Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/37499/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2nd June 2015	**On 26th June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

MISS DOROTHY DOREEN EDWARDS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Hannan, Counsel instructed by Corban Solicitors
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

[This decision was delivered orally in the presence of the parties. It is therefore couched in the present tense]

1. This is an appeal by Miss Dorothy Doreen Edwards against a decision of First-tier Tribunal Judge Bartlett, sitting at Hatton Cross, which was promulgated on 27th January 2015. The background to the appeal is as follows.

2. The Appellant is a citizen of Jamaica who was born on 18th August 1965. She applied for leave to remain in the United Kingdom on private and family life grounds. In view of the point that is taken in this appeal the following dates are relevant, indeed critical, to the outcome of this appeal.

3. I shall assume for these purposes that the Appellant made her application, albeit that there is some dispute about it, on 18th June 2012. Her application was refused on 11th September 2014 and, for reasons that it is unnecessary to consider, a separate decision to remove her was made on 15th September 2014.

4. In considering the Appellant's application, the judge applied what are commonly referred to as 'the new Rules', which came into effect on 9th July 2012. Those Rules, at least in part, sought to codify the jurisprudence relating to Article 8 of the European Convention on Human Rights and Fundamental Freedoms. As far as family life is concerned, the relevant provisions are to be found in Appendix FM to the Immigration Rules. So far as private life, with which this appeal is principally concerned, the Secretary of State sought to codify the Article 8 jurisprudence in paragraph 276ADE.

5. Somewhat ironically, in view of the point that is now taken, Judge Bartlett recorded the following at paragraph 13 of her decision:

> The parties **agreed** that the relevant version of paragraph 276ADE(1) to be considered was the one which required at paragraph 276ADE(1)(vi) that an individual who is over the age of 18 years but without 20 years continuous residency … has no ties (cultural, social and family) to the country to which she must return. [Emphasis added]

The irony of this stems from the fact that the agreement which the judge thus recorded is not only now in dispute, but it also lies at the very heart of this appeal.

6. The Appellant now says that the judge was wrong to consider paragraph 276ADE (which forms part of the new Rules) at all. Put simply, the argument that is now advanced is that because the application was made before the introduction of the new Rules, on 9th July 2012, the general rule that new Rules apply to pending applications (albeit that those Rules were not in force at the date of the application) is one that was displaced by the transitional provisions of those Rules.

7. In support of this argument, reliance is placed upon the decision of the Court of Appeal in **Edgehill and others v SSHD [2014] EWCA Civ 402**, where it was held that although the general rule (first established by the House of Lords in **Odelola**) is that new Rules will apply to pending applications, that general rule is displaced in the case of paragraph 276ADE by the specific transitional provisions of the Immigration Rules themselves. In **Edgehill,** this was held to be an unqualified proposition of law. However, what had not been drawn to the Court of Appeal's attention was that by the time it had decided that appeal the Secretary of State had already thought better of it, and had accordingly amended the transitional

provisions so as effectively to restore the general rule that was first recognised in the case of **Odelola**. Thus it was that the issue once again came before the Court of Appeal, this time in the appeal of **Singh v Secretary of State for the Home Department [2015] EWCA Civ 74**.

8. Although I shall later consider the other matters that are raised on behalf of the Appellant, for the first time today, it is my judgment the only point that was raised in the Grounds of Appeal is one that is disposed of in paragraph 56 of the Court of Appeal's judgment in **Singh,** wherein Lord Justice Underhill stated the position under the Rules to be as follows:

> 1. When HC 194 first came into force on 9 July 2012, the Secretary of State was not entitled to take into account the provisions of the new Rules (either directly or by treating them as a statement of her current policy) when making decisions on private or family life applications made prior to that date but not yet decided. That is because, as decided in *Edgehill*, 'the implementation provision' set out at paragraph 7 above displaces the usual *Odelola* principle.
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> 2. But that position was altered by HC565 – specifically by the introduction of the new paragraph A277C – with effect from 6 September 2012. As from that date the Secretary of State was entitled to take into account the provisions of Appendix FM and paragraphs 276ADE-276DH in deciding private or family life applications **even if** they were made prior to 9 July 2012. The result is that the law as it was held to be in *Edgehill* only obtained as regards decisions taken in the two-month window between 9 July and 6 September 2012. [Emphasis added].

