Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10586/2016

THE IMMIGRATION ACTS

Heard at City Centre Tower Birmingham	**Decision & Reasons Promulgated**
On 26th February 2018	**On 21st March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

NATALYA MUDROCHENKO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr L Harman of Chattertons Solicitors
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of the Ukraine born on 13th March 1949. After various visits to the UK, the Appellant last entered the country on 31st August 2009 with a multi-entry visit visa valid to 10th August 2011. She did not embark and on 10th December 2015 applied leave to remain under the Immigration Rules and also on compassionate grounds outside those Rules. That application was refused on 20th April 2016 for the reasons given in the Respondent's letter of that date. The Appellant

appealed and her appeal was heard by First-tier Tribunal Judge Caswell sitting at Bradford on 12th April 2017. He decided to dismiss the appeal for the reasons given in his Decision dated 19th April 2017. The Appellant sought leave to appeal that decision and on 14th November 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.

3. The Judge dismissed the appeal under the Immigration Rules. That decision is not contested in this appeal. The Judge also dismissed the appeal under Article 8 ECHR outside the Immigration Rules. The Judge found that the Appellant had a family life with her daughter and grandchildren in the UK, and also a private life having resided in the UK since August 2009. The Judge was satisfied that the decision of the Respondent would amount to an interference with that family and private life of such a degree of gravity as to engage the Appellant's Article 8 ECHR rights. However, the Judge also found the Respondent's decision to be proportionate. His reasons for that decision were given at paragraphs 19 to 23 inclusive of the Decision.

4. At the hearing before me, Mr Harman referred to his Skeleton Argument and submitted that the Judge had erred in law in coming to this conclusion. He had failed to fully consider the evidence and had made errors of fact as regards the Sponsor's ability to support the Appellant should she return to the Ukraine; whether it was unreasonably harsh to expect the Appellant to safely relocate within the Ukraine; and whether the Sponsor and her children could maintain contact with the Appellant by modern means of communication or by visits to the Ukraine. The Judge had failed to give adequate reasons for his decision and had failed to carry out properly the balancing exercise necessary for any assessment of proportionality. In particular, the Judge had failed to fully consider the evidence as to whether the Sponsor's financial circumstances were sufficient to maintain herself, her three children, and the Appellant resident in the Ukraine especially as the Sponsor would have to pay childcare costs in order to keep her employment if the Appellant was absent. The Judge had also erred in law by assuming that the Appellant's pension could be reactivated if she returned to the Ukraine. Further, the Appellant came from the Donetsk region and the Judge had failed to take into account the travel guidance of the Foreign Office advising against travel there. Finally, the Judge had found that the Appellant had a strong relationship with her grandchildren, but had erred in not appreciating that it was too dangerous for the Sponsor and her children to visit the Appellant.

5. In response, Mrs Aboni referred to the Rule 24 response and argued that the Judge had not erred in law as alleged. The Judge had taken into account all the relevant evidence before him which was listed at

paragraphs 13 and 14 of the Decision. The Bundle now submitted by the Appellant had not been before the Judge. The Judge had made no error in his calculation of the ability of the Sponsor's family to financially support the Appellant in the Ukraine. At paragraph 17 of the Decision the Judge had considered all the relevant evidence and had come to a conclusion in this respect which he had been entitled to make. Further, it had not been argued by the Judge that the Appellant would be at risk on return to the Ukraine and had found that the Appellant could safely relocate within that country only in the alternative. Finally, Mrs Aboni argued that the Appellant's grounds of application amounted to no more than a disagreement with the judgment of the Judge. The Judge had taken into account all the relevant facts and had been entitled to find that the Appellant's poor immigration history meant that the public interest carried the most weight.

6. I find no material error in the decision of the Judge which I therefore do not set aside. It is for the Judge to consider all the relevant facts and to exercise his judgment in deciding if the decision of the Respondent is proportionate. This the Judge did in this appeal. He carried out a careful analysis of the evidence at paragraph 17 to 23 inclusive of the Decision. He came to a conclusion open to him on that analysis and for which he gave sufficient reasons. He was entitled to attach significant weight to the public interest as the Appellant had been an overstayer for a significant period of time. I find there to be no material errors of fact in the Judge's analysis. The Judge found that taking into account the probability that the Appellant could again receive her pension in the Ukraine, she would not be destitute in that country with the assistance of financial help from the Sponsor which clearly the Sponsor was able to provide. It was not an error of law for the Judge to be satisfied that the Appellant could safely return to the Ukraine as nothing to the contrary was argued before him. The Judge was right to conclude that the relationship between the Appellant and her grandchildren could be maintained through modern methods of communication even if it is the case that the Sponsor for whatever reason would find it difficult to visit the Appellant in the Ukraine with her children. I find the grounds relied upon by the Appellant to amount to no more than a disagreement with the decision of the Judge and therefore not to amount to an error of law.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed Date 19th March 2018

Deputy Upper Tribunal Judge Renton