thirdly in reducing the weight otherwise to be accorded to the requirements of firm and fair immigration control, if the delay is shown to be the result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes...”
12. Whilst therefore the point made by Ms Everett is a relevant factor, namely that the delay was in the course of a long period of Ms Arthur being unlawfully in the United Kingdom, the question for me is whether it was open to the judge to give that delay the weight that he did.
13. In my judgment there was nothing perverse or irrational in the approach taken by the judge. He was constrained by statute to give little weight to private life established when unlawfully in the United Kingdom though that has to be seen against the guidance given at paragraph 16 in the case of **EB Kosovo** to which I have referred above. Further whilst little weight is to be given to private life, there will be different types of private life so that the little weight may be more in some cases than in others. In looking to the public interest and indeed the individual’s contentions said to outweigh any public interest in removal a relevant factor must of course be the nature of that relationship which on the facts of this case came very close, in the judge’s view to amounting to family life indeed whether it was open to the judge to characterise the relationship as family life is moot. However that was not a finding which the judge made and it would not be appropriate to me to go further than I have.
14. In my judgment this was a very carefully considered statement of reasons. The decision of the judge falls well within the range of findings open to him on the issue of proportionality given the facts as they were and I should say further that his decision to look to the wider application of Article 8 on the facts of this case given the medical issues and the nature of the relationship were such that it was entirely appropriate in my judgment for him to take that course. Indeed it is An observation which this tribunal can make that a very large proportion of cases which fall to be considered within the wider application of Article 8 will necessarily be cases involving medical issues because the Immigration Rules did not specifically address

cases where medical issues arise on top of the family or private life considerations ordinarily to be considered under the Immigration Rules.

15. In all the circumstances I find no material error of law in the decision of the First-tier Tribunal and accordingly the decision of the First-tier Tribunal shall stand.

Notice of Decision

The appeal to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal is affirmed.

Signed

Date

Deputy Upper Tribunal Judge Zucker