



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/36676/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 1st April 2014**

**Sent
On 8th April 2014**

Before

**THE HON MR JUSTICE JEREMY BAKER
UPPER TRIBUNAL JUDGE MOULDEN**

Between

**MRS LAURETTA BLANKSON
(No Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins of counsel instructed by Kilic and Kilic solicitors
For the Respondent: Mr G Saunders a Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Ghana who was born on 7 June 1980. She has been given permission to appeal the determination of First-Tier Tribunal Judge Brennells (“the FTTJ”) who dismissed her appeal against the respondent’s decision of 11 July 2013 to remove her from the UK following the refusal to grant her leave to remain outside the provisions of the Immigration Rules as the ex-wife of a former work permit holder.

2. The appellant arrived in the UK on 26 September 2006 with a work permit holder visa as the spouse of a work permit holder and was granted leave to enter for a period expiring on 21 September 2008. On 10 August 2007 her then husband made an application for leave to remain as a work permit holder and named her as his dependant spouse. Both of them were granted leave to remain until 10 August 2012. On 13 March 2011 the respondent was informed by her husband's former employer that he was no longer employed by them. On 11 August 2011 his leave was curtailed with effect from 9 October 2011 and her leave was also curtailed in line with his.
3. On 26 July 2012 the appellant applied for indefinite leave to remain on the grounds that she was the ex-wife of a work permit holder. The respondent refused the application because it was made for a purpose not covered by the Immigration Rules. It was considered on private and family life human rights grounds but refused on the basis that there were no exceptional reasons which were sufficiently compelling to allow her to remain in the UK.
4. The appellant appealed and her appeal was heard by the FTTJ on 27 January 2014. Both parties were represented and oral evidence was given by the appellant, her partner and two other witnesses. The appellant's representatives had submitted a 204 page bundle the contents of which were listed by the FTTJ in paragraph 5 (2) of the determination.
5. The FTTJ considered the appeal on Article 8 human rights grounds and applied the step-by-step tests set out by Lord Bingham in Razgar v SSHD [2004] UKHL 27 concluding that the appellant had established a family life in the UK with her partner, that all but the last of the tests were answered in the affirmative and that the decision turned on the last, proportionality. He found that the appellant's removal would be a proportionate interference with her right to respect for her family life under Article 8.
6. The FTTJ dismissed the appeal. The appellant applied for and was granted permission to appeal arguing that the FTTJ erred in law by failing to make necessary factual findings or to give adequate reasons for his conclusions.
7. Mr Saunders accepted that the FTTJ had failed to look at some of the evidence. He made no further submissions. Mr Collins relied on the grounds of appeal and submitted that the determination was seriously deficient in that it lacked necessary findings of credibility and fact. The appellant was now pregnant. He asked us to find that there were material errors of law, set aside the decision and direct that it be remade in the First-Tier Tribunal.
8. We said that we had reached the conclusion that there were errors of law such that the decision should be set aside. We would direct that the decision be remade in the First-Tier Tribunal. Our written reasons would follow.
9. The appellant's bundle before the FTTJ included witness statements from the appellant and her partner, documents common to both parties relating

to the decision making and appeals process, copies of the appellant's passport and her partner's British passport, a receipt indicating that they had booked their wedding, statements from the appellant's partner's father and her father, statements from family and friends, feedback from the radio station where the appellant was a part-time presenter, information about her qualifications and projects and photographs. In the light of all this information we find that it was not open to the FTTJ to say, in paragraph 16, that; "she has provided little evidence of private life (other than her work) ..."

10. The determination contains no clear findings as to the credibility of the appellant, her partner or the other witnesses. There is no summary of the evidence given by the witnesses and, except for limited findings in relation to the evidence given by the appellant and her partner, no findings in relation to the evidence given by the other two witnesses. Whilst the FTTJ accepted that the appellant had a family life with her partner, the findings do not address important aspects of their evidence including the total time the appellant has spent in the UK, her partner's British citizenship or the factors relevant to whether he should be expected to leave the UK. In paragraph 16, the FTTJ noted that the appellant claimed that she was divorced from her former husband and that she had produced no evidence of divorce proceedings but there is no conclusion as to whether he did or did not accept that she was divorced.
11. We find that these omissions amount to material errors of law. We have considered whether any judge properly directing himself or herself in the light of all the evidence would inevitably have come to the same conclusion to dismiss the appeal on human rights grounds. Whilst in the light of current jurisprudence including Nagre v SSHD [2013] EWHC 720 (Admin) and Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC) the appellant is going to have a difficult task we are not persuaded that she is bound to fail.
12. We have not been asked to make an anonymity direction and can see no good reason to do so.
13. Having concluded that the determination contains material errors of law we set aside the decision of the First-Tier Tribunal. In light of the directions given by the Senior President of Tribunals on 25 September 2012 we are satisfied that the effect of the error has been to deprive the appellant of a fair hearing or other opportunity for her case to be put to and considered by the First-Tier Tribunal. We therefore direct that the appeal be remitted to and reheard by the First-Tier Tribunal.

DIRECTIONS

- 1) The hearing before the First-Tier Tribunal sitting at Taylor House will take place on 15 August 2014 at 10 am unless the First-Tier Tribunal directs otherwise.

- 2) Time estimate – two hours.
- 3) No interpreter required.
- 4) No later than 14 days before the hearing the appellant’s representatives are to lodge with the First-Tier Tribunal and serve on the respondent an indexed and paginated bundle containing all the documents on which the appellant intends to rely including any new material and the material previously submitted.
- 5) Any witness statements must be capable of standing as evidence in chief.
- 6) To be heard by any First-Tier Tribunal Judge other than Judge Brennells.

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Signed:
April 2014
Upper Tribunal Judge Moulden

Date: 2