



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

Appeal Number: IA 09642 2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 2 May 2014**

**Determination**

**Promulgated**

**On 17 June 2014**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**NOELA FRANCESSE CLAYE**

Respondent

**Representation:**

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer

For the Respondent: The respondent was not represented

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing on human rights grounds an appeal by the respondent (hereinafter "the claimant") against a decision of the Secretary of State to remove her from the United Kingdom. The claimant was not represented before me today. She came armed with a very detailed letter from Public Law Project asking for an adjournment. With the help of Mr Walker for the Secretary of State I tested out the strength of the Secretary of State's case before making any decision on that application. I concluded that this is not a case where I found it appropriate or necessary or in the interests of justice to adjourn because it concerns an appeal that I am going to dismiss for the reasons given.
2. In outline, the claimant is a citizen of Sierra Leone born in 1947 and so she is now 66 years old. Although apparently perfectly capable of addressing me, which she did appropriately and with dignity, I think it right to say that

her general appearance is of someone possibly a little older than the age given and this is no doubt something which acted on the mind of the First-tier Tribunal.

3. The claimant came to the United Kingdom in September 2004 as a visitor and remained without leave from 2005. On 3 July 2012 she made an application for indefinite leave to remain.
4. Looked at superficially this case seems to be a rather annoying example of a single relative joining her family in the United Kingdom without regard for the Rules and staying around for long enough to assert in a right (in her mind) to remain but that would be a very wrong analysis of the case. There are different elements to this case that have been brought out very clearly in a careful and full determination by the First-tier Tribunal Judge.
5. The claimant was in Sierra Leone at a time of great social disruption. She suffered significantly including being raped which must be regarded as being amongst the very worst kind of violence that a woman can survive. Had she organised things differently she might have been able to establish a claim to be a refugee. No such claim was made and there is no reason to think that she is a refugee now. Sierra Leone has changed. Nevertheless it is very important to emphasise that this is a case of a person who has had a very hard time in Sierra Leone and her reluctance to live there is clearly rooted in something much deeper than her personal convenience and her understandable not particularly weighty desire to be with her family.
6. The First-tier Tribunal Judge found that in her time in the United Kingdom the claimant had established a significant private and family life. She lived with her niece who looked after her financially. She contributed to running the home and looked after her niece's children. She had also made herself an active member of society, particularly in her involvement in St Peter's Church and its extended community, where she was clearly highly regarded. She is a person who has not lived selfishly in her time in the United Kingdom.
7. The First-tier Tribunal Judge took account of her age, her time in the United Kingdom and all the circumstances of the case before deciding that it would be disproportionate to remove her.
8. In paragraph 38 of his determination the First-tier Tribunal Judge particularly considered proportionality. I have set it out below. He said:

“Firstly in favour of the Secretary of State I find that the [claimant] came in as a visitor and has overstayed for over eight years in the United Kingdom. When the [claimant] came to the UK there was no legitimate expectation that she would be allowed to stay in the UK indefinitely. However in favour of the [claimant] is the fact that she has never claimed benefits and she has never committed any criminal offence. The [claimant] is clearly a vulnerable adult bearing in mind the background she has had of being raped. This has brought back old memories and returning her to Sierra Leone would be placing her at her age in a vulnerable position. The evidence before me is that the [claimant] does not have any family members in Sierra Leone. She has not lived there for over eighteen years. I

therefore find that there are no family ties for her back in Sierra Leone. She has a very supportive network in the United Kingdom which can only help to extend her wellbeing bearing in mind her age.”

