Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/05151/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons**
On 21 July 2016	**On 29 July 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

[N T]
~~**(ANONYMITY DIRECTION NOT MADE)**~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Seymour, Alpha Shindara Legal
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, [NT], was born on [ ] 1983 and is a female citizen of Cameroon. She appealed to the First-tier Tribunal (Judge Kempton) against the decision of the

Secretary of State dated 22 January 2015 refusing her further leave to remain in the United Kingdom on the basis of her private life/compassionate circumstances. The First-tier Tribunal, in a decision promulgated on 5 October 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the outset of the appeal, Mr Seymour, for the appellant, told me that the appeal proceeded on Article 8 ECHR grounds only; the appellant accepts that she cannot succeed under the Immigration Rules.

3. The first ground asserts that the judge failed to make factual findings or to assess the evidence properly. The grounds record that the appellant works in the National Health Service as an administrator in the United Kingdom and has some family members living in this country and takes hepatitis treatment which may not be available in Cameroon. The grounds complain that there does not appear "to be a clear finding of adverse credibility (*sic*) against her, simply an adverse inference drawn from the absence of corroborating witnesses."

4. At [16], the judge does indeed complain of being asked "to accept the appellant's account totally on face value without any other evidence." The judge notes that the appellant claims to have an adult brother living in the United Kingdom and that she has friends here. The judge went on to record that "in particular, there is no evidence whatsoever about her marriage which did not take place. There was no independent evidence of her having been stood up on the big day (*sic*). There is nothing from anybody about the matter." The judge goes on in the decision to accept [21] that the appellant "undoubtedly has a private life in the UK."

5. I do not consider the judge's analysis to be flawed by any failure to make particular findings of fact. The judge had to consider the appellant's private life in the United Kingdom on the basis of the evidence provided and, whilst I accept that he has not made a positive "adverse credibility" finding against the appellant (to use the language employed by the judge), equally the judge has not found the appellant's account of her current circumstances in the United Kingdom to be incredible. I consider the judge has taken at face value the appellant's own evidence with further and corroborating evidence which might, for example, have indicated just how strong or compelling the appellant's relationship is with her brother or with her friends were simply absent. It was quite proper for the judge to note the absence of that evidence and to go ahead and assess the Article 8 ECHR appeal simply on the bare facts as given by the appellant. Put bluntly, the appellant seems to have had little to place in the balance in the exercise *vis-à-vis* the public interest concerned with her removal other than her assertion that she had a brother and friends in the country. It was for the appellant to adduce evidence with a view to discharging the burden of proof and the judge did not err in law by drawing attention to the fact that she had adduced very little evidence.

6. The second ground of appeal asserts that the judge has considered the incorrect version of paragraph 276ADE. At [9], whilst discussing that paragraph, the judge refers to the need to consider whether the appellant has no ties (including social,

cultural family) with Cameroon. The correct version of the Rules (changed in July 2014) now refers to "significant obstacles to the appellant's integration into the country to which she would have to go if required to leave the UK." It is asserted by that by referring to the wrong version of the Rules, the judge has erred in law.

7. I find the ground has no merit. It may well be the case that the judge has referred to the wrong version of the Rules but, given that the appellant could not satisfy the Rules at all and that the appeal was based on Article 8 ECHR grounds only, it is difficult to see how this may be material. I acknowledge that it may in certain circumstances be necessary to consider the Article 8 appeal through the lens of an appellant's ability or inability to satisfy the Immigration Rules. However, the fact remains that the appellant had been unable to produce any evidence to the First-tier Tribunal that she had no ties to Cameroon or that there exist significant obstacles preventing her integration into that country where she has lived the majority of her life. It is difficult to see how either provision may have had an impact on the Article 8 analysis.

8. The third ground of appeal asserts that the judge failed to apply the proper standard of proof. The judge referred at [4] to the standard of proof being "a balance of probabilities." Later [5] the judge referred to the need to identify "substantial grounds for believing the evidence." Later, at [18], the judge stated that there was "no huge likelihood (sic) of [the appellant] going on in the future to suffer liver scarring as this affects only 20% of carriers and she has an 80% chance of being one of those who do not go on to suffer cirrhosis."

9. The use of language by the judge is unfortunate. However, the fact remains that the judge has correctly indicated the standard of proof in the Article 8 appeal (the balance of probabilities) and my reading of the other passages which I have quoted above indicates that these are simply forms of expression employed by the judge; they do not, in my opinion, indicate that she has departed from an application of the correct standard of proof. For example, the use of the words "huge likelihood" is simply a means of expressing the differential between 80% and 20%. The language used by the judge is infelicitous but its effect upon the overall reasoning of the decision is not such as materially to undermine or damage it.

10. The fourth ground of appeal complains that the judge had not fully taken into account Section 117 of the 2002 Act (as amended). The judge refers to Section 117 at [21] noting that "the appellant only ever came to the UK on a temporary basis." Other factors such as the appellant's ability to speak English and her ability to support herself financially had not been considered.

11. I find that the ground does not have merit. The judge has stated that she has taken into account Section 117 and I have no reason to believe that the judge did not do so. The fact that the judge refers to only one element of the application of Section 117 (the appellant's temporary status in the United Kingdom) does not mean that the judge has ignored the other relevant parts of the statute. The failure to refer to the other provisions in terms is not an error of law. Indeed, Mr Seymour did not seek to

persuade me that the appellant's ability to speak English or support herself financially (a matter regarding which there had been no findings of fact and exists very little evidence) are unlikely to make a material difference to the outcome of the Article 8 appeal.

12. For the reasons I have given, I find that the appeal should be dismissed.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed Date 29 July 2016

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 29 July 2016

Upper Tribunal Judge Clive Lane