IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/42045/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 30 October 2014	**On 6 November 2014**
Prepared 30 October 2014	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

SELETE SEBASTIO TETA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Singarajah, Counsel, instructed by Londonhelp4U
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a citizen of Angola, appeals, with permission, against a determination of Judge of the First-tier Tribunal Sweet who, in a

determination promulgated on 27 May 2014, dismissed her appeal against a decision of the Secretary of State to refuse her application for indefinite leave to remain under the fourteen year long residence provisions and also to refused her leave to remain on Article 8 grounds.

2. When the appellant appealed against that decision she asserted that she was in a durable relationship with an EEA national who was a qualified person under the Immigration (European Economic Area) Regulations 2006. She also claimed the decision was in breach of her human rights under Article 8 of the ECHR.

3. At the hearing of the appeal the judge heard evidence from the appellant and Mr Bruno Araujo, her partner. Mr Araujo asserted that he was born in Portugal but had travelled to Angola from time to time as his mother and her family members lived there.

4. In paragraphs 39 onwards the judge set out his findings of fact. He noted that the appellant had used a forged Portuguese identity card which she had obtained in 1995 and that she had used a false name to gain employment in Britain. He noted that the appellant had confirmed that she had wrongly claimed job seekers allowance and benefits but that she denied that she had received benefits between 2006 and 2013 as stated in a letter from HMRC. He concluded that she had been receiving benefits to which she was not entitled. He accepted that the appellant satisfied the fourteen year requirement under paragraph 376.

5. However, he did not consider that the appellant met the requirements of the Rules because he considered that her dishonesty was such that it would be undesirable for her to be given indefinite leave to remain on the grounds of long residence: he concluded that the public interest meant that it was undesirable for her to remain in Britain on those grounds. In reaching that conclusion he referred to the appellant's blatant fraud in entering Britain on a forged Portuguese passport and thereafter seeking state benefits, employment and access to medical services in Britain. He stated that he did not accept her evidence as to when she had stopped obtaining benefits.

6. He went on to say

> "I have not found her evidence to be credible in that regard nor as to her relationship with her partner Bruno Araujo, who gave oral evidence before me. It is suggested that they met each other in 1988/1999 and started a relationship soon after, but they both accept this had been an on/off relationship and it has only been since 2011 that they have been living together. There is very limited evidence of them residing at the same address, save for a utility and TV licence bill dated in July and November 2013 respectively. There is some evidence that they have been obtaining medical treatment together, but I am not satisfied that there is sufficient evidence that they have indeed been living together or in an ongoing relationship."

7. Having weighed up a number of other factors he concluded that the appellant could not have a claim under family life under Appendix FM "or pursuant to **Razgar**". He stated that:

> "Because of my views as to her failing to meet the public interest test under paragraph 276B of the Immigration Rules, it follows (in my view) that it cannot be disproportionate for her to return to Angola, even though she has spent seventeen years in the UK. She had previously lived for 25 years in Angola. I am not satisfied that she has an ongoing relationship with her partner and in any event, though he is Portuguese, his mother lives in Angola and there is no reason why he could not return to that country with the appellant in order to continue their claimed relationship. I have also taken into account the findings in **ZH (Bangladesh) [2009]."**

8. Although permission was refused in the First-tier I granted permission on 19 August 2014 on the basis that I considered that it was arguable that there was a lack of clarity in the judge's findings regarding the status of Mr Araujo and the relationship between him and the appellant and that moreover the judge had failed to engage with the Immigration (EEA) Regulations 2006.

9. At the hearing of the appeal before me Mr Singarajah argued that the judge should have found that the appellant was in a durable relationship with an EEA national exercising Treaty rights but that in any event he should have found that there was a disproportionate interference with her rights under Article 8 of the ECHR in requiring her to leave the jurisdiction.

