Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: IA/22937/2013**

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly	**Decision and Reasons Promulgated**
On 11 March 2016	**On 11 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

PAPIA SULTANA

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Timson counsel instructed by Maya Solicitors

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
3. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Simpson promulgated on 28 January 2014 which dismissed the Appellant's

appeal against a decision to remove her from the UK following a refusal of leave to remain on the basis of long residence and outside the Rules on all grounds .

Background

4. The Appellant was born on 27 April 1994 and is a national of Bangladesh.
5. On 22 June 2006 the Appellant was issued with entry clearance as an accompanied child for a family visit valid until 22 December 2006 arriving in the UK on 4 July 2006 aged 12. On 31 July 2012 the Appellant applied for indefinite leave to remain on the basis of 10 years long residence.
6. On 4 June 2013 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
   (a) The Appellant had lived in the UK for 6 years and 11 months and only 5 months of that period was lawful.
   (b) The Appellant could not meet any of the requirements of Appendix FM as she had no partner or child in the UK.
   (c) In relation to paragraph 276ADE(1) (vi) the only provision that the Appellant could conceivably meet it was not accepted that the Appellant had lost all ties with Bangladesh given that she was 19 years old and had lived the majority of her life in Bangladesh.
   (d) The Appellants claim that she had been abandoned in the UK by her parents and that her sponsor Yaris Ali and his family had brought her up was considered but it was not accepted that there were circumstances that warranted a grant outside the Rules.

The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Simpson ("the Judge") dismissed the appeal against the Respondent's decision. The Judge :
   (a) Heard evidence from the Appellant and her Sponsor Yaris Ali.
   (b) Considered the documents which she listed at paragraph 3 of the decision.
   (c) She found that the Appellant had not lived in the UK for more than 10 years lawfully and therefore could not succeed under the long residence provisions of the Rules.
   (d) She did not accept that the Appellants cousin was unable to discover where the Appellants parents were living in Bangladesh.

(e) She did not accept that the Appellants aunt did not know where her brother, the Appellants father was living in Bangladesh.

(f) She could not understand why Mr Ali and his family had not reported to Social Services that the Appellant had been abandoned in the UK by her parents as they claimed.

(g) She found that the family had made a '*deliberate and cynical decision to facilitate the Appellant remaining in the UK until she reached adulthood, presumably in the hope that she would then be entitled to remain.*'

(h) She did not accept the Appellant or Sponsor had given truthful evidence and did not accept that the Appellant had broken all ties with her family in Bangladesh or that her parents had disappeared.

(i) She was satisfied that the Appellant had family in Bangladesh.

8. Grounds of appeal were lodged arguing that the Judge had failed to engage with the guidance given in Ogundimu (Article 8-new Rules) Nigeria [2013] UKUT 00060 (IAC) as to what constituted 'no ties' having had no direct or indirect contact with family there and therefore any ties she had to Bangladesh were remote and she would be at risk returning as a lone woman.

9. Permission was refused on 3 April 2014 and the application was renewed and refused again on 1 May 2014 by Upper Tribunal Judge Kekic who found that the grounds did nothing more than disagree with the findings of the Judge and the outcome of the appeal and no arguable error of law was identified.

10. The application was renewed and permission was granted by the High Court. On 8 October 2015 the Vice President of the Upper Tribunal C M G Ockleton stated 'The parties are reminded that the Upper Tribunal's task is that set out in s12 of the 2007 Act.'

11. At the hearing I heard submissions from Mr Timson on behalf of the Appellant that :

(a)The High Court can only grant permission if he finds that the decisions of the First-tier and the Upper Tribunal are wrong in law.

(b)Section 12 of the 2007 Act required the Tribunal to find whether there had been an error of law.

(c)The Judge did not engage with Ogundimu and her findings were insufficient.

12. On behalf of the Respondent Mr Mc Vitie submitted that :

(a) The Judge found that the evidence given was all a lies to her circumstances.

(b) The Judge found that she had immediate family in Bangladesh therefore it was irrational to suggest that she had no ties.

(c) The decision of the High Court made no reference to the findings made by the Judge none of which were challenged.

(d) How could Ogundimu possibly assist the Appellant?

13. In reply Mr Timson on behalf of the Appellant submitted:

(a) The Judge was confusing being abandoned with having no ties.

(b) The Judge needed to make other findings on the other issues not simply whether she was abandoned.

Legal Framework

14. In Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 60 (IAC) the Tribunal said that the natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules (HC194) imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances.

15. In R (on the application of Akpan) [2015] EWCA Civ 1266 it was held that in refusing to grant leave to remain under paragraph 276ADE of the Immigration Rules to a Nigerian national who had come to the UK 12 years ago as a 14 year old, the SSHD had been entitled to conclude that the applicant had failed to show an absence of ties to Nigeria. In carrying out the rounded assessment that was required when considering the issue of ties, the Secretary of State rightly had

regard to the fact that the applicant had lived in Nigeria until the age of 14 and hence would have acquired familiarity with the customs there.

Finding on Material Error

16. Having heard those submissions, I reached the conclusion that the Tribunal made no material errors of law.

17. This Appellant's case that she was entitled to succeed under paragraph 276ADE(1)(vi) was underpinned by her assertion and that of her cousin Yaris Ali that not only was she abandoned in the UK by her parents in the course of a family visit to the UK after a family dispute in 2006 but that thereafter the family of which the Appellant was a part in the UK had lost all contact with the Appellants parents and indeed had no knowledge of where they lived.

18. I am satisfied that given this presentation of the Appellants history was the foundation of her case and the explanation for why she had no contacts in Bangladesh it was open to the Judge to examine whether she accepted that the Appellant and Mr Ali had given a truthful account of how the Appellant came to live and remain illegally in the UK.

19. The Judge gave a number of clear and sustainable reasons why she did not find the account given by Mr Ali and indeed his mother was a truthful one in paragraphs 21-23 of the decision. She made clear that she found the whole family had deliberately facilitated the Appellants remaining in the UK and that she did not accept the claim of abandonment. The Appellant was just over 18 at the time she gave her evidence and gave evidence in line with that of Mr Ali and the Judge made a finding that against this background she did not find either of them to be credible witnesses and it must follow that she did not accept that the Appellant herself had been truthful about having no contact with her parents and had been a party to this deception.

20. The Judge did not indeed refer to Ogundimu in deciding whether the Appellant had lost all ties to Bangladesh but I am satisfied that even if she had it would have made no material difference to her decision in the particular circumstances of this case where she had wholly rejected the basis of the Appellants case. The

undisputed factual basis of this case was that the Appellant had lived in Bangladesh until she was 12 which is still therefore the greater part of her life; she would have been exposed to the life and culture of that society; she speaks the language and the Judge found as a fact that her closest family members, not remote relatives, would be present in Bangladesh to provide her with support and help in reintegrating into Bangladeshi society. The suggestion that she would be at risk as a lone woman in Bangladesh is therefore entirely without merit.

21. The Judges assessment under Article 8 at 25-26 of the decision is concise but given this was against the background of the Appellants failure to meet the requirements of the Rules the Judge was entitled to conclude that the removal in this case was proportionate.

22. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1) : "*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."*

23. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning. The Appellant cannot be in any doubt about why the appeal was dismissed because the basis of her claim to have lost contact with her parents was rejected in its entirety.

CONCLUSION

24. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

25. **The appeal is dismissed.**

Signed Date 25.3.2016

Deputy Upper Tribunal Judge Birrell