



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11552/2014

THE IMMIGRATION ACTS

Heard at Field House
On July 16, 2018

Decision & Reasons Promulgated
On July 25, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MISS ZN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brown, Counsel, instructed by Farani-Javid-Taylor Solicitors
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I extend the anonymity order made in the First-tier Tribunal. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of

her family. This direction applies to amongst others, the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is a Sierra Leone national. She entered the United Kingdom as a visitor on May 23, 2006 aged 29 years of age. A previous application on human rights grounds dated May 28, 2010 was refused without a right of appeal on July 5, 2010 and following a reconsideration by the respondent on July 27, 2014 it was certified as unfounded.
3. On October 20, 2014 she applied for asylum. The respondent refused her application on December 4, 2014 and she appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her appeal came before Judge of the First-tier Tribunal Oliver on September 9, 2016 and in a decision promulgated on September 27, 2017 he dismissed her claims for protection and on human rights grounds. She appealed to the Upper Tribunal and following a hearing on January 5, 2017 Upper Tribunal Judge Gill upheld the decision on protection and article 3 grounds but found there had been an error in law on private and family life issues and remitted this back to the First-tier Tribunal.
4. This remitted appeal was heard by Judge of the First-tier Tribunal Twydell (hereinafter called "the Judge") on December 13, 2017 and in a decision promulgated on January 12, 2018 the Judge dismissed her appeal. Permission to appeal was granted by Judge of the First-tier Tribunal Parkes on February 12, 2018 and the appeal was initially listed before me on April 11, 2018.
5. On that date the respondent's representative (Mr Deller) conceded that the Judge's assessment of the family life between the appellant and mother at paragraph 31 of the decision was lacking in substance. Mr Deller made it clear that he did not agree the appeal should be allowed but was prepared to accept that the Judge failed to properly analyse the relationship and had further erred in paragraph 34 of the decision by speculating where the appellant's mother may live.
6. Due to the appeal's history and the outstanding issues I retained the appeal in the Upper Tribunal and directed the Appellant serve further evidence about her mother including but not limited to (a) an updated report from social services addressing what services would be available to the appellant's mother in the event the appellant was removed and (b) updated medical evidence.
7. The appellant's representatives submitted a report provided by social services, dated July 3, 2018, along with a letter from Barts Health NHS Trust dated June 13, 2018.
8. The social service report indicated that the appellant's mother was unable to speak English but was capable of understanding a little English. She was capable of making decisions for herself insofar as what she wanted and told the interviewing officer that she did not want any carers as the appellant was happy to provide the support she needed. The author of the report concluded the appellant's mother:
 - (a) Satisfied the eligibility criteria for care and support under the Care Act 2014.

- (b) Had the capacity to make decisions for herself including deciding what she wanted to wear.
 - (c) Was able to engage throughout the assessment but needed her son to translate for her.
 - (d) Was supported by the appellant who would continue to do so.
 - (e) Was able to manage toilet transfers but needed support both getting out of bed and in and out of the bath.
 - (f) Did not require her care and support needs to be met by social services but she wanted the appellant to continue to be her carer.
9. The medical report confirmed that the appellant's mother was being treated for HIV infection and tuberculous of the central nervous system and that she had a complex course in terms of therapy and recovery. She took various medication on a daily basis and was supported, in the main, by the appellant.

SUBMISSIONS

10. Ms Brown adopted the content of her skeleton argument that she had handed to the Tribunal on the morning of the hearing. She agreed that the appeal was under article 8 ECHR and she argued that the appellant was entitled to remain outside of the Immigration Rules because she was her mother's carer. To a lesser extent she relied on the private and family life she had established with her two brothers and her niece.
11. Ms Brown relied on the updated reports that were before the Tribunal and whilst she accepted that care was available from social services she submitted the Tribunal would have to consider who was best placed to provide that care. She submitted that it was reasonable that the appellant be allowed to provide the care for her 78-year-old mother whom she had been supporting ever since her health had deteriorated. She referred to the Respondent's Carer's Policy and submitted that in deciding who was best placed to provide such care, regard should be had to the wishes of the family.
12. The Tribunal should also take into account the language difficulties and whilst Ms Brown accepted this did not mean social services could not provide the appropriate care she argued it was an additional factor to take into account.
13. The fact the appellant's mother required personal care was something her son was unable to provide firstly because it would be embarrassing for him and secondly her two sons were in full-time employment and her niece studied.
14. Ms Brown submitted that the appellant was a de facto parent to her niece as she had looked after her since she was ten years of age and she had a private life with her and her two siblings.
15. In considering section 117B of the 2002 Act she submitted the appellant spoke English and was not reliant upon the state albeit she personally was not financially

independent. She submitted there were special and compelling circumstances that meant the appellant's appeal should be allowed. She referred, in her skeleton argument to a number of authorities that addressed the concept of private/family life between adults and she submitted the public interest did not require her removal.

16. Mr Bramble invited the Tribunal to dismiss the appeal and submitted that until sixteen months ago there was no family or private life but the situation changed when the appellant's mother was discharged from hospital. Her previous human rights application had been rejected both in 2010 and 2014.
17. Mr Bramble submitted that this was a proportionality assessment and in carrying out a proportionality assessment under article 8 ECHR, he submitted the Tribunal was entitled to take into account that the appellant had been here unlawfully since October 2006 and her private life and family life which she now seeks to rely on had been built up over a period of almost 12 years unlawful stay. Whilst it was understandable the appellant's mother did not want her sons carrying out certain aspects of her personal care the fact remained social services were able and willing to provide such care. She declined all offers of support on the basis that she wanted her own daughter to provide that support but the purpose of obtaining the updated report was to identify whether support from the local authority would be available and the report confirmed such support was available. The appellant's mother would not be left alone if the appellant was removed because she currently lives with one of her sons and there were other family members in the United Kingdom, as well as social services, who could provide assistance. He invited me to dismiss the appeal.

