Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/19168/2012

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 24 July 2013	**On 8 October 2013**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

PHATHOKUHLE NDLOVU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs S Ashraf, Girlington Advice and Training
For the Respondent: Mr S Spence, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Phathokuhle Ndlovu, was born on 17 May 1964 and is a citizen of Zimbabwe. She appealed to the First-tier Tribunal against a decision of the respondent dated 16 August 2012 to remove her from the United Kingdom as an illegal entrant. The First-tier Tribunal, in a

determination promulgated on 25 October 2012, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds of appeal are confined to Article 8 ECHR. First, the grounds challenge the judge's finding, his determination at [35(i)]:

> "I now turn to deal with the appellant's family life. The appellant cannot I find argue she has a close family life with her sister in Aylesbury and at the same time argue that she has an established private life in Bradford. These are not compatible arguments."

3. The grounds assert that the maintenance of an individual's private and family life should not be mutually exclusive simply by reason of that individual's geographical separation from other family members. However, I believe that the point that the judge was making is that the Appellant has shown, by adducing a great deal of evidence of her many private life activities in Bradford, she would not have the time and resources remaining to maintain an active family life with her sister in Aylesbury. She does not live with her sister and she is unlikely, as a consequence of her commitments in Bradford, to make frequent visits to her sister's home. That was a finding which the judge reasonably drew from the evidence before him. I agree that the judge could have expressed himself somewhat more clearly. However, his finding later in the same sub-paragraph that there are "no exceptional compassionate circumstances in this case which would justify any finding that the relationship is any other than a normal relationship that exists between siblings" was clearly available to the judge on the evidence before him.

4. The grounds also raise the question of delay by the Home Office in dealing with the appellant's representations made following a refusal for leave in January 2002. The judge has very helpfully set out at [2] a very detailed chronology of the appellant's immigration history. It appears that the appellant applied for leave to remain as a student in September 2001 and was refused in January 2002. Nothing then appears to have happened (despite having no leave to remain, the appellant did not leave the country) until July 2003 when he applied for leave to remain as a student. On this occasion, the leave was granted until January 2004. Thereafter, the appellant applied for several extensions of her student leave which finally expired on 30 April 2009. Subsequent applications then made by the appellant to remain under Tier 4 and Tier 1 were refused but the appellant was eventually served with a form IS151A on 14 October 2011.

5. It is difficult to see how the issue of delay arises in this case. When the appellant was refused leave to remain as a student in January 2002, she had the obvious option of leaving the country and returning home. She benefited from the delay in removing her at that time and, perhaps surprisingly, acquired leave to remain as a student in 2004. Thereafter, it is difficult to see there has been any reasonable delay on the part of the Home Office in dealing with her applications for further leave to remain. I

find that the judge did not err when considering the relevance of delay in the Article 8 ECHR appeal.

6. Paragraph 3 of the grounds of appeal complain that the judge did not follow "the five stage test" set out in **Razgar**. Having considered the determination carefully, I am in no doubt that the judge has carefully addressed all the relevant evidence in reaching his conclusions in this appeal. It is true that he has not referred in any detail to jurisprudence relating to Article 8 ECHR but that is not the point; what is important is that he has applied the principles enunciated in the case law. As he rightly observed at [35(j)], proportionality was the central issue in the Article 8 ECHR appeal. The judge's conclusion that there would not be a disproportionate interference with the appellant's Article 8 rights in respect of both family and private life was clearly open to him on the evidence and I find that he has supported his decision with clear and cogent reasons. By contrast, the skeleton argument supplied to the Upper Tribunal contains extensive quotations from case law only to conclude with the bold assertion that, "the Appellant's right to a family and private life will be disproportionately interfered with by refusing him (*sic*) leave to remain in the United Kingdom." The judge's determination, unlike the skeleton argument, has sought to apply the principles of law arising in an Article 8 ECHR appeal and to the particular facts of this Appellant's case. His analysis portrays no error of law so serious that the determination falls to be set aside and, as a consequence, I dismiss this appeal.

DECISION

7. This appeal is dismissed.

Signed Date 10 August 2013

Upper Tribunal Judge Clive Lane