IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003881
First-tier Tribunal No: HU/54897/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 August 2023

Before

DEPUTY UT JUDGE FARRELLY

Between

MRS RUTH MUSIS NABUWULE
(anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D Olawanle of Del and Co,solicitors.
For the Respondent: Mr S Walker , HOPO.

Heard at Field House on 4th August 2023

DECISION AND REASONS

1. The appellant is a national of Uganda, born on 3 August 1933.

2. She came to the United Kingdom on 23 March 2002 on a visit Visa, valid until 25 August 2005. Her daughter and grandchildren lived here.

3. The appellant overstayed the terms of her visit Visa. She subsequently made various unsuccessful applications for leave to remain to regularise her situation .On 16 July 2019 she lodged further submissions relating to her last application of 18 February 2016. These were rejected and her appeal was heard

by First-tier Tribunal Judge Hyland at Hatton Cross on 16 May 2022 via the CVP platform. Her appeal was dismissed.

4. The parties were represented and the appellant took part through an interpreter. There was also evidence from her daughter and grandson. She has a total of six grandchildren. There was a bundle of documents in support of the appeal.

5. The judge began by considering the application of paragraph 276 ADE(1)(vi) of the immigration rules which deals with private life. The issue arising, where the person had lived in the United Kingdom for less than 20 years, was whether there would be very significant obstacles to their integration into their home country .

6. Her account was that she had four brothers and three sisters but the family were scattered and she did not know if they were alive or their circumstances. She was similarly unclear about any extended family. The same was said about her daughter's account. The judge did not accept the absence of family or support in Uganda and concluded she continued to have connections and ties to her home country. The judge had regard to her age and health and her involvement with her church. The judge concluded that neither individually or collectively would these amount to very significant obstacles to return. Consequently, the judge concluded she could not benefit from paragraph 276 ADE(1)(vi).

7. The judge went on to consider article 8 on a freestanding basis. She acknowledged the section 55 duty towards the appellants two youngest grandchildren. The judge concluded their needs could be met by their mother and older siblings.

8. The judge accepted the existence of family life within the meaning of article 8. The judge also accepted the existence of a private life, given the length of time she had been here. The judge concluded that this family life could continue via social media and modern means of communication.

9. The judge considered the public interest consideration set out in section 117 B of the Nationality, Immigration and Asylum Act 2002 . The judge commented that the appellant did not speak English and took this into consideration as a public interest factors.

Permission to appeal to the Upper Tribunal

10. First-tier Tribunal Judge Bartlett refused permission to appeal, finding no arguable error of law. The application was renewed before Upper Tribunal Judge Lindsley who granted permission on the basis it was arguably an error of law to refer to the appellant's lack of English when the immigration rules only require English for those under the age of 65. The grounds had also argued that someone of her age and frailty would face significant obstacles to integration, particularly given her close family ties in the United Kingdom and her established private life.

The Upper Tribunal hearing

11. At the outset Mr S Walker , HOPO, accepted that the reference to the appellant's lack of English, given her age, amounted to a material error of law.

12. I referred Mr Walker to paragraph 276 ADE(1) (iii) and the reference to someone who had lived in the United Kingdom for 20 years. There was no suggestion the appellant had left the United Kingdom since arrival. Given that she had arrived in the United Kingdom on 23 March 2002 the 20 years residence was met on 23 March 2022, albeit this was after the date of application. There were no issues suggested in relation to suitability. Given that the immigration rules are meant to reflect the respondent's policy in relation to article 8 this rule was relevant to the freestanding assessment. He did not demure.

13. I indicated I would set aside the First-tier Tribunal and remake it, allowing the appeal on the basis of article 8 .

Decision

A material error of law has been established. The decision of First-tier Tribunal Judge Hyland is set aside. I remake the decision allowing the appeal on the basis of article 8 and long residence .

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

4th August 2023