



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

Appeal Number: PA/11869/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 18 June 2019**

Decision & Reasons Promulgated

On 24 June 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AITA SIDIBE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 28 April 1979 and is a female citizen of Senegal. She appealed to the First-tier Tribunal against the decision of the Secretary of State to refuse her human rights and asylum claim following the making of a deportation order against her. The appellant was sentenced to 10 months imprisonment in the Blackfriars Crown Court on 29 July 2016 for possessing a false instrument with intent. She had been granted a six-month visit Visa in 2001 and had overstayed, obtaining the false documents in order to enable her to work in the United Kingdom. The First-tier Tribunal in a decision promulgated on 28 December 2018, dismissed her appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The appellant appeared in person at the initial hearing at Birmingham before the Upper Tribunal on 18 June 2019. Her command of English was excellent and I believe that she understood the proceedings. I asked the

appellant to let me know if anything was said which he did not fully understand.

3. The grant of permission by Upper Tribunal Judge Grubb notes that the judge applied paragraph 398(c) of HC 395 (as amended) and also section 117C of the 2002 Act on the basis that the appellant's offence caused 'serious harm.' Consequently, the 'public interest in deportation will only be outweighed by other factors whether our very compelling circumstances over and above those described in paragraphs 399 and 399A.' The appellant has no partner or children in the United Kingdom. Neither Exception under section 117C applies to her. As Judge Grubb observe when granting permission, whether or not 'serious harm' is made out in the provision of the rules and the statute do or do not apply to the appellant, she may only appeal on Article 8 ECHR private life grounds which require her to show the existence of very compelling circumstances.
4. There is little guidance from the Senior Courts as to the proper construction of 'serious harm.' In *LT and DC* [2016] EWCA Civ 1246, the Court of Appeal dealt with appeals arising out of deportation decisions against individuals who had committed serious drug offences. As the appellant in the instant case pointed out, her offence was considerably less serious. However, it is clear from the Court of Appeal's judgement [19] that 'substantial weight should be accorded by the tribunals to the [Secretary of State's] view that' particular offences cause serious harm either to individuals or to society as a whole. The Court of Appeal also stated that [24], 'the proposition that all drugs offences are by their nature serious may be questionable.' By extension, not all offences involving false documents will be by their very nature serious. Having said that, the appellant in the instant appeal has worked for a number of years on the basis of false documentation and would no doubt have carried on working had she not been apprehended. In the light of the weight which the First-tier Tribunal was obliged to give opinion of the Secretary of State, I am satisfied that, on the particular facts, the appellant's offence can be characterised as having caused serious harm to the community.
5. Even if I am wrong in their conclusion, and the designation of serious harm in this instance was inappropriate, the outcome of the appeal would not have been different. This is because there is nothing in the circumstances of this appellant which may be accurately described as very compelling. The appellant was bound to lose her appeal on the only ground available to her, Article 8 ECHR. In the circumstances, and notwithstanding the judge's error at [23] in misdescribing the incidence of the burden of proof in a human rights appeal, I find this appeal should be dismissed.

Notice of Decision

This appeal is dismissed.

Signed

Date 18 June 2019

Upper Tribunal Judge Lane