



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

Appeal Number: IA/33493/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 October 2015
And 23 June 2016**

**Decision Promulgated
On 26 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

**MAHA BAKRI MOHAMED BALDO
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sparks (Fisher Meredith Solicitors) (October 2015)
Mr Fripp (for Fisher Meredith Solicitors) (June 2016)

For the Respondent: Ms Everett (Senior Home Office Presenting Officer)
(October 2015)

Mr Bramble (Senior Home Office Presenting Officer) (Junior
2016)

DECISION AND REASONS

1. This is the appeal of Maha Bakri Mohamed Baldo, a citizen of Sudan born 18 December 1970, arising from the decision of the Secretary of

State of 1 August 2014 to refuse to vary her leave to remain and to make removal directions against her under section 47 of the Immigration Asylum and Nationality Act 2006. The matter having been dismissed by the First-tier Tribunal, the appeal now proceeds with permission in the Upper Tribunal.

2. Her case as put to the Home Office was based on having first come to the United Kingdom to study dermatology at Oxford University. She had difficulties with her studies which meant that she did not complete her Ph.D. Her siblings and parents were now mostly based in this country, her father having been a judge who had fallen out of favour with the authorities and had relocated to the United Arab Emirates, where she had gone to live with him: subsequently she lost her own residence rights there, and would find it difficult to reintegrate in Sudan, notwithstanding the presence of three aunts there.
3. On 3 March 2014 her representatives wrote a further letter, setting out that their earlier application, acknowledged by the Respondent on 4 February 2014, had involved an application, now needed modification, as, given that some further time had passed, she had now completed ten years of lawful residence and so they wished to vary her outstanding application to encompass an application under Rule 276B which countenanced settlement for a person who had resided here continually for a decade where there were no public interest reasons counting against their being granted leave.
4. The application was refused because, on the Home Office calculation based on her passport stamps, she had been absent for some 598 days rather than the 471 days that she had estimated she had been away. Once her case was assessed against Rule 276ADE addressing private life, she was a 42-year old woman who had lived here since 30 March 2004 and she had not severed social, cultural or family ties with Sudan, and there were no insurmountable obstacles to her relocation there.
5. The First-tier Tribunal dismissed her appeal, it being accepted by her representative that she could not satisfy the requirements of the long residence or private life Rules, and finding that once it came to considering her case outside the Rules, she had been present in time-limited and thus precarious capacities and had spent over 18 months outside the country, which counted against her. Her good character, the presence of parents and siblings here, her familiarity with UK life, and the difficulties she would face in Sudan, did not outweigh those considerations.
6. The Appellant's grounds of appeal challenged the decision on the basis that no findings of fact had been made in relation to material aspects of her evidence, and alleging that there had been insufficient engagement with either the difficulties that she might face if she went to Sudan or the ties she claimed to have here with numerous close family members

including parents and siblings. Permission was granted by Judge Simpson of the First-tier Tribunal, remarking that few if any findings of fact had been made and that the consideration of Article 8 outside the Rules was so terse as to be arguably unfair, particularly given that the Appellant's background as a Ph.D student at Oxford University and self-sufficient economic status had apparently been overlooked.

Findings and reasons: Error of law hearing

7. I accepted that an error of law was established. Reasons must be provided in sufficient detail to “enable the reader to know what conclusion the decision maker has reached on the principal controversial issues” (*Save Britain’s Heritage v No 1 Poultry Ltd* [1991] 1 WLR 153) and “The overriding test must always be: is the Tribunal providing both parties with the material which will enable them to know that the Tribunal has made no error of law in reaching its findings of fact? ... A party appearing before a Tribunal is entitled to know, either expressly stated by it or inferentially stated, what it is to which the Tribunal is addressing its mind. In some cases it may be perfectly obvious without any expressed reference to it by the Tribunal; in other cases it may not. Secondly, the appellant is entitled to know the basis of fact upon which the conclusion has been reached”: *Khan (Mahmud)* [1983] 2 WLR 759.
8. Here the principal issue which demanded reasoned adjudication, given the realistic concession by the Appellant’s advocate below that her case could not succeed under Rule 276ADE as she would not face very significant obstacles to integration in Sudan, was whether the private and family life established in the United Kingdom by the Appellant outweighed the public interest in her removal. That enquiry was to be conducted by reference to the factors identified in section 117B of the Nationality Immigration and Asylum Act 2002.
9. The Appellant's case was that she had close connections with this country which were to be contrasted with her comparative lack of connections with Sudan from where her close family had departed due to her father’s difficulties with the establishment. The *Sudan Country Profile* (Social Institutions and Gender Index; 25 November 2014) set out various restrictions under which women laboured in accessing public space, adding that male relatives often denied them the right to leave the house unaccompanied. They had very restricted access to land and other property and it was virtually impossible for them to manage their own assets freely. The Equal Rights Trust report (produced in partnership with the Sudanese Organisation for Research and Development) *In Search of Confluence - Addressing Discrimination and Inequality in Sudan* (October 2014) set out at 2.4, under the heading “Discrimination and Inequality Based on Gender”, that

