Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/48286/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 10 June 2014	**On 25th July 2014**

Before

LORD MATTHEWS
SITTING AS JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE KING TD

Between

KEHINDE ABISOLA ADENUGA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr V Onipede of Counsel
For the Respondent: Mr T Melvin, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Beach promulgated on 15 April 2014. The only issue for us concerns whether or not the judge made an error of law in refusing to categorise the relationship between the appellant and her family as constituting family life, in the sense that the caring duties which she undertook undoubtedly in respect of her parents, were over and above the normal emotional ties between adult children and their parents. If an error of law was made in refusing so to categorise that relationship the question comes to be

whether that error was material, it being argued on behalf of the appellant that the assessment of proportionality under Article 8 would have been different if their relationship had been categorised as family life rather than private life, as was done by the judge in paragraph 33 of the determination.

2. At the hearing today, Dr Onipede submitted a social care needs assessment in respect of each of the parents. These documents were not before the First-tier Tribunal, but we have considered the terms of them insofar as we were asked to do so. They do not, with respect, appear to us to add anything of significance to the facts which were before the First-tier Tribunal Judge and which were set out in the determination and taken account of by the judge. It is plain that the appellant's parents suffer a variety of difficulties, each of which, as we have said, are set out in the determination. It is plain that, whether or not the appellant is categorised as a qualified carer or not, she does undertake caring duties, which again are plainly set out in the determination. It is said by the Home Office Presenting Officer, Mr Melvin, that there is no error of law evidence in the determination in that the judge was entitled to take the view that the caring duties did not elevate the relationship between the parties to one of family life for the purposes of Article 8, and in any event, that any error was not of materiality.

3. In our opinion no error of law can be detected. It might well be that another judge might take the view that these duties undertaken, and I use the word "duties" in a broad sense, by the appellant did in fact elevate the relationship between them to family life for the purposes of Article 8, such was a question of fact. It was submitted by Mr Melvin that all relevant facts were taken account of by the judge. The decision was one which was open to him to make and we should not interfere with it.

4. That having been said we consider whether or not, even if the judge was wrong in regarding the relationship between the parties as an aspect of a private life, that error, if it was an error, was one of materiality. In our opinion the assessment of proportionality undertaken by the judge was precisely the same as it would have been if the relationship between the parties had been categorised as family life. We can detect no error in that assessment. The relevant factors are all taken account of. They are set out in the earlier part of the determination and referred to appropriately in paragraphs 35 to 41.

5. It is plain that the appellant cannot fulfil the requirements of the Immigration Rules. The only issue therefore being whether Article 8 could assist her case. In considering Article 8 the judge took account of the determination in **Gulshan**, took account of **Razgar** and took account of all the submissions and circumstances which it was her duty to do. We cannot detect any irrationality in the judge's approach and in the circumstances the appeal before the Upper Tribunal is dismissed. The original decision should stand, namely that the appeal is dismissed under the Immigration Rules and under human rights.

Signed Date

Lord Matthews
Sitting as a Judge of the Upper Tribunal