



IAC-FH-AR-V1

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

Appeal Number: IA/21205/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 February 2016**

**Decision & Reasons
Promulgated
On 19 April 2016**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

**MISS ELIZABETH ANN ARMSTRONG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Jegede, Solicitor, OJN Solicitors

For the Respondent: Miss N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has been granted permission to appeal the determination of First-tier Tribunal Judge Lucas against the decision of the Secretary of State made on 28 April 2014 to refuse to vary her leave to remain and to

give directions for her removal under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellant is a citizen of Trinidad and Tobago, born on 8 September 1962. She claims to have arrived in the UK in August 2000. On 21 March 2011 she was granted discretionary leave to remain in the United Kingdom, under Article 8 ECHR on the basis of her relationship with Miss Malgorzata Edyta Dziwirek until 20 March 2014. On 7 March 2014, she applied for leave to remain on the basis of her family and private life. The respondent refused the application on 28 April 2014 stating that the appellant had failed to provide sufficient documentary evidence from official sources to show that she was still enjoying a family life with her partner. The respondent was not satisfied that the grounds under which she was previously granted discretionary leave still persist and her application for further discretionary leave was refused.
3. The respondent then considered the appellant's claim that her removal would breach her right to respect for private and family life under Article 8 of the ECHR. The respondent considered the application under Rule 276ADE(1)(vi). The respondent noted the appellant's claim to have entered the UK in August 2000 and noted that she has not lived continuously in the UK for at least twenty years. The respondent was not satisfied that the appellant could meet the requirements of Rule 276ADE(iii).
4. The respondent noted that at the time of the application the applicant was 51 years old and was not satisfied that she could meet the requirements of paragraph 276ADE(1)(iv) and (v). Having spent 38 years in her home country and, in the absence of any evidence to the contrary, it was not accepted that in the period of time that she has been in the UK, she has lost ties to her home country. The respondent was not satisfied in the circumstances that the appellant could meet the requirements of 276ADE(1)(vi).
5. Mr Jegede had argued before the First-tier Tribunal Judge that there has not been any significant change in circumstances of the appellant since the initial grant of her leave. Nevertheless the appellant's Article 8 claim was not solely based on her relationship but included her private life which was in respect of her length of residence in the UK, her network of friends and interaction with members of the society.
6. The judge found that after a successful appeal before the First-tier Tribunal, the appellant was granted discretionary leave to remain in the UK for the period between 21 March 2011 and 20 March 2014 on the basis of her then relationship to a Polish national. That has now elapsed and this application was made on the basis of an application for further leave. The judge noted that discretionary leave to remain is not permanent and does not bestow a right or expectation of the grant of such leave. The fact

is that the appellant cannot rely on her previous relationship because that has now ended.

7. He noted that the appellant's claim was therefore based upon private life only. She has lived in the UK for over fourteen years and has, clearly established a private life in the UK over that period. It was argued that she was financially independent and there was therefore no public interest in her removal.
8. The judge found that the appellant could not comply with the Immigration Rules either in terms of paragraph 276ADE or Appendix FM. She could not fulfil the twenty year residence Rule and there was no other basis upon which she could qualify under those Rules.
9. The judge said that reliance was therefore placed upon Article 8 of the ECHR outside of the Immigration Rules. He found that there was nothing exceptional or notable about the appellant's claim other than the fact she has resided in the UK for the past fourteen years. She has spent her first 38 years in Trinidad and Tobago before she moved to the UK. That is much longer and more significant than simply a "formative" or influential part of her life. The judge accepted that the appellant has built up a private life for the past 14 years or more. That was to be expected. However he did not accept that her removal was either disproportionate or unlawful. The above findings made by the judge were not challenged.
10. Mr Jegede challenged the decision on the basis that whilst it is acknowledged that the appellant's relationship no longer existed, the issue for the Tribunal was whether the cessation of that relationship amounted to a significant change in the appellant's circumstances justifying refusal of extension of leave to remain in the UK. He argued that the judge failed to give consideration to this part of his argument.
11. Permission was granted by First-tier Tribunal Judge P J M Hollingworth as follows:

"An arguable error of law has arisen with regard to the degree of analysis or absence of the same in relation to the policy of the respondent governing the grant of discretionary leave before 9 July 2012 in assessing the nature of the changes which have taken place. A consideration of the spectrum of factors ranging across family and private life in assessing the nature of those changes has not been undertaken in the light of the respondent's policy. No analysis has been undertaken as to the relationship of the changes in this spectrum set against the factors to be weighed in the proportionality exercise. This is arguably relevant to the public interest in the maintenance of efficient immigration controls."

12. Mr. Jegede relied on the respondent's policy entitled "**Applicants Granted Discretionary Leave before 9 July 2012**". The first bullet point of that policy states as follows:

- “• Those who, before 9 July 2012, have been granted leave under the DL policy in force at the time will normally continue to be dealt with under that policy through to settlement if they qualify for it (normally after accruing six years continues DL). Further leave applications for those granted up to three years DL **before 9 July 2012** are subject to an active review.”

13. The third bullet point states as follows:

- “• Decision makers must consider whether the circumstances prevailing at the time of the original grant of leave continue at the date of the decision. If the circumstances remain the same and the criminality thresholds do not apply, a further period of three years DL should normally be granted. Decision-makers must consider whether there are any circumstances that may warrant departure from the standard period of leave.”

14. I find that even though the judge failed to consider Mr. Jegede's argument, the failure does not amount to material error of law. The appellant has to qualify for settlement under the Discretionary Leave Policy. The decision maker was required to consider whether the circumstances prevailing at the time of the original grant of leave persisted at the date of decision. It was not disputed that the appellant's relationship to her EEA partner had lapsed as found by the judge. Therefore, as the appellant's circumstances prevailing at the time of the original grant of leave no longer existed, it cannot be expected that the appellant would be granted further discretionary leave to remain.

15. Mr. Jegede's argument was without merit.

Notice of Decision

16. The judge's decision shall stand.

17. No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Eshun

