



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

Appeal Number: IA/45889/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 February 2016**

**Decision &
Promulgated
On 21 March 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**T H K
(ANONYMITY HAS BEEN DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karim, Counsel, representing Wall Lane Solicitors, London

For the Respondent: Ms Savage, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sierra Leone born on [] 1963. She appealed against the Respondents decision of 30 October 2014 refusing her application for leave to remain in the United Kingdom based on her human rights. Her appeal was heard by a Judge of the First Tier Tribunal Onoufriou on 19 May 2015. He dismissed the appeal under the Immigration Rules and under Article 8 of ECHR in a decision promulgated on 4 June 2015.
2. An application for permission to appeal was lodged. Permission was refused by Judge of the First Tier Tribunal Robertson on 17 August 2015.

Permission to appeal to the Upper Tribunal was lodged and permission was granted by Deputy Upper Tribunal Judge Archer on 17 November 2015. The permission states that it is arguable that the Judge did not apply the correct version of paragraph 276ADE(vi) of the Rules. In paragraph 28 of the decision the Judge makes reference to ties with Sierra Leone and then to the absence of significant obstacles or exceptional circumstances preventing her return to Sierra Leone. The permission states it is arguable that the Judge did not give adequate weight to the 9 year delay in making a decision by the Respondent and incorrectly applied an exceptionality test at paragraph 29 instead of the compelling circumstances test identified at paragraph 33 of **SS (Congo) & Others** [2015] EWCA Civ387. Permission was granted on all grounds.

3. There is a Rule 24 response on file which states that with regard to consideration of Rule 276ADE(vi) the newer version of the Rule is a more difficult test for the Appellant to meet so it could not have been a material error for the Judge to fail the appeal under the older version. The response states that the Judge`s findings of family support in Sierra Leone are relevant to either test (paragraph 28). The response states that the Judge properly considered the issue of the delay in the context that it allowed the Appellant to remain in the United Kingdom for a substantial period. This formed part of his overall Article 8 findings.

The Hearing

4. There are 4 grounds of application. Counsel referred to the first ground and paragraphs 23 and 24 of the decision. The Judge makes credibility findings in these paragraphs and refers to the Devaseelan principle based on the Appellant`s previous asylum appeal. Counsel submitted that the Judge did not make his own credibility findings but instead based his decision on the credibility findings in the asylum appeal.
5. With regard to the second ground and to Rule 276ADE(vi), Counsel submitted that at paragraph 28 the Judge conflates the former test with the correct test. He makes his decision based on the Appellant`s lack of ties to Sierra Leone and whether there are any significant obstacles to her returning. He submitted that that is not the correct test. The correct test is whether there are very significant obstacles to the appellant`s integration into Sierra Leone.
6. Counsel submitted that there was a delay of 9 years from when the Appellant made her human rights claim until the Respondent made the decision to refuse her human rights claim. He submitted that this detracted from her claim, as it meant that she lost touch with her own country and any ties she had to Sierra Leone diminished. He submitted that the Judge did not engage with this.
7. Counsel went on to deal with Article 8 outside the Rules and paragraph 29 of the decision, in which the Judge states that there are no exceptional circumstances in this case. He referred to the said case of **SS (Congo) &**

Others at paragraph 33 and submitted that the test of exceptionality no longer holds. He submitted that the test now is not as strict as exceptionality and this is an error on the Judge`s part.

8. I put to counsel that with regard to the credibility findings the Judge makes, it perfectly clear at paragraph 23 of his decision why he finds the appellant`s evidence to lack credibility. The Judge correctly uses the **Devaseelan** principle and then refers to the Appellant lying at the Hearing before him and denying that she had a previous asylum claim, which she clearly had based on what was before him. The appellant`s evidence that Mr [C] (she stays with him and his wife) has supported her in the UK for 11 of her 14 years here but the Judge found not to be credible particularly as he did not attend the Hearing to support her appeal or even provide a letter. At paragraph 24 the judge states that he finds that the Appellant totally lacks credibility. He was entitled to state this based on the above. Counsel submitted that the appellant`s evidence might not have been as clear as it could have been but the Judge`s starting point, being the Appellant`s failed asylum claim, was also his ending point and that is definitely not the case.
9. With regard to rule 276ADE(vi) the judge deals with this at paragraph 28. He refers to very significant obstacles and the lack of ties to Sierra Leona. I put to Counsel that this is a lower test than the current test which is “very significant obstacles to integration in Sierra Leone on return.” He submitted that this Appellant has been out of Sierra Leone for 14 years and would have very significant obstacles to integration on return.
10. Counsel pointed out that at paragraph 29 of the decision the Judge refers to the 9 year delay. The case of **EB (Kosovo)** [2008] UKHL 41 is referred to and the Judge states that the delay by the Respondent in reaching her decision has been to the Appellant`s advantage rather than her detriment. Counsel submitted that this delay has meant that her integration into Sierra Leone is much more difficult now.
11. I asked Counsel why Article 8 should be considered outside the Rules and why he thinks there are compelling circumstances. He submitted that the Rules only cover people who have been in the United Kingdom for 20 years. He submitted that there will be very significant obstacles to this Appellant re-integrating into Sierra Leone and that delay is not covered by the Rules. He submitted that the Judge has not properly applied the Rules in his decision and there are compelling reasons which will prevent this Appellant returning to Sierra Leone and integrating there.
12. Counsel submitted that there are material errors of law in the Judge`s decision.
13. The Presenting Officer submitted that she is relying on the Rule 24 response and the Judge has given adequate reasons for his decision. She submitted that the Judge found that the Appellant had lied at the Hearing before him and in paragraphs 23 and 24 of the decision proper reasons

