Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/04417/2015**

THE IMMIGRATION ACTS

Heard at Field House
On 9th October 2015

Decision and Reasons Promulgated
On 20th October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

Miss MARVA LINDA CALLISTE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Hussain (counsel) instructed by Addison & Khan, solicitors
For the Respondent: Ms E Savage, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hillis promulgated on 2 June 2015, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 10 March 1981 and is a national of Grenada.

4. On 13 January 2015 the Secretary of State refused the Appellant's application to vary leave to remain in the UK and decided to remove the appellant.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Hillis ("the Judge") dismissed the appeal against the Respondent's decision.

6. Grounds of appeal were lodged and on 4 September 2015 Judge Cox gave permission to appeal stating inter alia

> ".. The judge did not in my view demonstrate at [17] to [20] that he had either understood or engaged with A's case, rather borne out at [20] by his reference to family life."

The Hearing

7. Mr Hussain, for the appellant, adopted the terms of the grounds of appeal and argued, firstly, that the appellant's bundle of documents had not been considered by the judge, and, secondly, that the judge has carried out an inadequate balancing exercise when considering article 8 ECHR. He explained that the appellant could not submit an application for leave to remain as a tier 4 student because she did not have a CAS letter as she was awaiting approval for her Ph.D. proposal. He argued that the judge failed to consider the appellant's full immigration history and failed to consider what would happen to the appellant if she had to return to Grenada for a few months to make an application for entry clearance from there. He conceded that at [10] the five stage test set out in Razgar is narrated, but argued that the judge did not follow those five steps.

8. Ms Savage, for the respondent, relied on the rule 24 reply dated 14 September 2015, and argued that the decision does not contain a material error of law, nor do the grounds of appeal identify a material error of law. She told me that the judge considered article 8 ECHR in a structured way by first of all assessing the appellant's appeal against paragraph 276ADE of the immigration rules, before considering whether or not there are reasons to consider the appellant's case out-with the immigration. Ms Savage relied on paragraph 57 of Patel and others v SSHD [2013] WLR(D) 450, and urged me to dismiss the appeal.

Analysis

9. The appellant drafted the grounds of appeal without the benefit of legal representation. Two challenges are raised by the appellant. The first is that the appellant does not believe that documents presented by her were considered; the second is that inadequate consideration has been given to the factors pled in her case.

10. At [5] of the decision the judge states "*I have also read and taken into account all the documents which have been placed before the tribunal for this appeal.*" At [6] the judge says that the appellant has not produced a bundle of documents but relies on the documents submitted to support her original application. The appellant argues that the judge failed to take account of documents submitted with her notice and grounds of appeal.

11. The problem for the appellant is that the judge clearly states that he considered every document which was placed before him. Neither in her grounds of appeal nor in submissions made by counsel for the appellant before me is it said that a specific piece of evidence has been ignored. In reality counsel for the appellant sought to plead this case of new, arguing that inadequate weight had been given to the history behind the appellant's application.

12. Although the decision is brief, a fair impartial reading of the decision clearly demonstrates that the judge made findings in fact that the appellant is a 33-year-old student who entered the UK in February 2007, and that she appealed against the respondent's decision to remove her from the UK arguing that she has established private life in terms of article 8 ECHR. At [3] the judge clearly and correctly sets out the decision which the appellant appeals against. At [11] the judge succinctly sets out the appellant's claim. At [13] the judge summarises the appellant's grounds of appeal.

13. Between [14] and [15] the judge correctly sets out why the appellant cannot fulfil the requirements of the immigration rules. It is not suggested that the appellant can fulfil the requirements of the immigration rules.

14. In reality the appellants challenge drives at [18] to [20] of the decision. It is true that at [20] the judge makes reference to "*any family life the appellant may be found to have*". That is clearly an error, but it is not a material error of law because it is abundantly clear from an holistic reading of the decision that the appellant's appealed concerned her right to respect for private life, and it was the appellant's article 8 private life that the judge considered. One wrong word has been used, but the context makes it clear that the focus in this case never shifted from article 8 private life.

15. [17] to [18] are brief. The question for me is whether or not that brevity amounts to superficiality.

16. Findings of fact can only be made on the basis of evidence produced. The documents placed before me, together with the submissions made, indicate that no reliable evidence of the component parts of private life within the meaning of article 8 ECHR was played before the judge. The judge looked for

reasons to consider the appellant's article 8 ECHR rights out-with the immigration rules and could not find them because that evidence was not placed before him.

17. In SS (Congo) and Others [2015] EWCA Civ 387 Lord Justice Richards said (at paragraph 33) "*In our judgment, even though a test of exceptionality does not apply in every case falling within the scope of Appendix FM, it is accurate to say that the general position outside the sorts of special contexts referred to above is that compelling circumstances would need to be identified to support a claim for grant of LTR outside the new Rules in Appendix FM. In our view, that is a formulation which is not as strict as a test of exceptionality or a requirement of* "*very compelling reasons*" *(as referred to in MF (Nigeria) in the context of the Rules applicable to foreign criminals), but which gives appropriate weight to the focused consideration of public interest factors as finds expression in the Secretary of State's formulation of the new Rules in Appendix FM. It also reflects the formulation in Nagre at para. [29], which has been tested and has survived scrutiny in this court: see, e.g., Haleemudeen at [44], per Beatson LJ*".

18. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

19. It is not an arguable error of law for a Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for a Judge to fail to deal with every factual issue under argument. Disagreement with a Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. I find that the Judge's decision, when read as a whole, sets out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

20. I therefore find that no errors of law have been established and that the Judge's determination should stand.

DECISION

21. The appeal is dismissed.

Signed Date
Deputy Upper Tribunal Judge Doyle