



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

Appeal Number: AA/05681/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 8th November 2013**

**Determination Sent
On 28th November 2013**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

CARINE CYNTHIA AMANDINE TCHEI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown instructed by Parker Rhodes Hickmotts
Solicitors

For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Simpson made following a hearing at Manchester on 15th July 2013.

Background

2. The Appellant is a citizen of the Cote D'Ivoire born in 9th July 1984. She entered the UK as a visitor on 16th October 2012 and claimed asylum the following day. She was refused in a letter dated 14th May 2013. The Respondent did not believe the Appellant's account of her alleged problems resulting from her boyfriend's membership of the FESCI. The judge agreed with the Respondent, and there is no challenge to that aspect of her decision.
3. The judge also considered the Appellant's human rights claim. She has no family in the UK and does not meet the requirements of paragraph 276ADE. The judge set out the guidelines contained in Razgar and said that whilst the Appellant's removal to the Cote D'Ivoire would interfere with her private life, on the facts, the removal would not have consequences of such gravity as to engage the operation of Article 8. Even if it did, such interference would be in accordance with the law and she therefore made no findings in relation to proportionality.

The Grounds of Application

4. The Appellant sought permission to appeal on the grounds that the judge had not properly considered the Appellant's claim to remain on human rights grounds. The Appellant is a disabled person who competed in the London 2012 Paralympics as a weight lifter. Part of her case was that as a person with disabilities she would not be able to live a normal life on return to the Ivory Coast. Since she had arrived in the United Kingdom she had acquired an electric wheelchair which had a life-changing impact on the way she is able to conduct her life. It has given her an independence and mobility which is an integral part of her moral and physical integrity. Even if she was allowed to keep the wheelchair and return to the Ivory Coast there was background evidence before the judge that wheelchair accessible facilities were not common there.
5. On 25th September 2013 permission to appeal was granted by Judge Wellesley-Cole for the reasons stated in the grounds.
6. On 31st October 2013 the Respondent served a reply pointing out that the issue was not raised in the original Grounds of Appeal and there was no reference in the determination to any freestanding Article 8 issue in relation to the Appellant's disability.

Submissions

7. Mr Brown relied on his grounds and in particular submitted that the drastic change which had taken place in the Appellant's life following the supply of a much improved wheelchair, which had had a transformative effect on her life, should have been properly weighed, and if it had been, could potentially have led to a different decision. The difference which the wheelchair had made to her life should not be minimised and without that equipment her private life would be diminished.

8. The judge had not engaged with the issues of disability in the determination.
9. Mrs Pettersen relied on her reply and submitted that no separate argument had been made at the hearing in relation to the Appellant's disability.

Findings and Conclusions

10. At the date of the hearing before the judge the Appellant had been in the UK for nine months. She had been able to train in the Cote D'Ivoire to such a high standard that she had been selected to represent her country in the Paralympics.
11. There is no reference in the determination, which recorded the Appellant's submissions, to a stand alone claim in relation to her disability. Mr Brown clearly made submissions on Article 8 private life but was not able from his notes to confirm whether he had put the claim on the basis of her access to a much enhanced wheelchair or not. It cannot be an error for the judge not to deal with points which were not made to her.
12. She did deal with the Article 8 issue both in relation to the Rules and on Razgar principles. Given that she had been in the UK for such a brief period of time and that she had been able to train in the Cote D'Ivoire it was quite open to the judge to find that the Appellant's removal would not engage Article 8. The fact that the Appellant has access to a better wheelchair than would be available in her own country cannot found a claim that removal would be disproportionate.
13. It was therefore not an error of law for the judge not to deal with the question of proportionality.

Decision

14. The judge's decision stands. The Appellant's appeal is dismissed on all grounds.

Signed

Date

Upper Tribunal Judge Taylor