IAC-FH-CK-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/15446/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29 October 2014	**On 7 November 2014**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS AUBREY TABARES HABLO
(ANONYMITY DIRECTION NOT MADE)

Respondent
(Litigant in Person)

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer
For the Respondent: Mr A Vaughan, Counsel instructed via Direct Access

DECISION AND REASONS

1. This is an appeal against the decision of a Judge of the First-tier Tribunal who allowed the appeal of the appellant as I will continue to call her, Miss Hablo, against the Secretary of State's decision refusing to vary leave to remain and that was a decision made on 17 April 2013.

2. Ms Isherwood has made the point that the application seems to have been for discretionary leave for a year in order to allow the appellant to recover from depression and anxiety and it was refused on that basis but Mr Vaughan has been able to clarify the position that she was unrepresented at that stage and it was only when she sought his advice that she became aware that the relationship she has with her nephew was a matter that could be raised and it is clearly a matter that could be raised at the time of the hearing and was properly raised and the judge dealt with it.

3. Essentially the judge at paragraph 24 concluded that at the present time the removal of the appellant would constitute a disproportionate interference with her right to respect for her private and family life and that her removal would effectively rupture the de facto parental relationship that the judge had found she had with her nephew, prevent her from returning to her studies in the United Kingdom and would significantly impact on the quasi-family unit of which she is an integral part and concluded that these factors outweighed the more limited matters as being applicable to the maintenance of immigration control.

4. So I think that the judge took into account the factors that had to be balanced. She set out the relevant legal tests from paragraph 15 onwards noting that the case was not covered by the Immigration Rules and it was arguable therefore that they required consideration outside the Rules, referring to authorities such as Gulshan, Izuazu, Nagre and Razgar. She concluded that she had established family life with her nephew and that to remove her would clearly interfere with this family life, and, essentially as so often it came down to a matter of proportionality.

5. The Presenting Officer acknowledged that the fact that she had all times remained with leave and was a victim of two failed colleges somewhat lessened the weight to be attached to the legitimate aim and the judge agreed with this. She found that she had come with the reasonable expectation that she would gain the qualifications she had paid to study and had shown her ability to study successfully in her home country and had clearly been let down by the two colleges in the United Kingdom which had caused her psychological illness.

> "Whilst", the judge said, "I do not approach this case as a 'near-miss' situation it is relevant to set out the relevant immigration context behind this appeal. So whilst there is some weight to be attached to the legitimate aim of maintaining immigration control I consider it to be lessened by these circumstances."

6. The judge went on to make the findings that I have referred to about the nature of the relationship she has with her nephew, the quasi-parental relationship and the particular need for that in light of the fact that his mother sometimes works nightshifts and I think the evidence was that perhaps five or seven days a month her sister is in a position to collect him and drop him off at school but otherwise she, the appellant, does that.

7. So the appeal was allowed under Article 8 and it is important I think to look at exactly what was said in the grounds because they are quite brief and in my judgment quite narrow. It is said that the judge erred in law by taking account of an irrelevant consideration, namely that the appellant came here with the reasonable expectation that she would gain the qualifications she paid to study. The judge erred in law by placing weight on the above consideration. It is inherent in the nature of an assessed higher educational course that, for a variety of reasons, a person might not attain their desired qualification. Accordingly, the judge erred in placing weight on this factor in the proportionality evaluation, and then, quoting from paragraph 57 of Patel [2013] UKSC 72, that "the opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under Article 8." Its weight would therefore be diminished as a factor in the proportionality evaluation. Further, admission to the UK as a student does not generate a legitimate expectation that an applicant might be permitted to stay in the UK for other purposes, quoting E-A (Nigeria) [2011] UKUT 315 (IAC), and those were the grounds.

8. Permission was granted by a Judge of the First-tier Tribunal who summarised the legitimate expectation study point and went on to say:

> "It was argued that there was an error of law in the assessment of proportionality in the relationship between the appellant and her sister's child and because admission to the United Kingdom did not permit the appellant to expect that she would be admitted to remain for other purposes."

The judge considered that to be an arguable ground.

9. The difficulty I have with that is that it is not a ground pleaded and the judge has not granted permission on the ground that was put before her, so that might raise questions as to exactly what the ambit of this hearing is. I think it is probably sensible to take a relatively broad brush approach to this and perhaps assume that at least the judge granted permission in relation to the grounds that were put before her but I accept that that is not a very solid basis on which to proceed in light of the fact that she did not specifically refer to that matter in paragraph 3 where she granted permission.

10. But the matter is I think best dealt with by returning to paragraph 20 of the determination where the judge said what he had to say about the reasonable expectation of the appellant. I do not read that as being part in any major sense of the proportionality assessment. The judge said towards the end of that paragraph: "It is relevant to set out the relevant immigration context behind this appeal." An essentially weighty matter that the judge was persuaded by in this case was the relationship between the appellant and her nephew. Certainly there is a reference at paragraph

24 to the fact that removal would prevent her from returning to her studies here but that is a part of the evaluation and in my view not a material part, and in my view the judge was entitled in light of the rather limited grounds in relation to which one can say permission was granted to conclude as she did in relation to that particular issue. It was not a matter that gives rise to any error of law in the overall evaluation. The judge came to conclusions that were open to her and as a consequence the decision allowing the appeal under Article 8 is maintained.

Signed Date

Upper Tribunal Judge Allen **6 November 2014**