FINDINGS

18. The appellant's immigration history is detailed above but put simply she came here as a visitor with leave until October 25, 2006 and she never left. She did not come to the United Kingdom as a minor but came here when she was approximately 27/28 years of age. She was now 40 years of age and there was no evidence that the appellant was unwell and the evidence presented to the Tribunal indicated that she spoke both English and her native language of Krio.
19. Before she came to the United Kingdom the evidence showed she had worked in a factory and also run her own business.
20. The appellant's two brothers both live in the United Kingdom and both are financially independent and have financially supported the appellant during her unlawful stay in this country. Both brothers told the original Judge that they would not continue their financial support if she were returned to Sierra Leone but the Judge rejected this claim finding there was no reason why such support would suddenly stop and concluded it was likely they would do everything they could to assist. The Judge further concluded that based on the fact she had demonstrated an ability to look after her mother the appellant was organised and capable of physical work. Her language skills would be of benefit if she were returned to Sierra Leone.

21. The main thrust of this appeal centred around the appellant's mother and when this matter came before me in April of this year I directed that a report be obtained from social services and from a doctor because such evidence would be important when considering whether removal would be proportionate.
22. Ms Brown relies on the social services report to the extent that it supports the appellant's appeal that she looks after her mother and she was the only person her mother would allow to help her.
23. Mr Bramble pointed to the fact that social services have stated that the appellant's mother was entitled to local authority support but it was her mother's refusal to countenance any other support from anybody else that was at the heart of the problem. Ms Brown submitted that given the age of the appellant's mother and the nature of care provided it was not unreasonable for the mother to have such demands.
24. The Care Act 2014 set out the responsibilities placed on the local authority and how the local authority should meet those responsibilities. In this case, an assessment had taken place, but the author of the report was unable to set out a proposed plan of support because the family made it clear this was not acceptable.
25. However, as Mr Bramble submitted the local authority accepted the appellant's mother was eligible for support. I can also not overlook the fact that in addition to the appellant been present in this country there were two other children capable of providing assistance.
26. Currently, the appellant's mother lives with one of her sons albeit the accommodation is said, by social services, to be unsatisfactory as it is a studio apartment. The appellant's mother clearly has mobility problems, but these are issues that are encountered on a daily basis by the local authority and that is why there are provisions in place so that people, who need assistance, can be provided with the relevant assistance.
27. It is said, by Ms Brown, that certain aspects of personal care could only be provided by the appellant because it would not be appropriate for her sons to provide such care (bathing by way of example) but these are tasks that could be undertaken by social services. There is nothing contained in the report which suggests the local authority would be unable to meet its legal obligations.
28. The fact the appellant's mother prefers her daughter to provide that care is a factor to take into account, but it is not the only factor. Ms Brown submitted the cost to the public purse would be considerably more if social services were involved but ultimately that is not the test to apply. The Care Act 2014 sets out how such care would be funded.
29. The appellant clearly has family and private life with her mother because I accept she has been providing care for her and whilst she has been her mother's carer since she was released from hospital, the appellant's mother continues to live with her son. It follows there must be some support provided by the son. The report provided by the

local authority referred to the son having assisted with translating what was said and I find the appellant is not the only person who could provide translation assistance to social services.

30. Reliance has also been placed on her relationships with her brothers and niece. Neither her brothers or her niece are minors and it cannot go unnoticed that the relationships have been created and/or firmed up by the fact the appellant has been here unlawfully since 2006. Her attempts by her to extend her stay had been rejected.
31. I have considered the authorities of Ghising [2012] UKUT 00160, Kugathas [2003] EWCA Civ 31 along with the other authorities set out in the skeleton argument. The appellant's niece is a student aged 21 but I am not satisfied that the relationship between her and the appellant goes beyond normal emotional ties. Similarly, the relationship between the appellant and her brothers do not engage article 8 ECHR. That is not to say there is no relationship between them but simply their relationships do not engage article 8 ECHR.
32. This case ultimately falls down to whether the appellant's involvement with her aged and sick mother outweighs the maintenance of effective immigration control. I have considered the statutory factors set out in section 117B of the 2002 Act.
33. The fact the appellant speaks good English is a positive factor but the Courts have made clear it is a neutral factor when considering effective immigration control. Whilst she does not claim benefits the fact remains she has not worked and is financially reliant on others.
34. Whilst I accept she has a private/family life with her siblings and niece the fact remains she has established her private life with her niece whilst here unlawfully and whilst her immigration status was precarious.
35. Ultimately, the issue is whether the mother's wishes for her daughter to look after her outweigh what is on offer by social services and other family members. I must take account of the appellant's very poor immigration history as well as the statutory factors set out above.
36. I fully understand why the appellant wishes to remain to look after her mother but I have to balance those wishes against all the other factors set out above and in the evidence submitted to the Tribunal.
37. I find that the maintenance of immigration control in circumstances where the appellant has not met the Immigration Rules and based on the findings above, outweigh the appellant's wish, and that of her mother, to remain in this country to provide care.

DECISION

38. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and I previously set aside that decision.

39. I remake the decision and I dismiss the appellant's appeal under article 8 ECHR.

Signed

Date 18/07/2018

A handwritten signature in black ink that reads "SPALIS". The signature is written in a cursive style with a horizontal line underneath the name.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award as I have dismissed the appeal

Signed

Date 18/07/2018

A handwritten signature in black ink that reads "SPALIS". The signature is written in a cursive style with a horizontal line underneath the name.

Deputy Upper Tribunal Judge Alis