



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/24386/2013

THE IMMIGRATION ACTS

Determined at Field House
On 2nd July 2014

Determination Promulgated
On 4th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

MISS ANNETTE CHIOMA ATULOBI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

NO ANONYMITY ORDER

DETERMINATION AND REASONS

1. This matter comes before me for remaking the decision following my finding that the the First-tier Tribunal Judge's decision contained an error of law. I refer to my decision and directions dated 28.5.2014. The Secretary of State is the appellant in this matter and for ease of reference I shall refer to the parties as "the claimant "and the Secretary of State.

2. The claimant, whose date of birth is 25 August 1971, is a citizen of Nigeria. Her appeal outside of the Rules was allowed under Article 8 ECHR by First-tier Tribunal Judge C M A Jones in a determination promulgated on 8 January 2014. That determination was set aside. The essential findings of fact as to date and nature of entry, details of former partnership, illegal status in the UK, working as a carer, establishing social network and the death of the British partner were preserved and are accepted. The finding that was not preserved related to the claim of having entered the UK trafficked as a prostitute. There is no evidence of family life in the UK. The appellant established a private life between 1994 and 2010 during which time she had no lawful leave in the UK. The basis of her discretionary leave granted in 2010 was the partnership which no longer existed following the death of her partner in 2012.
3. In order to consider the claimant's private life under Article 8 ECHR reference is made to guidance in **Gulshan [2013] UKUT 00640 (IAC)** .

“Only if there were arguably good grounds for granting leave to remain outside of the Rules was it necessary for him for Article 8 purposes to go on to consider whether there were compelling circumstances not sufficiently recognised under the Rules”.

4. Directions were issued by me on 9th June 2014 for written submissions from both parties to be filed and served within 10 days of the date of issue, as to how the claimant met the guidance in **Gulshan** or not, and if applicable whether or not Article 8 ECHR private life was engaged. As at 2nd July 2014 I received no written submissions from either the claimant or from the Secretary of State. Accordingly I proceed to determine the appeal and remake the decision by substituting a decision to dismiss the appeal on human rights grounds . In so doing I allow the Secretary of State's appeal.
5. I am satisfied that the claimant failed to show that there are good arguable grounds for granting leave outside of the Rules. She has lived in the UK for a significant period of time, 19 years, but has not met the 20 year period of residence required under the Rules and has pursued her private life in the UK largely without lawful leave. She entered the UK illegally in 1994. She was granted discretionary leave on 19.3.2010 as the partner of a British citizen under Article 8 ECHR. That leave expired on 18.3.2013. Sadly the claimant's partner died on 22.11.2012. The claimant wished to be able to remain in the UK in order to attend to his grave and to continue close relations with his family. She further claimed that she had been trafficked into the UK and that this was an exceptional circumstance. I find no evidence to support this claim and the claimant has not pursued the matter in any submissions. Whilst I accept the desire for continuing relationships with her partner's family, there is no evidence to show that the relationships are strong and/or significant. Relations can be maintained by communication and visits. The claimant can tend to her partner's grave on the occasion of visits to the UK. The circumstances albeit compassionate do not amount

to good arguable grounds for granting leave outside of the rules. The claimant has an elderly mother in Nigeria with whom she is in contact and she would return to some family life. She has skills that she can utilise in Nigeria and obtain employment in the caring field.

6. The Secretary of State's appeal is allowed.

The decision is remade to dismiss the appeal on human rights grounds.

Signed

Dated 2.7.2014

Deputy Upper Tribunal Judge G A Black

No anonymity order made.

A fee award was made by the First Tier Judge in the sum of £140 which now lapses.

As I have dismissed the appeal there is no fee award made.

Signed

Dated 2.7.2014

Deputy Upper Tribunal Judge GA Black