



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

Appeal Number: IA/20263/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27th July 2015**

**Decision & Reasons Promulgated
On 10th August 2015**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SEMA FENNICHE

Respondent

Representation:

For the Appellant: Mr D Clarke, Home Office Presenting Officer

For the Respondent: Not represented

DECISION AND REASONS

1. I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Algeria born on 24th January 1972. Her appeal against the Respondent's decision of 27th April 2014 refusing leave to enter was allowed under the Immigration Rules by First-tier Tribunal Judge G A Black in a decision dated 8th January 2015.
2. The Appellant held a five-year multi visit visa valid from 30th September 2010 to 2015. On 18th April 2014 she was refused leave to enter as a visitor because she had spent 32 out of the last 40 months in the UK. Her leave was cancelled on the basis that she was no longer a visitor and was in fact seeking to reside in the UK. She did not satisfy the requirements of

paragraph 41(ii) of the Immigration Rules. The Respondent was satisfied that the duration of her trips to the UK constituted a material change in circumstances of such a degree to warrant a cancellation.

3. Permission to appeal was granted by First-tier Tribunal Judge Simpson on 13th March 2015 on the grounds that it was arguable the Judge failed to give adequate reasons for finding that the Appellant was not advised by the immigration authorities that she would have to restrict the length and frequency of her visits, and in any event her appeal was limited to human rights grounds.
4. In the Rule 24 response, the Appellant argued that the matters raised in the grant of permission were not advanced by the Respondent before the First-tier Tribunal. The Judge found that the Appellant was a credible witness and she intended to live in Algeria. The Judge's findings were open to her on the evidence.

The Hearing

5. The Appellant attended with her brother. She was unrepresented because there had been some mistake and counsel had not been booked. A fax from her solicitor confirmed the situation. Since this was the Respondent's appeal and the grounds were limited, the appeal proceeded on the basis that if the Respondent persuaded me there was a case to answer, the matter would be adjourned to enable the Appellant to be represented.
6. There was some discussion on whether the appeal was limited to Article 8 grounds. Mr Clarke accepted that this was not pleaded in the grounds and in any event the restriction on rights of appeal applied to the grant of entry clearance and not the cancellation of leave or the refusal of leave to enter.
7. Mr Clarke submitted that given that the Appellant had remained in the UK for extended periods since 2011, the Judge's conclusion that she was a genuine visitor who satisfied paragraph 41(ii) was perverse. The Appellant had made frequent successive visits to the UK for extended periods and in effect resided in the UK and visited Algeria.

Discussion and conclusions

8. I did not need to hear from the Appellant to decide the appeal. The Judge had accepted the Appellant's evidence in its entirety and concluded that although she had visited the UK for extended periods, it was understandable given her father's death and her divorce, that she intended to visit her siblings who provide her with emotional support. She maintained strong links with Algeria and had a sabbatical from her job.
9. The Appellant had never breached the Immigration Rules and never stayed longer than a period of months. It was irrelevant whether she was advised by the immigration authorities that she would have to restrict the

frequency and length of her visits. This was not a requirement of the Immigration Rules or a reason to cancel her leave.

10. The Judge found that the Appellant had no intention to live in the UK and the Respondent had failed to show any material change or other change in circumstances to justify the cancellation of leave and/or entry clearance. The circumstances at the time the Appellant was given leave to visit her family still existed. These findings were open to the Judge on the evidence before her.
11. Accordingly, I find that there was no error of law in the First-tier Tribunal's decision and the Secretary of State's appeal is dismissed. The decision of 8th January 2015 shall stand.

Notice of Decision

Appeal dismissed.

No anonymity direction is made.

Signed

Date 31st July 2015

Upper Tribunal Judge Frances