



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

Appeal Number: IA/44637/2013

THE IMMIGRATION ACTS

Heard at Field House

On 19th September 2014

**Determination
Promulgated**

On 8th October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MISS STACIAN VERONICA GILBERT
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Lane, Counsel

For the Respondent: Miss A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Jamaica born on 29th August 1980. On 18th September 2012 the Appellant applied for indefinite leave to remain in the United Kingdom on the basis of her private life, long residence, medical

and compassionate grounds. The Appellant had originally arrived in the United Kingdom on 30th July 1998. Her immigration history thereafter is set out in considerable detail in the first main paragraph of a reasons for refusal letter that was issued to the Appellant on 27th August 2013.

2. The Appellant appealed and the appeal came before First-tier Tribunal Judge Archer sitting at Taylor House on 26th June 2014. In a determination promulgated on 11th July 2014 the Appellant's appeal was dismissed under the Immigration Rules but was allowed under Article 8 of the European Convention of Human Rights.
3. The Secretary of State lodged Grounds of Appeal to the Upper Tribunal on 21st July 2014. Those grounds contended
 - (i) That the judge had erred in his purported identification of compelling circumstances not sufficiently recognised under the Rules.
 - (ii) That the judge had erred in law by not having regard to the requirements of the Rules as a relevant consideration in the proportionality evaluation.
 - (iii) The judge had erred in law by failing to have regard, in the proportionality exercise, to the public interest in effective immigration control.
4. On 31st July 2014 First-tier Tribunal Judge Cox granted permission to appeal. No Rule 24 response has been filed by the legal representatives of the Appellant.
5. Miss Gilbert appears by her instructed Counsel Mr Lane. The Secretary of State appears by her Home Office Presenting Officer Miss Everett. I acknowledge that this is an appeal by the Secretary of State but for the purpose of continuity within the litigation the Secretary of State will be referred to hereinafter as the Respondent and Miss Gilbert will remain for the purpose of this determination as the Appellant.

Preliminary Issue

6. Mr Lane seeks to raise a preliminary issue in the proceedings. He produces to the Tribunal a new birth certificate dated 1st September 2014 in which the Appellant's father has been added to the birth certificate pursuant to a court order. He takes me to the statutory authority of Section 65 of the Immigration Act 2014 which modifies the persons who are previously unable to acquire citizenship due to the fact that the natural father was not married to the mother. He submits that under that Section as soon as that Section of the Act is brought into force the Appellant would be in a position to register as a British citizen.
7. He also takes me to the authority of *R (On the Application of Johnson) v the Secretary of State for the Home Department [2014] EWHC 2386 (Admin)*. He submits that whilst that was a deportation case the issue was

principally the same and Dinghams J considered the issue as to whether or not there was discretion in refusing nationality where a claimant was illegitimate and the High Court found that there was a discretion under Article 14 which would combine with Article 8 and it was left thereafter as to the advocates how to proceed.

8. Mr Lane submits that the Appellant now finds herself in a very similar position and that these are factors I should take into account in the event I found there was any merit in the appeal made by the Secretary of State.

Submissions/Discussions

9. Miss Everett relies on the Grounds of Appeal and submits that the judge has given the wrong level of weight in his determination. She submits that at paragraphs 26 and 27 of the determination the judge has given far too much weight to the delay (which she acknowledged has taken place) in the processing of the Appellant's application for further leave to remain and that the findings he makes at paragraph 28 are not sustainable. She asked me to find a material error of law and to set aside the decision of the First-tier Tribunal.
10. Mr Lane responds by pointing out that at paragraphs 16 to 18 the judge has made findings of fact and paragraph 28 of the determination takes them into account. He points out that the principles of *Razgar* are set out within paragraph 24 albeit that the case is not specifically named and that it then becomes a matter for the judge to apply the principles of proportionality and that he has looked at this and drawn his conclusions at paragraph 28. He has she points out for example considered the Appellant's medical condition emphasising that this is an extremely serious condition that could be lethal if she is removed from the United Kingdom. The judge has made findings of fact which are not challenged and he draws to my attention that the Appellant is dependent upon family members in the UK. He submits that the Appellant has a very strong private life in the UK and that this was acknowledged by the First-tier Tribunal Judge and that it would be wrong to underestimate her health conditions and her requirement to be with her family and that this is reflected in paragraph 28. He submits that there is no error of law in the determination and asked me to dismiss the appeal.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
12. 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. Nor is it an error of law for an Immigration Judge to fail to deal with every

factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

13. The basis of the Appellant's appeal substantially relies on the level of weight the judge has given individual issues in this matter and it is argued by Miss Everett that the judge has not given due and proper weight to the public interest considerations and has given too much weight to the delay brought about by the Secretary of State as a failure to process the Appellant's application. Providing an Immigration Judge has applied due and proper weight and his decision is not perverse it is not the role of the Upper Tribunal to overturn his decision. What is clear in this determination is that the judge has analysed the facts and thereafter applied weight to the various factors. In carrying out that exercise he certainly does not create any material error of law in his determination.
14. The judge found all witnesses to be credible. That is not challenged. He found that the Appellant had been in the UK for almost sixteen years and that was not challenged. The findings of fact that he sets out at paragraphs 17 to 20 are further accepted in particular the Appellant's birth history, her physical disabilities particularly with regard to asthma and her private and family life. He further drew conclusions that the Appellant could not succeed under the Immigration Rules.
15. Thereafter the judge went on to apply Article 8 outside the Rules. He has addressed these issues at paragraphs 24 to 28 of his determination. He has set out the questions posed in *Razgar* and made findings that the Appellant has a strong degree of private life in the UK and that removal would interfere with that. He has within paragraphs 25, 26 and 27 addressed the issues of whether the interference would be in accord with the legitimate aim and has addressed proportionality. He has applied all these factors to the findings of fact that he previously made. I acknowledge that he has made reference to the delay that he has not overemphasised the fact of finding that the delay does not amount to such conspicuous unfairness as to constitute an abuse of power. He has then rounded everything together and found that there were arguably sufficient compelling circumstances to allow the claim outside the Immigration Rules

pursuant to Article 8. Such conclusion is sustainable based upon his findings of fact and reasons. In such circumstances having given weight to all the appropriate issues there is nothing perverse in the decision of the First-tier Tribunal Judge and effectively the arguments of the Secretary of State amount to little more than disagreement and an attempt to re-argue the appeal. There is no material error

of law disclosed for all the above reasons and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal is maintained.

Decision

16. The decision of the First-tier Tribunal does not disclose a material error of law. The appeal of the Secretary of State is consequently dismissed and the decision of the First-tier Tribunal allowing the appeal pursuant to Article 8 of the European Convention of Human Rights is maintained.
17. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that order and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris