Upper Tribunal
(Immigration and Asylum Chamber)
Appeal Number: IA/45124/2013

THE IMMIGRATION ACTS

Heard at: Manchester	**Determination Promulgated**
On: 1st July 2014	**On:11th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

Tithelepo Thomson Chikombole
(no anonymity order made)

Respondent

For the Appellant: Mr Harrison, Senior Home Office Presenting Officer
For the Respondent: Mr Timson, Counsel instructed by Manchester Associates

DETERMINATION AND REASONS

1. The Respondent is a national of Malawi date of birth 27th September 1974. On the 18th March 2014 the First-tier Tribunal (Judge Crawford) allowed her appeal against the Secretary of State's decision to remove her from the UK pursuant to section 10 of the Immigration and Asylum Act 1999. The Secretary of State now has permission to appeal against that decision.

2. The unchallenged facts as found by the Tribunal were that the Respondent came to the UK in 2001 with leave to enter as a visitor. She thereafter properly varied her leave to that of student on a number of occasions. In

© CROWN COPYRIGHT 2014

October 2002 she made a further application for leave to remain as a student. She heard nothing from the Home Office. In June 2003 she was at a friend's house when the premises were visited by immigration officers who told her that her application had been refused. She had been unaware of this. She was asked to report to the UKBA centre at Dallas Court in Salford. She did this on a monthly basis throughout 2003. In May 2004 she received a letter inviting her to make a new application. This application was acknowledged as valid but she heard nothing else. She continued to sign on every month at Dallas Court. She signed on all through 2004, 2005, 2006, 2007, 2008, 2009 and 2010. All her enquiries as to her application were met with silence. In 2010 she engaged a solicitor to chase the application. The Home Office acknowledged the solicitor's letter but did nothing further. The Respondent went and got other solicitors. They wrote to the Home Office. They did not write back. The Respondent went to see her MP. The MP wrote a letter, and finally, after nine years, the Home Office responded by granting the Respondent three months' leave to remain. Whilst she had that leave she made an application for leave to remain on human rights grounds. It is the refusal of that application that has led to this appeal.

3. The Secretary of State refused the application with reference to the Rules. The Respondent did not meet the requirements of any of the provisions in Appendix FM of the Rules. Nor did the Secretary of State accept that she met the requirements of paragraph 276ADE of the Rules. In respect of that provision, relating to 'private life' the Secretary of State found that the Respondent had not lived in the UK long enough. Nor could she demonstrate that she had lost all ties, social cultural and family, with Malawi. The Secretary of State found there to be no exceptional circumstances and refused the application.

4. Judge Crawford very carefully sets out the history of this matter and all applicable law. He finds that the Respondent has been in this country since November 2001. He accepts her evidence that she had been unaware that her application for further leave to remain had been refused in 2003. He finds that she has at all time complied with the requirements placed upon her by the Home Office. She has not had any contact with her family in Malawi since 2006. Her parents are elderly and she is estranged from them after she fell out with them about her not attending college in the UK. During the time she has been in the UK she has made numerous good friendships and as her ties to this country have deepened, so have her ties to Malawi diminished. She has been working in a care home during that time and contributing to our society. Having accepted the Respondent as an entirely credible witness Judge Crawford found that she had only remote or abstract ties left to Malawi. He accepted that she did not have ties as envisaged in paragraph 276ADE and allowed the appeal on that basis. He went on to consider Article 8 ECHR. He found that the Respondent could not show the decision to be necessary in pursuit of any of the legitimate aims set out in Article 8(2). He further found the decision to be a disproportionate interference with the Respondent's private life. He allowed the appeal under that alternative head.

Error of Law

5. The Secretary of State now appeals that decision, alleging the determination to contain the following errors of law:

    i) The finding that the Respondent had no ties to Malawi was an error following Ogundimu [2013] UKUT 60;

    ii) The Judge misdirected himself in failing to consider whether there existed good grounds to find there are compelling circumstances not sufficiently recognised under the new rules to require a grant of leave under Article 8: Nagre [2013] EWHC 720 (Admin);

    iii) There was no basis for concluding that the decision was not necessary in a democratic society to protect the economy: Shahzad [2014] UKUT 85.

6. In his submissions Mr Harrison was content to rely on the grounds.

7. There is absolutely no merit in these grounds which amount to a disagreement with the outcome of this appeal.

8. Ground 1 consist of a comparison between the facts of this case and the facts in Ogundimu. There is little to be gained in that. The Judge clearly directed himself to that decision. He understood and applied the test therein to the facts as he found them. The fact that the Secretary of State does not agree with his conclusions is neither here nor there. There is no error in approach.

9. Ground 2 is equally misconceived. All Nagre says is that most Article 8 cases will nowadays be dealt with under the Rules; a few that do not succeed under that framework that nevertheless merit consideration under the 'old' Razgar test. If faced with one that does not obviously merit consideration, it is "not necessary" for the court to go on to consider it. That is all it says. It does not introduce some additional hurdle for human rights claimants to surmount. It is simply a statement of fact. In respect of this particular case there was clear merit in going on to consider the matter.

10. Lastly the Secretary of State complains that the Judge erred in finding that the decision could not be justified on the grounds that the Secretary of State was protecting the economy. This is a case where this woman waited *nine years* for her application to be decided. She reported to

operational enforcement *every month* for nine years. This was what the Judge had in mind when he found that the decision could hardly be said to be "necessary". That was a finding that was open to him on the facts. Again, the grounds amount to a disagreement with the findings of the First-tier Tribunal and do not identify any error in law.

11. I find the decision of the First-tier Tribunal to be cogent, reasonable and open to the Judge on the facts before him.

Decision

12. The decision of the First-tier Tribunal contains no error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce
30th July 2014