



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: IA/34491/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 November 2014**

**Decision Promulgated  
On 2 December 2014**

**Before**

**THE HONOURABLE MRS JUSTICE ELISABETH LAING DBE  
DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**ZINDA AURRETHIA TRICIA CALIXTE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr B Watson of Haslaw & Co Solicitors

For the Respondent: Mr E Tufan Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. We have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence we do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge James promulgated on 11 July 2014 which dismissed the Appellant's appeal under the Immigration Rules and Article 8.

#### Background

3. The Appellant was born on 4 February 1981 and is a citizen of St Lucia.
4. On 2 January 2013 the Appellant applied for Indefinite Leave to Remain on the basis of 10 years continuous legal residence in the United Kingdom.
5. On 10 July 2013 the Secretary of State refused the Appellant's application by reference to paragraph 276B of the Rules and found no arguable reasons to warrant a grant of leave under Article 8 outside the Immigration Rules HC 395 as amended ('the Rules') and made directions for her removal under section 47 of the Immigration, Asylum and Nationality Act 2006.
6. The refusal letter gave a number of reasons: the Appellant could not meet the requirements of paragraph 276B because she had spent 192 days outside the United Kingdom and therefore there was a break in her lawful residence in excess of the period for which there was a discretion available; the Appellant did not meet the family requirements of the Rules in Appendix FM as she had no partner or child in the United Kingdom; she did not meet the private life requirements of paragraph 276ADE, given the length of time she had resided in the United Kingdom and there was no evidence to suggest she had cut all ties with St Lucia; there were no factors that had not been considered under the Rules that warranted a consideration of the case under Article 8 outside the Rules.

#### The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge James ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found that the Appellant had conceded that she could not meet the requirements of the Rules in relation to Long Residence or Article 8; the Judge considered the case under Article 8 outside the Rules and took into account her background and circumstances but found that the decision to remove was in all the circumstances proportionate.

8. Grounds of appeal were lodged and on 21 October 2013 Upper Tribunal Judge Pitt gave permission to appeal stating that it was arguable that the Judge had *'failed to take into account the accepted and material fact of the appellant having been given incorrect legal advice in the proportionality assessment.'*
9. At the hearing we heard submissions from Mr Watson on behalf of the Appellant that in essence can be summarised as follows:
  - (a) He relied on his skeleton argument and grounds of appeal.
  - (b) The Judge had taken into account all the facts underpinning the Appellant's application but failed to give them sufficient weight and therefore arrived at a perverse conclusion.
10. On behalf of the Respondent Mr Tufan submitted that in essence:
  - (a) The Judge specifically took into account that the Appellant had been given poor advice previously.
  - (b) The only error the Judge made was in considering Article 8 outside the Rules without finding compelling reasons to do so but that error was in favour of the Appellant.
  - (c) The threshold for a finding of perversity was a high one and it was not met in this case as the conclusions reached by the Judge were open to him on the facts.
  - (d) The grounds are merely a disagreement with the conclusions reached by the Judge.

### **Finding on Material Error**

11. Having heard those submissions we reached the conclusion that the Tribunal made no material errors of law.
12. This was an appeal against a refusal of Indefinite Leave to Remain on the basis of Long Residence under the Rules. The Appellant's representative at the hearing before the First-tier Tribunal properly conceded that the Appellant could not meet the requirements of the Rules either as to Long Residence or Article 8.

13. The Appellant challenges in her grounds of appeal the conclusions the Judge reached as to the proportionality of the decision under Article 8. We are satisfied that the Judge carried out a careful and detailed analysis of the Appellant's circumstances taking into account all of the facts that were relevant to the assessment of proportionality. The Judge specifically identified the length of lawful residence in the United Kingdom (paragraphs 9,14), the fact that the Appellant had been given poor legal advice previously as to the basis on which she should apply to remain in the United Kingdom (paragraphs 10, 15), that she had made a positive contribution to the community (paragraphs 17 and 18).
14. The Judge considered this factual background by reference to the appropriate test set out in Razgar [2004] UKHL 27. Mr Watson accepted that the Judge had considered all of the facts that were relevant to the issue of proportionality but argued that she had failed to give them sufficient weight. We are satisfied that it is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged and that the threshold for establishing irrationality is a high one. We are satisfied that the decision of the Judge in this case was not perverse and that she reached a conclusion that was open to her on the facts.
15. We were therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

## **CONCLUSION**

- 16. We therefore found that no errors of law have been established and that the Judge's determination should stand.**

## **DECISION**

- 17. The appeal is dismissed.**

Signed

Date 2.12.2014

Deputy Upper Tribunal Judge Birrell