



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

Appeal Number:
IA/22267/2014

THE IMMIGRATION ACTS

Heard at: Manchester

On: 20th July 2016

**Determination
Promulgated**

On: 20th July 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Mary Sowa
(no anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Harrison, Senior Home Office Presenting Officer
For the Respondent: Mr Moksud, International Immigration Advisory Service

DETERMINATION AND REASONS

1. The Appellant is a national of Sierra Leone born on the 2nd June 1969¹.
2. On the 9th December 2014 the First-tier Tribunal (Judge Dickenson) dismissed her appeal on human rights grounds against a decision to

¹ The date of birth given in the appended Error of Law decision is incorrect

remove her from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999. By way of written decision promulgated on the 3rd June 2016 I set that decision aside. My full reasons are set out in the attached 'Error of Law' decision but in essence the error identified was a failure to make clear findings as to whether the Appellant enjoys a genuine and subsisting parental relationship with her daughter in the United Kingdom. Her daughter, identified in this determination as M, now has indefinite leave to remain, having lived in this country since 2005.

3. This is the re-made decision. The appeal is pursued on Article 8 grounds only. It is necessary to briefly address why that is. First, the Appellant cannot hope to succeed under the Immigration Rules. In respect of Appendix FM she cannot show that she is a 'partner' since she does not have a qualifying relationship. Nor can she show that she is a 'parent' under the terms of that part of the Rules since she shares (at the very least) parental responsibility for M with her sister, Ms Kamara. Second, in respect of private life the Appellant concedes that she cannot meet any of the requirements of paragraph 276ADE(1) concerning either long residence or obstacles to reintegration. She can only hope to succeed on Article 8 grounds 'outside of the rules'. I am satisfied that there are good grounds to consider her case on this footing: Appendix FM is not a "complete code" and this case is a paradigm example of why. The Appellant may well be a parent with a genuine and subsisting family life with a minor who nevertheless falls outwith the scope of Appendix FM.

The Evidence

4. The evidence which led the First-tier Tribunal to doubt the nature of the claimed relationship between the Appellant and her daughter is an Order of the Manchester County Court date 19th September 2007 in which parental responsibility for M is conferred upon the Appellant's sister Camilla Kamara.
5. The Appellant now relies upon the following material to demonstrate that she does have a genuine and subsisting relationship with M:
 - i) A letter dated 14th June 2016 from the Secretary of St Thomas of Canterbury RC Primary School in Salford. Mrs Sarah Wallace writes to confirm that M was a pupil there between September 2007 and July 2015. As far as the school are concerned the Appellant had parental responsibility for M throughout that entire period, or at least from October 2007. The Appellant dropped her at and picked her up from school and was the first point of contact for teachers. She was "hugely involved" in

M's school life and is described as "one of the most supportive parents" the school has ever known.

- ii) A letter dated 2nd June 2016 from Reverend David R. Macfarlane P.P of St Thomas of Canterbury Church. Rev. Macfarlane writes that he has known the Appellant since October 2007 and that she regularly attends mass with her two daughters. He describes her as a "good mother to her children and is bringing them up very well".
- iii) A statement from the Appellant dated 12th July 2016 in which she avers that she has had full responsibility for M since resuming living with her in October 2007. Prior to that she was away training as a nurse and M was living with her aunt Camilla Kamara. It was at that time that the Court Order was obtained.
- iv) A letter (undated and handwritten) from M herself confirming that her love for her mother (and baby sister) is "infinite" and that without her mother's support she would not have managed to get into the good secondary school that she now attends.
- v) A statement dated 12th July 2016 from Camilla Kamara confirming the contents of the Appellant's statement. Ms Kamara states that she and her sister have brought up the Appellant's children, and her own daughter, together. They have supported each other and share a strong bond.

Both the Appellant and M attended the hearing but were not called upon to give any further evidence.

My Findings

6. There is a family life between the Appellant and her daughter M. The evidence itemised at (i)-(v) above all attests to that. There is no credible evidence to the contrary. I am satisfied that there is further a family life between M and her sister, born in the UK in May 2013. I am satisfied that the decision to remove the Appellant (and her younger daughter whom the Secretary of State has agreed to treat as a dependent) would interfere with the family life they both share with M. Article 8 is therefore engaged.
7. The decision to remove persons with no leave to remain is one rationally connected with the legitimate Article 8(2) aim of protection

of the economy.

8. The remaining *Razgar* question is whether the decision is proportionate. The parties agree that in determining that question I must have regard to the factors set out in section 117B of the Nationality, Immigration and Asylum Act 2002. It is not contested that the maintenance of immigration control is in the public interest, nor that the Appellant has not had any leave to remain since September 2005. The Appellant speaks fluent English and is financially independent in that she is supported by her sister. Little weight can be placed on her private life, established as it was when her status was unlawful. I bear all of those factors in mind. The principle provision that has relevance to this appeal is s117B(6):

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

9. In *MA (Pakistan) & Ors* [2016] EWCA Civ 705 the Court of Appeal held that this provision is not simply one of six that all have equal application. At paragraph 17 Elias LJ states:

“there can be no doubt that section 117B(6) must be read as a self-contained provision in the sense that Parliament has stipulated that where the conditions specified in the sub-section are specified, the public interest will not justify removal”.

10. If the Appellant can show that she meets all three of the limbs contained in the provision, the public interest does not require her removal and it would follow that her appeal must be allowed, since the Secretary of State would be unable to show that her removal would be proportionate.
11. I find as fact that M is a qualifying child. She now has indefinite leave to remain, having lived here continuously since 2005. She has therefore lived here for well in excess of seven years.
12. I find as fact that the Appellant has a genuine and subsisting parental relationship with M. That is plain from the evidence of the school, the Reverend, M herself and her aunt. The fact that Ms Kamara was granted parental responsibility in 2007 does not negate the relationship that M enjoys with her mother.
13. The remaining question is whether it is reasonable for M to leave

the UK. I need not decide that question since it has already been resolved. In its decision dated 9th December 2014 the First-tier Tribunal found that she met the requirements of paragraph 276ADE(1)(iv) and allowed her appeal. That decision was not challenged by the Respondent, who granted her leave to remain. It is the Respondent's position that "reasonable" in paragraph 276ADE(1)(iv) means the same as "reasonable" in s117B(6), and this approach has been endorsed by the Court of Appeal in MA (Pakistan) [at 13].

14. All three limbs of the tests in s117B(6) are made out and the public interest does not therefore require the Appellant to be removed from the United Kingdom.

Decisions

15. The appeal is dismissed under the Immigration Rules.
16. The appeal is allowed on Article 8 grounds.

Upper Tribunal Judge Bruce
20th July

2016