Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/30804/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 16th April 2014	**On 1st May 2014**

Before

THE HON MR JUSTICE BEAN SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE D E TAYLOR

Between

NANA ABENA KUMIWAA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Kanu, Legal Representative
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by Miss Nana Kumiwaa against a decision of Judge Michael Harris in the First-tier Tribunal promulgated on 27th February this

year following a hearing at Hatton Cross on 13th February. By that decision the judge dismissed Miss Kumiwaa's appeal against a decision of the Home Secretary contained in a notice of 3rd July 2013 to remove the Appellant as an overstayer.

2. Her principal ground for appeal was that the judge should have found that she was entitled to leave to remain on the basis of fourteen years' continuous residence, whether lawful or otherwise, under the then applicable long residence provisions of the Rules. The specific Rule was paragraph 276B(1)(b). The Appellant's case was in fact that she continuously resided in the UK since 1989 and if that was right she would also be able to satisfy paragraph 276ADE following the introduction of a twenty year residence condition. The subsidiary ground of appeal is that if the judge was not satisfied that she was entitled to leave to remain under the long residence provisions, he should have found in her favour under Article 8 of the ECHR.

3. The Appellant's evidence in support of her claim that she had lived continuously in the UK since 1989 was based partly on her oral evidence, partly on a written statement from her sister, but also on photographs of her performing the role of a carer in uniform, sometimes in the company of an elderly person, and also on work records. It is obvious from this recital of what the evidence contained that the work records were of vital importance. After all, a photograph as such does not prove a date and the Appellant had to show not simply that she had been working from time to time in the UK over 25 years but that she had continuous residence for a period for at least fourteen years.

4. The work documents were largely in the name of Juliana Quarshie. The Appellant was provided by a then boyfriend with a National Insurance number in this name. There was no dispute before the First-tier Tribunal, since the Appellant admitted it, that she had obtained a number of jobs using the false name of Juliana Quarshie. It is obvious, and Mr Kanu has accepted before us today, that she did that because Juliana Quarshie, whoever that had been, was somebody apparently lawfully in this country and in possession of a National Insurance number. Had the Appellant used her own name she would have had the difficulty that she had no lawful right to be here during the 1990s and the early years of the present century, and almost certainly did not have a National Insurance number in her own name either.

5. There was an issue before the judge as to whether the signature of Juliana Quarshie appearing on many for the documents submitted by the Appellant in support of her application for leave to remain was so similar to the signature of the Appellant's sister, Mrs Puplampu, as to suggest that the Quarshie signatures were the signatures of Mrs Puplampu rather than of the Appellant. The judge found at paragraph 14 that he was not satisfied that that allegation in effect of forgery had been proved by the Home Office. On the other hand, he did go on to say in paragraph 16 that there were striking similarities in appearance between the signatures and

the Appellant had not provided a satisfactory explanation for the similarity, which raised doubts about the reliability of her claims.

6. When he went on in paragraphs 17 to 21 to consider the employment records, his findings were unequivocal. The Appellant's oral evidence before him was that she had never used any national insurance number other than that obtained for her by her former boyfriend connected with the name of Juliana Quarshie, the number being NW491147D, but her application submitted to the Home Office included a form P45 in another name and with another number. The name was Nana Kumiwaa, the leaving date of employment given was 10th February 2006. The national insurance number was PW149475A and the Appellant in her evidence denied that she had ever lived at the address which was given in another documents relating to N Kumiwaa in the bundle, that is 22 Brentfield Gardens, although she conceded that the deceased husband of her aunt had lived at that address.

7. The judge took into account, as he said at paragraph 18, that that P45 was submitted by the Appellant at the time of her application for ILR and was part of the bundle of her employment record before the Tribunal. Moreover, at paragraph 19 he referred to another document in the Appellant's bundle, in her assumed name of Juliana Quarshie, but this time using a different national insurance number from the one referred to elsewhere in the evidence, namely NM941147D.

8. Putting all these factors together, he said that the significant inconsistencies in the Appellant's evidence undermined the reliability of the documentary evidence she produced; and he also had serious doubts as to the reliability of her evidence about her activities in the name of Quarshie.

9. We have mentioned that the evidence before Judge Harris included a written statement from the Appellant's sister. The Appellant explained that Mrs Puplampu, her sister, was unwell and unable to attend the hearing, but nevertheless Mr Kanu on her behalf and on her instructions proceeded with the appeal. In the absence of Mrs Puplampu to be tested in cross-examination, with no convincing medical evidence as to her illness and inability to attend the hearing, it is not surprising that the judge found that the written statement could not be given such weight as to help to remedy the deficiencies elsewhere in the evidence.

10. It was for the judge who saw and heard the Appellant give oral evidence and be cross-examined to make an assessment of her reliability having regard also to the documentary evidence before him. He concluded that he was not satisfied that the Appellant had demonstrated on the balance of probabilities that she had resided continuously in the UK for a period of at least fourteen years. That was a conclusion he was plainly entitled to reach and there is no error of law which would entitle this Tribunal to interfere. It follows that the same applies to reliance on the twenty year continuous residence rule.

11. The judge then went on to consider the alternative claim under Article 8 and after reference to the decisions of this Tribunal in Izuazu, the House of Lords in Huang and the questions posed by Lord Bingham in the House of Lords in Razgar, he said that he was prepared to accept that the Appellant had resided in the UK since at least June 2011 and so has established private life here. It may be, although he did not spell this out, that he was satisfied that the Appellant had also lived and worked here at least intermittently for various periods between 1989 and June 2011. But in any event that could not make a real difference. Almost anybody who has spent time in the UK has some Article 8 private life. The significance of that private life or family life obviously varies from case to case.

12. This is a case in which the Appellant had no dependent children in this country, no spouse or long term partner in this country, no dependent elderly or sick parents or anything of that kind. She has a sister in this country but the case law clearly establishes that the presence of an adult sibling in this country does not begin to establish a bar under Article 8 to removal. It was simply not arguable before the First-tier Tribunal and is not arguable before us that once the Appellant had failed to establish the continuous residence which would bring her within the Rules, any sensible assessment of proportionality could result in the Appellant being granted leave to remain because of her Article 8 rights when set against the need to maintain effective immigration control.

13. Accordingly the judge's conclusion on this issue that the decision of the Respondent is proportionate and in accordance with Article 8 discloses no error of law and it follows that the appeal must be dismissed.

Signed Date

The Honourable Mr Justice Bean
Sitting as a Judge of the Upper Tribunal