Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/33197/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19th January 2018	**On 12th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MISS PRINCESS IHOUMA OKPARA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Bustani (Counsel)
For the Respondent: Mr E Tufan (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against a decision to refuse her human rights claim was dismissed by First-tier Tribunal Judge Buckwell ("the judge") in a decision promulgated on 27th March 2017. The appeal was brought in the light of refusal of an application for leave made by the appellant, in which she relied on her private life ties to the United Kingdom. The judge heard submissions on the private life rule contained in paragraph 276ADE(1). He made a broad Article 8 assessment, took in to account section 117B of the 2002 Act and considered whether refusal of the human rights claim amounted to a disproportionate response. The judge's overall conclusion was that the appeal fell to be dismissed.

2. In the application for permission to appeal, it was contended that the judge erred in making no express assessment of the case in the light of paragraph 276ADE(1)(iv) of the rules. The appellant was under the age of 18, as at the date of application and was able to show that she had lived continuously in the United Kingdom for at least seven years. The issue for determination by the Tribunal was whether it would not be reasonable to expect her to leave the United Kingdom. The judge, on the other hand, made an assessment outside the rules altogether and appeared to have in mind the requirements of paragraph 276ADE(1)(vi), which contains a different test and requires consideration of whether there are very significant obstacles to a person's integration into the country of removal.

3. It was also contended that the Article 8 assessment outside the rules was flawed, in the light of the particular emphasis on the appellant's immigration status.

4. Permission to appeal was granted, in due course, by an Upper Tribunal Judge. In a Rule 24 response made by the Secretary of State, the appeal was opposed. The author of the response drew attention to the fact that the appellant was an adult by the date of the appeal.

Submissions on Error of Law

5. Ms Bustani said that the appellant, born on 8th March 1997, arrived in the United Kingdom at the age of 10, on 28th November 2007. The application she made for leave to remain, with her mother, was submitted on 17th February 2015, by which time she had spent over seven years in the United Kingdom as a child. The relevant rule was contained in paragraph 276ADE(1)(iv). When the appeal was heard, the appellant had been present in the United Kingdom for just under ten years. The judge was required to assess the reasonableness of removal, under paragraph 276ADE(1)(iv). In the decision, the judge referred to paragraph 276ADE(1) in general terms. The body of the decision showed that he had in mind whether there were significant obstacles to integration, finding at paragraph 50 that there were none. This was the wrong test. So far as the second ground was concerned, Ms Bustani said that the judge had given little weight to the appellant's presence here during her formative years. At paragraph 63, he referred to the UKSC judgment in Agyarko and the question whether removal would have unjustifiably harsh consequences.

6. Mr Tufan said that the judge had indeed referred to paragraph 276ADE(1) in general terms. It appeared that sub-paragraphs (iv) and (vi) were drawn to his attention and he mentioned both at paragraph 15. He could not be criticised for concentrating on sub-paragraph (vi) as this formed part of the appellant's case. There was, on the other hand, a lack of detail regarding sub-paragraph (iv), which contained a different test than appeared in sub-paragraph (vi). The omission might not have been relevant if it were not argued at the hearing. So far as the assessment outside the rules was concerned, the judge's reasons were clear although

his mention of Agyarko was not accompanied by any detailed consideration of sub-paragraph (iv).

7. I indicated that there was no need for Ms Bustani to reply.

Conclusion on Error of Law

8. The decision has been prepared by a very experienced judge and is, as one would expect, carefully reasoned and thorough in almost all respects. However, the circumstances in which the appellant made her application for leave clearly show that she could, at first sight, fall within paragraph 276ADE(1)(iv) of the rules, as she was a child when the application was made. At paragraph 15 of the decision, the judge noted that the appellant's counsel had mentioned sub-paragraph (iv) and, in addition, sub-paragraph (vi). At paragraph 45, the judge referred again to an application under sub-paragraph (vi) and recorded that the appellant's counsel "accepted that the appellant had not been 18 years of age at the date of her application." This is unsurprising as she was a minor when she applied for leave.

9. The judge's reasons appear at paragraphs 55 to 66 of the decision. As accepted by the parties, paragraph 276ADE(1) is described as merely that, in those paragraphs. There is no refinement and no express engagement with sub-paragraph (iv). Whatever the merits of the assessment outside the rules, and taking into account the careful inclusion of section 117B of the 2002 Act, the clear issue raised by sub-paragraph (iv) is not engaged with. There is no answer to the question concerning the reasonableness of return. Instead, the judge found that there would not be unjustifiably harsh consequences for the appellant if she were removed to Nigeria, which amounts to the application of a higher threshold.

10. If the appellant were able to show that she met the requirements of paragraph 276ADE(1)(iv) of the rules, this would be of very substantial weight in the balance to be struck between the competing interests and might even be determinative.

11. I find that the decision contains a material error of law in the light of the absence of express engagement with paragraph 276ADE(1)(iv) of the rules. The decision is set aside and will be remade at Taylor House, by a judge other than First-tier Tribunal Judge Buckwell.

Signed Date 08 February 2018

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

The judge made no anonymity order and no application has been made before me. I make no order on this occasion.

Signed Date 08 February 2018

Deputy Upper Tribunal Judge RC Campbell