



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: IA/38493/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 4 December 2014**

**Decision & Reasons
Promulgated
On 18 December 2014**

Before

UPPER TRIBUNAL JUDGE E B GRANT

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS LILIAN AGYEMAN

Respondent

Representation:

For the Appellant: Ms A Holmes, Senior Presenting Officer

For the Respondent: Mr J Dhanji, Counsel

DECISION AND REASONS

The Background to this Appeal

1. The respondent Miss Agyeman appealed a decision of the Secretary of State to remove her as a person subject to administrative removal under Section 10 of the Immigration and Asylum Act 1999 and to refuse leave to remain on human rights grounds. Her appeal against that refusal was heard by First-tier Tribunal Judge Lingham on 16 July 2014 and in a decision promulgated on 26 August 2014 the judge allowed her appeal.

2. By an application made on 2 September 2014 the Secretary of State sought permission to appeal on the basis that the First-tier Tribunal Judge had made a material error of law in allowing the appeal on Article 8 grounds. The grounds went on to submit that the judge made a material misdirection of law in finding it was unduly harsh for the respondent to return to Ghana.
3. On 4 November 2014 First-tier Tribunal Judge Colyer granted the respondent permission to appeal and thus the matter came before me.
4. At the outset of the appeal hearing Ms Holmes for the Secretary of State sought permission to amend the grounds of appeal properly pointing out to me that the judge had also allowed the appeal under the Immigration Rules and that she would be in difficulty pursuing the application solely challenging the Article 8 findings. Mr Dhanji of Counsel opposed the application to amend the grounds at such a late stage. He had received notification of the proposed amendment the night before the hearing. The Secretary of State had overlooked the fact that the appeal had been allowed under the Immigration Rules when drafting the grounds challenging the Article 8 findings. The Secretary of State had not indicated there was any failure to give findings on a material matter and the judge in the First-tier Tribunal had approached the undue hardship test correctly. The application to add a new ground of appeal is severely out of time. Counsel understood why Ms Holmes had taken the view that she had because the appeal was allowed on two grounds namely under the Immigration Rules and under Article 8. Without challenging the decision made in the appeal on the Immigration Rules, the Secretary of State's application could not possibly succeed.
5. Ms Holmes indicated that she agreed with Mr Dhanji and had made her application in alarm when she saw that the decision had been appealed on Article 8 grounds only. This is her attempt to plug the hole. There was nothing more she could say.
6. I refused the application for leave to amend. To permit such a late amendment would cause unfairness to the appellant who had succeeded in her appeal. The time limits were there to be adhered to unless there were good reasons why time should be extended. There was no explanation for the delay other than an oversight by the person who drafted the grounds. I was satisfied there were no good reasons to extend time and I refused the application to amend the grounds of appeal.
7. Having refused the application to amend the grounds it became readily apparent that the application made by the Secretary of State for permission to appeal must be dismissed. The judge allowed the appeal under the Immigration Rules and it could not

possibly be argued that he was wrong to allow the Article 8 appeal when he had already found that the respondent met the requirements of the Immigration Rules under paragraph 276ADE.

Decision

The decision of the First-tier Tribunal Judge stands.

Signed

15 December 2014

Upper Tribunal Judge E B Grant