



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

Appeal Number: PA/08783/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 January 2018**

**Decision & Reasons  
Promulgated  
On 30 January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FROMM**

**Between**

**[F M]**

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Corban, Solicitor

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS ON ERROR OF LAW**

1. The appellant is a citizen of Kenya born on [ ] 1969. She entered the UK on 27 February 2004 with leave to enter as a visitor. She has overstayed since 23 July 2004, having made two unsuccessful applications for indefinite leave to remain on compassionate grounds. On 2 August 2017, she was encountered and detained. She was served with notices informing her of her liability to removal, whereupon she claimed asylum. A referral was made to investigate whether she was a victim of modern slavery, which resulted in a negative decision. The appellant's protection claim was refused on 6 September 2017. The appellant appealed on protection and

article 8 grounds but, at the beginning of the hearing, in the First-tier Tribunal, withdrew her protection claim.

2. In a decision promulgated on 16 October 2017, Judge of the First-tier Tribunal Jessica Pacey dismissed the appellant's appeal on all grounds. The appellant's case on article 8 grounds was brought on the basis she had been in a four-year relationship with a partner, who had refugee status and who could not therefore be expected to return to Kenya. With respect to her private life, the appellant claimed to have broken all her ties with Kenya and, as a 48-year-old woman in a highly corrupt and chaotic society, she was unlikely to be able to re-adapt to life there, particularly in order to find work. She would have no home or financial resources so she was likely to become homeless, which would lead to considerable emotional and psychological difficulties. Neither the appellant nor her partner gave evidence and the case proceeded on the basis of submissions only. The Judge noted the appellant had not challenged the finding made by the respondent that, when she had applied for a visit visa, she had been in employment. The Judge found the appellant's age was not an insuperable bar to finding further employment. She was not satisfied the appellant was in a relationship with her claimed partner. She noted that, as the appellant had not challenged the asylum decision or the credibility findings made on it, it could reasonably be concluded that the situation in Kenya and her reasons for leaving that country could not now constitute very significant obstacles to return. Even if she accepted the appellant had broken all her ties with Kenya, that was a matter of choice and the appellant had chosen to remain in the UK in breach of the law allowing her ties with her home country to weaken. Her removal would be proportionate.
3. The application for permission to appeal suggested the Judge had erred in law because she did not give weight to the witness statements regarding the appellant's relationship with her partner. She did not give reasons why she did not accept the evidence contained in those statements and she had penalised the appellant for her decision not to give evidence. The Judge erred in referring to the credibility challenge maintained by the respondent in respect of the protection claim because this claim had been withdrawn. Finally, the grounds argue the Judge had erred by failing to consider any of the provisions of paragraph 276ADE(1) of the rules. Relevant matters had not been taken into account in the proportionality balancing exercise.
4. Permission to appeal was granted because it was arguable the Judge had misdirected herself by failing to consider paragraph 276ADE(1)(vi) of the rules. Had the evidence on this matter been taken into account, it might have made a material difference to the outcome or to the fairness of the proceedings.
5. The respondent has filed a rule 24 response opposing the appeal. This argues that it was never contended that the appellant could satisfy the rules with respect to private life and the thrust of the appeal, after the

asylum element had been dropped, was her family life. It was not incumbent on the Judge to go through every item as long as the reader of the decision could clearly ascertain why the appeal had been won or lost.

6. I heard submissions from the representatives on the issue of whether the Judge's decision was erroneous.
7. Mr Corban relied on the grounds seeking permission to appeal and adopted the observation of the Judge who granted permission to appeal. He suggested the failure of Judge Pacey to consider paragraph 276ADE(1) of the rules was "obvious". She should have done this before embarking on consideration of article 8 outside the rules. When considering proportionality, she had not taken all the relevant factors into consideration.
8. Mr Nath argued the Judge had given adequate consideration to the rule and he pointed out the Judge had considered the case as it had been put to her on behalf of the appellant.
9. I indicated at the end of the hearing that I would dismiss the appeal because I did not consider the Judge's decision contained any material error of law. My reasons are as follows.
10. Permission to appeal was granted to argue a single point: whether the Judge had erred by failing to give consideration to paragraph 276ADE(1) (vi). That paragraph provides that the requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that they are aged 18 years or above, have lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to their integration into the country to which they would have to go if required to leave the UK.
11. It is clear that the appellant's article 8 case was based in large part on her claimed family life with her partner. The Judge rejected the appellant's claim to have a partner and that part of her decision is not now the subject of challenge. The Judge noted how the private life claim was constructed in the grounds of appeal at [14]. She then noted Mr Corban's submissions at [16], in which she was reminded of the appellant's length of residence, her lack of home or financial resources in Kenya and the absence of any welfare system in Kenya. Finally, she noted the presenting officer's submissions at [23].
12. The Judge's findings include the following paragraphs:
  - "38. She has not sought to challenge the asylum decision nor the credibility findings and, then, it can only reasonably be concluded that the situation in Kenya and her reasons for leaving that country cannot constitute very significant obstacles to her return.
  39. Even if I accept the Appellant had broken all ties with Kenya, I note (given a lack of challenge to the asylum findings of the Respondent) that this was a matter of choice in the deliberate

knowledge that she was opting to remain in the UK in breach of immigration rules and, on her argument, allowing ties in her home country to weaken.”

13. If that is not a consideration of paragraph 276ADE(1)(vi), it is not clear what it is. To the extent the challenge being made is that the Judge made no findings on the application of the rule, the case is unarguable. She plainly did. She recorded the arguments and set out her conclusions.
14. Mr Corban sought to exceed the remit of the grant of permission by arguing that the Judge failed to give consideration to the factors weighing in the appellant’s favour. If I understood him to mean that the Judge had not given adequate consideration to the correct application of the rule, I do not find the decision contains any material error.
15. The meaning of the similar provisions in relation to deportation appeals found in section 117C(4) of the 2002 Act and paragraph 339A of the rules were considered in *SSHD v AK (Sierra Leone)* [2016] EWCA Civ 813. Sales LJ said at paragraph [14] that the *“idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.”* In *Treebhawon and Others (NIAA 2002 Part 5A – compelling circumstances test)* [2017] UKUT 00013 (IAC), McCloskey J, in re-making the decision, said the *“very significant obstacles”* test was clearly an elevated threshold. Mere hardship, mere difficulty, and mere upheaval or inconvenience, even where multiplied, will generally be insufficient (see [37]).
16. Judge Pacey clearly had in mind the factors put forward on behalf of the appellant (her length of residence, the loss of ties, her age, the nature of Kenyan society, her lack of resources and difficulty finding employment) and rejected them. She found the appellant had previously worked for an airline and her age did not put beyond reach the prospect of her finding employment. Even if, despite the adverse credibility findings made, she accepted the appellant had lost her ties with people in Kenya, this would not be sufficient to meet the requirements of the rule.
17. Contrary to Mr Corban’s arguments, I consider Judge Pacey did consider all the relevant factors and her decision is sustainable.
18. There is no error of law in the First-tier Tribunal’s decision to dismiss the appeal and the decision shall stand. The appellant’s appeal is dismissed.

### **Notice of Decision**

The Judge of the First-tier Tribunal did not make a material error of law and her decision dismissing the appeal is upheld.

No anonymity direction is made.

Signed

Date 23 January 2018

**Deputy Upper Tribunal Judge Froom**