



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

Appeal Number: IA/04608/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> February 2015**

**Decision & Reasons Promulgated  
On 25<sup>th</sup> February 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**MISS LUCIA ONYEKACHI DURUAKU  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms C Record, Counsel

For the Respondent: Mr M Shilliday, Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Nigeria born on 23<sup>rd</sup> December 1978. She first came to the UK on 20<sup>th</sup> June 2000 when she entered the UK as a student. She had leave to remain as a student until 30<sup>th</sup> September 2002. She then overstayed until 23<sup>rd</sup> March 2005 when she made an application to remain on the basis of her marriage to Mr Obinna Onyemaechi Ike. She was granted discretionary leave to remain on the basis of this marriage from 28<sup>th</sup> August 2008 until 20<sup>th</sup> October 2011. She attempted to extend her leave on 11<sup>th</sup> October 2011 but this application was rejected due to errors with the application form and fees. She made an application which was

accepted on 15<sup>th</sup> March 2012 for further discretionary leave on the basis of her long residence and private life in the UK, her relationship with Mr Ike having broken down by this time. This application was refused on 8<sup>th</sup> January 2014. She appealed on 16<sup>th</sup> January 2014. Her appeal was dismissed in a determination of Judge of the First-tier Tribunal Kainth promulgated on 13<sup>th</sup> November 2014.

2. On 14<sup>th</sup> January 2015 Judge of the First-tier Tribunal Osborne found that there was an arguable error of law and granted permission to appeal because it was arguable that Judge Kainth had not given proper consideration to the appellant's legal stay and qualification as a nurse. Whilst these issues were not determinative of the issue of proportionality they should have been considered before making a proper decision.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

### *Submissions*

4. Ms Record drew my attention to the fact that the appellant's bundle included her nursing qualifications, her conditional job offer for a position with the NHS and newspaper articles about the shortage of nurses. She accepted that Judge Kainth had applied the correct test for establishing whether the refusal was proportionate but argued that he had failed to put the appellant's ability to contribute the community through her work into the balance when considering proportionality. She drew my attention to UE (Nigeria) v SSHD [2010] EWCA Civ 975 at paragraph 42 to 45. She argued that Judge Kainth had erred in law in applying principles derived from Nasim and others (Article 8) [2014] UKUT 00025 as that case was about students wanting to extend their leave to remain. The fact that Nasim found that contributing to the economy was not a matter which made the student appellants' Article 8 cases stronger should not have guided Judge Kainth given that this appellant had a more complex background situation. Judge Kainth should have been guided by UE (Nigeria). Ms Record argued that the points based system was not relevant here as the respondent had not argued that the appellant should apply in this way in her refusal letter.
5. Mr Shilliday argued that it was highly significant that the appellant had conceded she could not meet the Immigration Rules. As stated at s.117 of the Nationality, Immigration and Asylum Act 2002 immigration control was in the economic interests of the UK. He relied upon what was said at paragraph 64 of Singh v SSHD [2015] EWCA Civ 74 that unless the case raised issues not dealt with by the Immigration Rules that there was no need to conduct a separate consideration of Article 8 ECHR. If the appellant argued her work was in the economic interests of the UK she needed to make a points' based application and show she could qualify in this way. UE (Nigeria) had been decided on the basis of the Immigration Rules prior to the points based system. Judge Kainth had sufficiently considered the appellant's work skills at paragraph 30 of the determination and his determination disclosed no error of law.

6. As the end of the hearing I informed the parties that I found that the First-tier Tribunal had not erred in law. I set out my reasons below.

### *Conclusions*

7. Ms Record conceded that Judge Kainth had applied the correct test at paragraph 19 and 30 of his determination when looking at the issue of the proportionality of the interference with the appellant's Article 8 ECHR rights outside of the Immigration Rules.
8. Judge Kainth had clearly considered the matter of the appellant's ability to contribute to the UK economy and society. He explicitly says that he has done so at paragraph 30 of his determination and from his summary at paragraph 13 was clearly aware that she was a qualified nurse with a job offer in a skill shortage area.
9. Judge Kainth did not err in law in concluding that this factor was sufficiently strong to outweigh the public interests in upholding immigration control, particularly given the guidance in Nasim, that such factors were not to be given significant weight when considering proportionality under Article 8 ECHR. I can see no reason why this factor should be given greater weight in the appellant's immigration situation than in the context of the students in Nasim.
10. As Mr Shilliday has pointed out if it is in the economic interests of the UK for her to be able to work here as a nurse then the appellant ought to succeed in an application to return to the UK with points based system entry clearance. She had not demonstrated this was the case, by making an application or otherwise however, and so this did not form part of the evidence before Judge Kainth. This may be a matter for her to discuss with her solicitors in the future.

### **Decision**

1. The First-tier Tribunal did not err in law.
2. The determination of the First-tier Tribunal is upheld.

No anonymity direction is made.

Signed

Date 23<sup>rd</sup> February 2015

Judge Lindsley  
Deputy Upper Tribunal Judge

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 23<sup>rd</sup> February 2015

Judge Lindsley  
Deputy Upper Tribunal Judge