10. He stated that the judge incorrectly placed weight in the fact that Mr Araujo did not have permanent residence in Britain although it was pointed out to him that that was not a finding which the judge had made, it was merely a submission made by the Presenting Officer. He then went on to assert that in paragraph 39 the judge had stated that "Since 2007 she has lived at her current address, where she also lives with her long term partner, Bruno Araujo". He argued that that showed the judge had assessed the length of relationship but he said that that finding was inconsistent with what the judge had written in paragraph 43 where he said that he was not satisfied that there was sufficient evidence that the appellant and Mr Araujo had been living together or were in an ongoing relationship.

11. He went on to argue that the judge had not considered the issue of whether or not the removal of the appellant would be disproportionate – the Rules had not incorporated the relevant Strasbourg jurisprudence and that that should be taken into consideration. He referred also to the rights of Mr Araujo and argued that the judge had not properly taken into account the issue of whether or not the removal of the appellant would be disproportionate. His contention was that either the judge had been consistent in his findings or alternatively, that he had failed to give reasons but in any event had failed to apply the correct law. He argued in particular that it would not be proportionate to expect the appellant to

leave Britain and return to Angola to make an application for leave to remain.

12. In reply Mr Nath argued that the judge had made clear findings – particularly those in paragraph 43 where he had stated that there was insufficient evidence that the appellant and Mr Araujo had been living together or were in an ongoing relationship. He stated that the judge had properly considered the issue of the appellant's rights under Article 8 of the ECHR which had themselves been considered in detail in the refusal letter of 24 September 2013. This was a considered determination and he asked me to find that the judge had made no error of law in the determination in concluding that not only could the appellant not qualify under the rules but moreover that her removal would be disproportionate.

Discussion

13. The appellant's initial application was for leave to remain under the fourteen year provisions. However when that application was refused she raised, in the grounds of appeal, two further issues – her rights under Regulation 8 of the Immigration (EEA) Regulations 2006 and her rights under Article 8 of the ECHR. For both of these issues it is necessary to consider the relationship between the appellant and Mr Araujo – whether or not they are unmarried partners in a durable relationship – and the further questions as whether or not Mr Araujo is exercising Treaty rights here or whether or not the removal of the appellant would be a disproportionate interference with her rights under Article 8 of the ECHR.

14. When considering the issue of the appellant's relationship with Mr Araujo the judge appears to reach two contradictory conclusions. In paragraph 43 he states that he is not satisfied that there was sufficient evidence that Mr Araujo and the appellant had been living together or were in an ongoing relationship, whereas in paragraph 39 he states that she has lived "with her long-term partner, Bruno Araujo". It is difficult to reconcile these two findings. It may be that in paragraph 39 the judge is summarising the evidence before him but that does not clearly reflect the heading before that paragraph which refers to his findings of fact.

15. I consider that there is a material error of law in the determination in that there requires to be a clear finding of fact on this issue – is the appellant in a durable relationship with Mr Araujo or is she not? It is only where there is a clear finding of fact on that that issue that it would be possible to go on to consider whether or not Mr Araujo is a qualified person under Regulation 6 or indeed whether or not the removal of the appellant would be such an interference with her rights under Article 8 of the ECHR that her removal would be considered to be disproportionate.

16. I therefore consider that the determination of the First-tier Judge should be set aside insofar as it relates to the issue of the appellant's rights under the Immigration (EEA) Regulations 2006 and her rights under Article 8 of the ECHR. I consider that there is no error of law in the decision of the

judge relating to the appellant's claim to have a right to remain under the fourteen year Rule and of course that was not challenged before me.

17. I consider that as the findings of fact made by the judge are unclear this is a case where it would be appropriate for the appeal to be remitted to the First-tier Tribunal as the requirements of the Senior President of Tribunal's Directions are met.

Directions.

This appeal will proceed to a hearing afresh when the issues set out in paragraph 15 above can be determined. To be listed at Hatton Cross, 2 hours, Portuguese interpreter.

Signed Date

Upper Tribunal Judge McGeachy **3 November 2014**