



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/50387/2013

Appeal Numbers:

THE IMMIGRATION ACTS

Heard at Field House

On 9th July 2014

**Determination
Promulgated**

On 14th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FOLASHADE APUKE TELEWA

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer
For the Respondent: Mr N Klear, instructed by UK Law

DETERMINATION AND REASONS

1. The Respondent is a citizen of Nigeria born on 12th December 1949. Her appeal against the refusal of leave to remain and the decision to remove her was allowed, on Article 8 grounds, by the First-tier Tribunal in a determination dated 24th March 2014. The Secretary of State applied for permission to appeal.
2. Permission to appeal was granted by First-tier Tribunal Judge Colyer on 6th May 2014 on the grounds that it was arguable that First-tier Tribunal Judge Fox had failed to follow the correct approach as set out in Gulshan

(Article 8 – new Rules – correct approach) [2013] UKUT 640 (IAC) and failed to consider if there were exceptional or compelling circumstances.

3. Mr Duffy relied on the grounds of appeal and submitted that the Judge had failed follow Gulshan and to give sufficient reasons for why the best interests of the Appellant’s grandchild, Jade, outweighed immigration control. The Judge focused on the best interests of Jade rather than carrying out a proper analysis of the facts, balancing all relevant facts. The Judge had erred in law in failing to show why the decision was disproportionate and the error was material because the Judge had failed to identify the exceptional or compelling factors.
4. Mr Klear submitted that the determination was well reasoned and the Judge had considered the grounds of refusal. He had covered all salient points and clearly followed Gulshan. The Judge was well aware of the relevant law and considered the rights of all parties concerned. He was entitled to rely on the evidence of the head teacher of Jade’s school; she had been at the special needs school for 20 years and knew Jade very well. There was ample evidence before the Judge demonstrating compelling and compassionate circumstances. Jade had severe autism and her mother could not cope without the Respondent. The Respondent had an impeccable immigration history and all her children were British citizens.

Findings and conclusions

5. The Respondent applied for leave to remain outside the Immigration Rules on 26th January 2013. Her application was refused under paragraph 322(1) because her application was not covered by the Immigration Rules. The Appellant considered Appendix FM and paragraph 276ADE, refused the application and made a decision, dated 21st November 2013, to remove the Respondent.
6. The Judge directed himself in law at paragraphs 11 to 13 of the determination and specifically referred to Gulshan. He recorded submissions from the Home Office Presenting Officer that there were no compelling circumstances in this case. The Judge considered section 55 of the Borders, Citizenship and Immigration Act 2009 and cases relevant to the best interests of the child. There was no misdirection in law.
7. The Judge found that in the particular circumstances of this case, the best interests of Jade outweighed the public interest. In coming to this conclusion the Judge took into account the Respondent’s immigration history, her medical needs, her mentally ill son and the effect of her removal on Jade and Jade’s parents. The Judge’s reasons set out at paragraph 41 to 45 amounted to compelling circumstances not recognised under the Immigration Rules.
8. Although the Judge did not specifically state the phrase “compelling

circumstances,” he clearly identified what they were in this case. The Judge’s findings were open to him on the evidence before him and he gave adequate reasons for his conclusions.

9. The Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated 24th March 2014 shall stand.

Deputy Upper Tribunal Judge Frances
11th July 2014