Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/05519/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 14 October 2013	**On 18 October 2013**
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Before

THE HON. MR JUSTICE COLLINS
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE ESHUN

Between

MISS OLUWAYEMISI ADEOLA ONASANYA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Plowright, Counsel instructed by Perera & Co Solicitors
For the Respondent: Mrs K Pal, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision of the Secretary of State that the appellant is liable to removal from the United Kingdom under Section 10 of the 1999 Act. The appellant is Nigerian. She came here originally at the

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age of 17 in 1998. She had leave for six months as a visitor. She decided to overstay and in the course of her time here she got good qualifications and she is obviously very able and she has qualifications as a quantity surveyor. Indeed in January 2008 she set up a private company to offer services in quantity surveying. Sadly at all material times she was here unlawfully and it was not until December 2009 that she made a formal application to the UKBA to regularise her stay and to seek leave to remain in the United Kingdom.

2. The Secretary of State refused her application on 1 July 2011 and refused to reconsider the matter following a letter from the appellant's solicitors. The Secretary of State then took considerable time to decide on removal, the appellant being here at all times but eventually the decision was made and the Secretary of State decided that she should be removed, hence the appeal.

3. The judge had, as he put it, considerable sympathy for the appellant she having come to this country shortly before her 18th birthday, her father having brought her here with her younger brother. But a decision was made (the judge put it down to her and her family) that she should remain here and he made the point that all her studies and obtaining of qualifications was done while she was deliberately flouting the laws of this country and she had thereby avoided the need to seek entry clearance which might have been granted, who knows, in order to obtain those qualifications. It follows that the Article 8 claim upon which the appeal and indeed the application was based is exceedingly weak. Private life established while an individual is here unlawfully for obvious reasons carries much less weight than private life established while a person is here lawfully. It is true that once the Secretary of State is aware of unlawful presence failure to decide within a reasonable time to remove may sometimes enable the person concerned to establish the right to private life a little more strongly but the starting point must be that unlawful presence is not something which gives rise to a claim which is at all strong.

4. The Immigration Judge decided that her qualification as a quantity surveyor was more than capable of being transferred to Nigeria and there was nothing within her background which suggested she would not be supported by her family based in the United Kingdom while she re-established herself in Nigeria and it is quite impossible to quarrel with that conclusion.

5. Now the reason why leave to appeal was granted was that the Upper Tier Tribunal Judge decided that although it was not a matter raised before the judge and whilst it might come to nothing, it was arguable that consideration ought to have been given to the transitional provisions relating to long residence applications in view of the fact that the appellant's application was made before 9 July 2012 given the delay by the respondent in taking enforcement action. The problem of course is that

she would not have qualified under the fourteen year Rule which was the only one upon which she would have been able to rely before July 2012 and in fairness to Mr Plowright he recognises it would not have been possible for her to have relied upon it. Indeed he represented her below and it may well be that if there had been anything in that point he would have spotted it. I am sure he knows immigration law and he was right not to rely upon that. It is perhaps unfortunate that some hope has been given to the appellant by a mistaken grant of leave to appeal.

6. Mr Plowright did make the point that there was no Home Office Presenting Officer below and the positive adverse findings about the decision of the family to flout the law was one which was not put in terms to the appellant or her family who were present before the Immigration Judge. There was of course no cross-examination. They gave their evidence or confirmed so far as necessary the contents of the statements that had been put in. However it is clear to us that the conclusions reached by the Immigration Judge were inevitable. Either she decided of her own accord to overstay and the family were unaware of and were in no way complicit in it. That is improbable to say the least, particularly having regard to her age, and it was indeed less damaging to her case if this was something which the family were complicit in rather than her doing it entirely on her own and one must bear in mind her age at the time, she was only 17. We are afraid that there is no irregularity which can be relied on in support of this appeal on the basis of those findings by the Immigration Judge. He was in our view inevitably entitled to come to them and it is difficult and indeed Mr Plowright was not able to put forward any matter which would have mitigated those conclusions. In all those circumstances this appeal must be dismissed.

Signed Dated: 2013

Mr Justice Collins
Sitting as a Judge of the Upper Tribunal