9. Returning to the facts of this case, the immigration decisions that were the subject of appeal to Judge Bartlett (whether that be the refusal of further leave to remain or indeed the decision to remove the Appellant) were both taken outside the parameters of the window described in **Singh** (above). It therefore follows that, notwithstanding the fact that I have treated the application in this case as predating the introduction of the new Rules, it remains the case that the Secretary of State was entitled to consider this application under the new Rules and that the Tribunal was therefore right to consider it in the same way. The Tribunal did not therefore make any error of law, whether material or otherwise. That is sufficient to dispose of this appeal in relation to the matters raised in the grounds.

10. Today, however, Ms Hannan of Counsel has raised what are in effect new arguments. In my judgment they stray well beyond the Grounds of Appeal, as indeed did the reasoning of Judge Hollingworth when he granted permission to appeal. Neither seem to me to bear any relation to the point that was being raised in the grounds of appeal. Rather, they relate to what may be described as general Article 8 considerations.

11. Ms Hannan's further submissions may be summarised thus.

12. Firstly, Judge Bartlett erred in law by not undertaking a full free-standing Article 8 assessment of the Appellant's case. Secondly, even if she is wrong in that submission and the judge was right to apply an intermediate

test of 'compelling circumstances' before embarking upon such an exercise, there were in fact compelling circumstances in this case that warranted a grant of discretionary leave to remain outside the Rules. I take those points in turn.

13. The first point, namely that the judge erred in failing to undertake a full assessment under Article 8, is one that is in reality dependent upon the success of the point that was raised in the Grounds of Appeal; namely, that 'the old Rules', under which no provision was made for consideration under Article 8, should have been applied. However, that argument cannot succeed because I have already held that the new Rules did apply at the date of the Secretary of State's decision. It follows that the judge was right not to proceed immediately to a full Article 8 assessment, but instead firstly to consider the provisions of the new Rules, and then to ask herself whether there were any compelling circumstances that merited consideration outside the Rules [see **SS (Congo) [2015] EWCA Civ 387**].

14. I turn to Ms Hannan's second argument, which was that there were in fact such compelling circumstances. However the only circumstances to which Ms Hannan was able to point were, firstly, the Appellant's fifteen years' residence in the United Kingdom, secondly, the private and family life that she claimed to have established during that period and, thirdly, the lack of any social, cultural and in particular family ties to Jamaica. However, these were all factors that the Tribunal had already considered under paragraph 276ADE of the Rules and they cannot therefore be said to be 'compelling circumstances' that lie outside them.

15. So far as the existence of social, cultural and more particularly family ties to Jamaica were concerned, Ms Hannan also suggested that there was no evidence to support the Tribunal's finding that the appellant could be accommodated by a number of her grown-up children who still reside in Jamaica. The Appellant's case before the First-tier Tribunal had been that she had no contact with those children and could not therefore turn to them for any kind of support, be it emotional or financial. However, the judge disbelieved that claim for good and sufficient reasons, not least of which was the fact that the Appellant had given inconsistent evidence as to whether she remained in contact with her children.

16. I mention these matters for the sake of completeness. I wish however to stress that the reason that I have ultimately decided to dismiss this appeal is because the sole issue that is raised in the Grounds of Appeal - that the judge had considered the appeal under the wrong version of the Rules - is clearly misconceived in light of the judgments of the Court of Appeal in the appeal of **Singh** (above).

Notice of Decision

17. I am accordingly left with no alternative but to dismiss this appeal.

18. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Kelly