



IAC-AH-SC-V1

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

Appeal Number: IA/00605/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 4 January 2016**

**Decision & Reasons Promulgated
On 15 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

ALICIA PROMESSE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None (but see below)

For the Respondent: Mr K Norton, Home Office Presenting Officer

DECISION AND REASONS

The History of the Appeal

1. The Appellant, who is a citizen of St Lucia, appealed against the decision of the Respondent to refuse her application for leave to remain in the UK on the basis of Article 8 of the European Convention on Human Rights, which is her qualified right to respect for her private and family life.
2. The Appellant's appeal was heard on 26 June 2015 at Hatton Cross by Judge Manyarara. The Appellant appeared in person; the Respondent was not represented. In a decision promulgated on 8 July 2015 the appeal was

allowed under the Immigration Rules and on Article 8 human rights grounds.

3. Permission to appeal was granted to the Respondent on 30 September 2015 by Judge Osborne in the following terms:-

- “1. The grounds seek permission to appeal the decision and reasons of First-tier Tribunal Judge Manyarara who in a decision and reasons promulgated 8 July 2015 allowed the Appellant’s appeal against the Respondent’s decision to remove an illegal entrant/person subject to administrative removal under Section 10 of the Immigration and Asylum Act 1999, under the Immigration Rules and in relation to Article 8.
2. The grounds assert that the Judge made a material error of law in allowing the appeal. The Judge found that there are very significant obstacles to the Appellant’s returning to St. Lucia because she would have no family there to support her. The Respondent submits that the finding is superficial; the Appellant’s evidence is that she is now estranged from her family in the UK and cannot turn to them for support. The Appellant did not demonstrate that she would be incapable of establishing herself independently of her family (as she has done in the UK) in St. Lucia. The friends who financially support her in terms of her son’s medical needs in the UK could continue to do so. The Judge also erred in assessing Article 8. The Judge should have had regard to all relevant factors within Section 117. The passing reference to the English language requirement is insufficient to demonstrate lawful engagement with the public interest factors.
3. In an otherwise careful and focused decision and reasons it is nonetheless arguable that the Judge arguably erred in law in failing to find that the Appellant’s friends could continue to financially support her son’s medical needs even if she and her son lived in St. Lucia. It is arguable that the Judge erred in finding that there are very significant obstacles to the Appellant’s returning to St. Lucia due to the fact that she has no family there to support her particularly as she is estranged from those members of her family who live in the UK.
4. As those arguable errors of law have been identified, all the issues raised in the grounds are arguable. Permission to appeal is granted.”

4. On 23 October 2015 the Appellant’s representatives, Apex Solicitors, submitted a bundle of evidence to the Upper Tribunal. They did not comply with Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, which requires an explanation why the evidence was not submitted to the First-tier Tribunal. At the error of law hearing Mr Norton raised no objection to submission of the additional evidence, on the basis that the Tribunal would be much better placed to reach a decision with the benefit of all of the evidence. I accepted the Appellant’s bundle of evidence.

5. On the day of the hearing the Appellant’s solicitors wrote to the Tribunal saying that they would not be attending the hearing, at which the Appellant would be representing herself. The Appellant said at the hearing that this was because she had not been able to afford to pay them.

6. I explained the procedure to the Appellant. Mr Norton made submissions. The Appellant replied, saying that she relied upon the decision of the first judge. I reserved my decision.

Determination

7. As to the Immigration Rules, the evidence before the judge was that the Appellant is estranged from her family in the UK and cannot turn to them for support. The Appellant did not however demonstrate that she could not establish herself independently in St Lucia. The evidence was that her friends support her financially in relation to the medical needs of her son, which are now the subject of evidence. However there was no evidence that they could or would not continue to do so in St Lucia.
8. Paragraph 276ADE(1)(vi) required the Appellant to show that, aged 18 or above and having lived continuously in the UK for less than twenty years, there would be very significant obstacles to her integration into St Lucia. The finding of the judge at paragraph 26 that there would be such obstacles was not grounded in the evidence. This was an error of law.
9. As to Article 8, the judge was required to consider all relevant factors under Section 117 of the Nationality, Immigration and Asylum Act 2002. At paragraph 34 the judge took into account the fact that the Appellant was currently being supported by friends; her child was an EEA national but not a British citizen; and the Appellant was able to understand English. However the judge did not take into account the public interest factors of the maintenance of effective immigration control and the particular weight which was to be accorded to it when the Appellant's immigration status was precarious. His Article 8 proportionality assessment at paragraphs 33 to 35 did not therefore take due account of these considerations. This too was an error of law.
10. I accordingly set the decision aside. The appeal is to be reheard at Hatton Cross by any judge other than Judge Manyarara.

Notice of Decision

11. The original decision contains a material error of law and is set aside.
12. The appeal is remitted to the First-tier Tribunal to be heard at Hatton Cross by any judge other than Judge Manyarara.

Signed

Dated: 11 January 2016

Deputy Upper Tribunal Judge J M Lewis