9. In paragraph 3 of the grounds of appeal the Secretary of State criticised the judge for allowing the appeal without proper regard to the medical care that would be available to her in Sierra Leone. The grounds referred to the decision of the Court of Appeal in **MM (Zimbabwe) v SSHD [2012] EWCA Civ 279** and described medical care as “an additional factor to be weighed in the balance, with other factors, which by themselves engage Article 8”. It then went on to say that the approach was expressed as: “Supposing ... the appellant has established firm family ties in this country, then the availability of continuing medical treatment here coupled with his dependence on the family here for support, together establish “private life” under Article 8.”
10. The grounds then complain that the test made it clear that medical care was only relevant where an individual’s personal ties to the UK have a direct bearing on the prognosis.
11. There is a report from Women Against Rape and its officer Sian Evans in the bundle at page 67. The report includes the following:

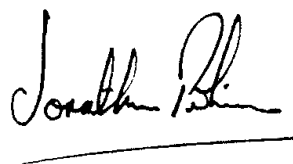
“[The claimant] is clearly suffering from symptoms typical of Rape Trauma Syndrome. In addition to the violence she herself suffered, she also witnesses adults and children being killed in the civil war. Also compounding her symptoms is the long period in which she has been unable to seek help, suffering profound isolation particularly as an older woman. As a result, she has not been able to start to recover from her experiences. Now we are helping her establish a support network to start this process, which now includes a referral for psychiatric treatment. Expert psychiatric evidence about [the claimant’s] state of mind and ongoing needs may be needed by the Tribunal to consider her appeal thoroughly.

To deprive [the claimant] of support at this point would be cruel and devastating. She cannot contemplate the possibility of being sent back to Sierra Leone: too terrified because of the horrors of the rebel atrocities she suffered and witnessed there. She has no connection with anyone there as most her of relatives are dead: the remainder have fled to other countries and she only knows the whereabouts of those in the UK. She would have no community or specialist support in the Sierra Leone.

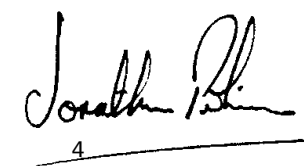
It is widely acknowledged that the aftermath or rape can last many years. .... [The claimant] would face isolation and destitution in Sierra Leone. As an older woman with no family members left there, she is certain that being returned would be a death sentence. We believe that it would be impossible for her to recover somewhere she feels in such terrible danger”.
12. I remind myself that the Tribunal is not criticised in the grounds for the way it evaluated the evidence but for acting without evidence.
13. It is plain that the First-tier Tribunal Judge had evidence before him that the claimant benefited considerably from local support and in the absence of that support would face isolation and destitution. It would be impossible for her to recover and might even take her own life.

14. The point I am making is that it seems to me there was evidence before the Tribunal exactly of the kind that the grounds allege the Tribunal did not have.
15. Mr Walker very rapidly dissociated himself from ground 3. The drafting, of course, was none of his doing.
16. What we are left with then is the suggestion that the Tribunal failed to give adequate reasons and the suggestion that there were no reasons why the ties with the niece went beyond mere emotional ties.
17. I dealing first with the suggestion that First-tier Tribunal's reasons for allowing the appeal were inadequate. This, I find, is completely unsustainable. It is absolutely plain why the judge made the decision that he did. He found that removing a vulnerable elderly lady to a country where she has no contacts and very unhappy memories that could be damaging to her health was disproportionate. I am satisfied that is a view he was entitled to reach.
18. The reference in the grounds to no family ties is backed up with a reference to the case of **Kugathas v SSHD [2003] EWCA Civ 31** but I am not sure what point is being made there. It surely cannot be the Secretary of State's position that removing a person who has been in the United Kingdom, however unlawfully, for a period of years is not interfering with her private and family life. It manifestly is and I do not know why **Kugathas** is thought to be a helpful or illuminating case at all.
19. There is another half point into that in the grounds that the Secretary of State has policies to deal with things that should have been considered but no policies have been produced or specifically identified.
20. At the risk of repeating myself there is much more to this case than first meets the eye. It is clearly a humane and compassionate decision. Much more importantly in my judgment it is a pragmatic and a legally correct one. Still more significantly the grounds on which the Secretary of State chose to bring the appeal do not support a finding that the First-tier Tribunal acted unlawfully.
21. I dismiss the Secretary of State's appeal against the First-tier Tribunal's decision.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



Dated 13 June 2014



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