are given by the judge for finding the appellant's evidence to lack credibility. She submitted that the judge applied the Devaseelan principle properly and gave adequate reasons for finding credibility to be an issue.

14. The Presenting Officer submitted that at paragraph 28 of the decision the Judge has considered significant obstacles to the Appellant's integration into Sierra Leone. Due to a lack of credibility he does not believe that she has no ties to Sierra Leone. She lives with a Sierra Leonean family in the United Kingdom and associates with other people from Sierra Leone. Her sons are living in Sierra Leone. She states that she could not obtain employment there but no reason has been given for this statement. She submitted that the findings under paragraph 276ADE can be said to apply to the appellant returning and integrating into society there.
15. With regard to the delay the Presenting Officer submitted that paragraphs 27 and 29 deal with this. She submitted that the Respondent's delay in coming to a decision has not adversely impacted on the Appellant but has been to her advantage in that it has extended her stay in the United Kingdom for much longer than she was entitled. She submitted that the judge states that there are no exceptional circumstances and she submitted that the delay has been properly dealt with in the decision and the grounds are merely a disagreement with the Judge's findings.
16. With regard to Article 8 outside the Rules the Presenting Officer submitted that this is dealt with in paragraph 29. She submitted that all the facts before the Judge were considered within the Rules and so Article 8 outside the Rules did not require to be considered. The Judge has dealt with the matters which Counsel has stated are not covered by the Rules, being the delay, the length of time the Appellant has been in the United Kingdom, (which does not amount to 20 years) and there are no compelling reasons for considering this application outside the Rules.
17. She submitted that all considerations have been assessed by the judge under the Rules.
18. She submitted that with regard to paragraph 29, the fact that exceptional circumstances are referred to does not undermine the Judge's findings.
19. She submitted that there is no material error of law in the Judge's decision.
20. Counsel for the Appellant submitted that the Rules do not take into account the quality of an Appellant's private life. He submitted that private life in this appeal has not been properly considered under the Rules and the Judge has failed to weigh to public interest against the appellant's rights and that these are material errors.

Decision & Reasons

21. In paragraphs 23 and 24 the Judge has given his own reasons for finding that there is no credibility in this Appellant`s account. He has also dealt properly with the **Devaseelan** issue.
22. With regard to paragraph 276ADE (vi) the Judge made an error when he referred to ties to Sierra Leone and significant obstacles to the appellant`s return but it is clear from his findings, that he is aware that this is a lady who has lived for most of her life in Sierra Leone, has children there and has ties to Sierra Leonean people in the United Kingdom. He makes it clear why he finds the terms of paragraph 276 ADE cannot be satisfied. Based on his findings there is no reason for finding that the appellant would be unable to integrate into Sierra Leone on return. This is not a material error of law.
23. The Judge deals properly with delay at paragraphs 26 and 29. The said case of **EB (Kosovo)** refers to delay in the Respondent making a decision being significant if it is to the detriment of the Appellant. The judge finds that this is not the case here. He has pointed out that had the decision been made sooner the Appellant would have been liable for removal sooner.
24. With regard to Article 8 outside the Rules, Counsel submitted that the Rules do not cover everything in this case. He referred to paragraph 276ADE requiring an Appellant to be in the United Kingdom for 20 years. The Judge in his decision shows that he is aware of how long the Appellant has been in the United Kingdom and has taken this into account. Counsel then submitted that delay is not covered by the Rules but the Judge has dealt with the delay adequately in his decision. Counsel then referred to the appellant`s private life not being properly considered within the Rules but in paragraph 29 the Judge refers to her private life, stating that it is very limited and involves going to Church, doing voluntary work and meeting friends. The Judge has considered everything within the Rules. There is therefore no reason for considering this claim outside the Rules. This is not an error of law.
25. In paragraph 29 the Judge deals with the evidence in the round and finds that it would be proportionate for the Respondent to remove the Appellant from the United Kingdom for the purpose of maintaining effective immigration control and in the public interest.

Decision

26. There is no material error of law in the Judge`s decision, promulgated on 4 June 2015. The decision of Judge Onoufriou dismissing the Appellant`s appeal under the Immigration Rules and on human rights issues must stand.
27. Anonymity has been directed.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray
Judge of the Upper Tribunal