



**The Upper Tribunal
(Immigration and Asylum Chamber)
IA/05916/2014**

Appeal number:

THE IMMIGRATION ACTS

**Heard at Manchester
On September 4, 2014**

**Determination
Promulgated
On October 6, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MRS EFETURI ANIANU
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chimpango (Legal Representative)
For the Respondent: Mr Harrison (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant, born July 27, 1978 is a citizen of Nigeria. The appellant was granted leave to enter as a Tier 1 (Post Study) partner on August 3, 2010 for the period July 19, 2010 and September 9, 2011. On January 26, 2011 her leave was extended until January 26, 2013. On January 16, 2013 she applied for leave to remain as a PBS Tier 1 dependant partner but her application was refused with no right appeal. On January 24, 2013 she submitted an application for leave to

remain as a PBS Tier 1 dependant partner. The respondent refused this and following a hearing on the papers on June 7, 2013 Judge of the First-tier Tribunal Turnock allowed her appeal to the extent the decision was not in accordance with the law because it had been decided on the wrong Immigration Rules and the section 47 removal fell foul of the decision of Adamally and Jaferi (section 47 removal decisions: Tribunal Procedures) [2012] UKUT 00414. The respondent re-considered the matter afresh on January 7, 2014 and refused the appeal and took a decision to remove her from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and nationality Act 2006.

2. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on January 28, 2014 and on April 29, 2014, 2013 Judge of the First Tier Tribunal Grimmatt (hereinafter referred to as the "FtTJ") dealt with her appeal on the papers and in determination promulgated on May 14, 2014 she refused her claim under paragraph 320(7A) and 322(2) HC 395 and human rights.
3. The appellant lodged grounds of appeal on May 22, 2014 and on June 20, 2014 Judge of the First-tier Tribunal Lever granted permission to appeal.
4. The respondent filed a Rule 24 statement on July 11, 2014 in which it was argued there was no material error.
5. The matter came before me on the above date. The appellant and her husband were in attendance.

SUBMISSIONS

6. Mr Chimpango submitted a skeleton argument in which he argued that the appellant had not acted dishonestly and whilst the evidence was not before the FtTJ he submitted I should have regard to the situation she faced because the situation that occurred in 2008 was unrelated to the current application and was of a different nature. The appellant was not seeking to benefit from the previous "deception" and he submitted the respondent had been harsh to place reliance on it. With regard to article 8 he submitted the FtTJ had not properly considered the fact that both the appellant's husband and her two children were here. The fact she was here as a dependant was a matter the FtTJ should have given more weight to. The FtTJ erred by failing to consider Section 55 of the Borders, Citizenship and Immigration Act 2009.

7. Mr Harrison submitted that the appellant had not helped her case by applying for her case to be dealt with on the papers and by failing to supply any evidence of private life. The FtTJ had identified the inadequacies in paragraph [10] and referred to the previous file for evidence something that he was not obliged to do. There was no evidence of the husband's status or being in the United Kingdom when the FtTJ considered the case. Similarly there was no evidence of the appellant's children being present in the United Kingdom. The FtTJ considered the application under the Immigration Rules and in the absence of any evidence to the contrary he was entitled to dismiss the appeal under paragraph 322(1A) and 320(7A) HC 395. The issues raised in the skeleton argument were not matters before the FtTJ and should not be factors considered now. With regard to the article 8 assessment the FtTJ had no evidence of family or private life but he was not satisfied they were present and therefore found no private or family life. This finding was open to him.
8. At the conclusion of submissions I refused the application and indicated I would give written reasons.

ASSESSMENT OF ERROR OF LAW

9. This is an application to remain as a family dependant. The FtTJ refused her appeal and gave reasons. The adequacy of those reasons has been challenged and I was invited to find an error in law.
10. The problem for this appellant is that on September 1, 2008 she applied for leave to enter as a Tier (Post Study Work) Migrant and in doing so she submitted a post graduate diploma in business management from the Cambridge College of Learning. Following the Tribunal decision in NA & others [2009] UKAIT 00031 the respondent was satisfied the diploma was not genuine because the college never ran such a course. Unfortunately for the appellant this only came to light when her January 2013 application was submitted and was the reason her application was refused in 2013 albeit that decision was subsequently found by a judge to be not in accordance with the law.
11. The result for this appellant was when her case was considered the refusal under the Rules was a mandatory refusal unless the appellant provided evidence that the course she had been on was genuine. The respondent and FtTJ were entitled, in the absence of any other evidence, to rely on the authority of NA. The FtTJ was entitled to dismiss the appeal under paragraph 322(1A) HC 395. There was nothing before the FtTJ that would

have persuaded him to reach a different conclusion and no error is displayed by this finding.

12. Whilst I note the appellant's explanation in her representative's submissions the reality is this is the first time she has mentioned this and no evidence was submitted to support her claim in any event. Clearly this is something she needs to address.
13. I have also considered whether there has been an error in law in relation to the FtTJ's assessment of the article 8 claim. No evidence was provided other than the application form and grounds of appeal. No evidence was submitted to support anything contained in the grounds of appeal and the FtTJ was asked to deal with the case on the papers. The FtTJ found in paragraph [11] that there was no evidence that her husband was in the United Kingdom at all or with leave and there as also no evidence that she had any children living with her or anywhere else in the United Kingdom. The FtTJ gave reasons for finding no family life. Based on those findings there was no need for him to consider Section 55. No error of law is revealed.
14. The FtTJ also rejected a claim for private life noting her private life had only been built up because she entered the United Kingdom illegally in 2008 using false documents. His finding that there was no private life is sustainable.

Decision

15. The decision of the First-tier Tribunal did not disclose an error. I uphold the original determination.



16. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order for anonymity was made in the First-tier and I do not vary that decision.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I make no fee award as the appeal was dismissed.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

SKA