“Women in Sudan suffer discrimination and disadvantage in a number of areas of life, yet the Equal Rights Trust’s research indicates that two principal factors shape their experience most significantly. First, there are a number of discriminatory laws and legal provisions – in particular in the areas of criminal law and personal status law – which restrict women’s ability to participate in many areas of life on an equal basis with men; and which prevent progress in ending harmful practices such as female genital mutilation, child marriage and polygamy. Second, in addition to the harsh legal environment, women are subject to increasingly repressive, conservative religious practices which appear to be promoted by the regime.”

10. The reasoning provided by the First-tier Tribunal fell below the minimum legal standard demanded by the authorities such as those cited above. Whilst the Tribunal clearly accepted that the Appellant had established private life here, there was no attempt to balance (as opposed to simply itemise) the various factors counting in favour and against her expulsion being disproportionate. In particular, the difficulties that her father has had with the regime, the fact that she only has relatively distant relatives residing in Sudan, and the country evidence just cited above which clearly indicated a possibility that her private life on return would be much more restricted than in this country, were all factors that required detailed consideration, as did her facility in the English language and economic self-sufficiency. It was not possible to discern from the decision below why it was that the First-tier Tribunal considered the adverse factors outweighed the positive ones.
11. As the assessment of proportionality needed to be lawfully conducted, a matter which potentially require further findings, I considered this matter was one suitable for final decision by the Upper Tribunal. I accordingly adjourned the hearing.

Findings and reasons: Continuation hearing

12. It was agreed before me that the legal territory had somewhat altered by the time of the June 2016 hearing. The Appellant had now completed ten years of continuous residence and so Mr Fripp, who represented her at the further hearing, argued that she satisfied all the requirements of the Rules and that the Upper Tribunal had jurisdiction to consider this matter. Mr Bramble, after some discussion, accepted that in reality the only issue that had led to the original long residence application’s refusal had now been established to his satisfaction. In those circumstances I can state my reasons for allowing the appeal shortly.
13. Here the situation is rather more straightforward than the scenario where the original application was not made on long residence grounds. In this case long residence was a basis on which the application was originally made. So there is no difficulty in taking a change of

circumstances based on the passage of time into account given the jurisdiction under section 85 of the Nationality Immigration and Asylum Act 2002 to “consider evidence about any matter which ... [is] relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.” A person who qualifies under a different aspect of the Rules at the date of decision than that under which he applied may succeed on appeal (at least so long as it is within the same immigration route): “they are entitled to rely upon that change as constituting a ‘matter’ which was “relevant to the substance of the decision” and which had arisen ‘after the date of the decision’”: see *YZ and LX (effect of s 85(4), 2002 Act) China* [2005] UKAIT 00157 at [17].

14. Here the Secretary of State’s refusal letter calculated that the Appellant had been absent from the United Kingdom for 598 days over the relevant qualifying decade preceding her application, as at 1 August 2014, which was more than the permitted eighteen months. However things have moved on. The first five periods of absence, amounting to 77 days in total, have now dropped out of the relevant period for assessment now matters are considered as at June 2016, and once subtracted from the prior total, there are only 521 days of absence, within the tolerated 540 days. There is no evidence of any further period of absence since then, and the Appellant's inability to travel since her application was refused makes further journeys abroad inherently unlikely.
15. As absence was the only consideration that was raised on the refusal, the appeal accordingly now falls to be allowed.

Decision:



Signed:
Deputy Upper Tribunal Judge Symes

Date: 24 June 2016

TO THE RESPONDENT

FEE AWARD

I have allowed the appeal based on different considerations than those prevailing at the date of decision and so I do not make a fee award.

Signed

Dated 24 June 2016

A handwritten signature in black ink, appearing to read 'M.A.S. Symes', with a long, sweeping underline that extends to the left and then curves back up towards the right.

Deputy Upper Tribunal Judge Symes