Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/25433/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 1 August 2014	**On 18 August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MISS ESTHER MISSOLLO NAMIREMBE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B. Hawkins, Counsel instructed by Raffles Hague Solicitors
For the Respondent: Mr N. Bramble, Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing her appeal against the decision by the Respondent to refuse to extend her discretionary leave to remain in the United Kingdom. The First-tier Tribunal did not make an anonymity order, and I do not consider that an anonymity order is warranted for these proceedings in the Upper Tribunal.

2. The appellant is a national of Uganda, whose date of birth is 19 January 1990. According to the immigration history set out at the beginning of the Home Office bundle, the appellant claims to have entered the country via an agent on 20 February 2006, after her grandmother and aunt died in Uganda. On 26 April 2006 she submitted an application for leave to remain as a child of a person in the UK with leave to remain or ILR, but this application was refused. On 20 October 2008 she was served with an IS15A removal notice. On 21 January 2009 she applied for leave to remain outside the Rules. On 5 May 2010 she was granted discretionary leave to remain which ran until 19 January 2011. On 18 January 2011 she applied for an extension of her discretionary leave to remain. This was granted for three years "as she was dependent on her mother and stepfather".

3. On 15 March 2013 the appellant applied for a further extension of discretionary leave. In her application form, she said she lived in a flat in London SE16. This was free accommodation provided by her mother. She was working in the UK, and her pay each month after income tax and other deductions was £750. She was asked whether a relative or friend of hers regularly gave her money, and she answered no. She said she had last been in Uganda in 2007, and she did not have ties to Uganda any longer. The application form was completed with the assistance of the appellant's legal representatives, a firm in Croydon ("the Croydon Firm").

4. The appellant's stepfather wrote a letter in support of the application, dated 26 February 2013. The letter was written from an address in Bexley, Kent. He wrote the letter not only in support of the appellant's application for further discretionary leave to remain, but also in support of a parallel application by his wife Sarah, who was also the appellant's mother. He explained that he had married Sarah (the appellant's mother) in August 2009 and they had lived at the Bexley address ever since. His wife had worked for the NHS since he had known her. They had been able to support Esther through her education and had financed her studies at UCL for two years. This had cost £3,500 a year in fees and another £3,000 in support. She had worked diligently and had secured a diploma, and she would like to extend her studies to obtain a degree. They were frequently visited by Esther, who stayed with her brother at his wife's old flat in Canada Water. He had noted in the last few years that Esther had become a bright, competent and happy young woman who was very intelligent. She now had a part-time job which gave her some pocket money, not to mention *independence* (my emphasis) and self-respect. He was sure that when the case was considered, the Home Office would agree that his wife's good character and employment record proved that she was fully integrated and had become a useful member of society; and that Esther had a bright future which enabled her to be of considerable benefit to the UK and to herself.

5. On 26 April 2013 the Secretary of State gave her reasons for refusing the application. The appellant had previously been granted DLR on 10 February 2011 on the basis that she was still dependent on her mother and her stepfather in the United Kingdom. But due to the fact that she stated that she earned £750 per month, and submitted evidence that showed that she earned in excess of this amount, she was able to lead an independent life, separate to that of her mother and stepfather. So

after carefully reviewing the application, the Secretary of State was not satisfied that the grounds under which she was previously granted discretionary leave still persisted and her application for further discretionary leave was refused.

6. The Secretary of State went on to consider the application of the exemption criteria in EX.1 of Appendix FM. The appellant did not meet the requirements to be considered under EX.1 because she did not have a partner or a child in the UK. The application of Rule 276ADE had also been considered. She had not lived continuously in the UK for at least twenty years. At the time of her application she was aged 23. She had not spent half of her life living in the United Kingdom. She spent sixteen years of her life living in Uganda and, in the absence of any evidence to the contrary, it was not accepted that in the period of time she had been in the UK she had lost all ties to her home country.

7. The Croydon firm settled lengthy grounds of appeal to the First-tier Tribunal on the appellant's behalf. The appellant's case was that her mother, Sarah Rogers, first entered the United Kingdom in July 1999 and claimed asylum. An application was then made for her to be granted leave to remain on the basis of marriage to Mr Richard Gindogo. Sarah was then granted discretionary leave to remain after the respondent delayed deciding her marriage application for a period in excess of five years. Sarah's marriage to Mr Gindogo broke down, and for a period of time Sarah was without leave to remain. She then made a fresh claim based on her family life with her second husband, a British national by the name of Mr Paul Rogers. Discretionary leave to remain was granted to her on 15 March 2010 for a period of three years expiring on 15 March 2013. The appellant arrived in the UK seven years ago in 2006 to join her mother. The appellant had a pending claim for permission to apply for judicial review of the ongoing failure of the respondent to resolve her case under legacy.

8. The refusal of further discretionary leave to remain to the appellant was contrary to the Secretary of State's declared policy that applicants who were granted leave under the discretionary leave policy before 9 July 2012 continued to be considered under discretionary leave policy through to settlement provided they continued to qualify for leave and their circumstances have not changed. It was clear the appellant was entitled to an extension of DL as her circumstances had not changed. The conclusion that she was leading an independent life was perverse. Her parents were paying her rent and university education fees. The appellant should be commended for having the energy and desire to improve her life in the UK by working part-time to earn an income and to gain working experience. The appellant clearly could not live independently on such a low income, with her commitments. While she might have been granted discretionary leave to reside with her mother, family life nonetheless continued to exist in the UK despite the appellant's age. Furthermore, the respondent's failure to grant the appellant leave to remain to conclude her case under legacy weighed in her favour.

9. The appeal was listed to be heard at Hatton Cross on 23 April 2014. On 17 April 2014 the Croydon firm wrote to the Tribunal requesting an adjournment. The application

was supported by a 39 page bundle of documents which referred to judicial review proceedings involving Mrs Rogers, the appellant and the respondent. The Croydon Firm submitted that until the legacy judicial review was determined by JR, the proceedings before the Tribunal could not justly be determined. Additionally, the appellant was unable to prepare for her Tribunal hearing whilst the issue of the legacy matter was undecided.

10. The appellant's representatives then went on at some length to explain why the claim for judicial review was "not academic". Among other things, the appellant relied upon the fact that after the withdrawal of "the asylum claims" (sic), she received correspondence informing her that her case would be concluded under the legacy programme.

The Hearing before, and the Decision of, the First-tier Tribunal

11. The adjournment application could not be dealt with in advance of the hearing, so it was addressed at the outset of the hearing before First-tier Tribunal Judge Widdup at Hatton Cross on 23 April 2014. The appellant was represented by a barrister ("Mr C"), who had been instructed by the Croydon Firm. The respondent was represented by Ms McGrath, Home Office Presenting Officer.

12. In paragraphs 5 to 11 of his subsequent determination, Judge Widdup records how the adjournment application proceeded, and the arguments advanced in support of it by Mr C. Judge Widdup asked him why the appeal against the immigration decision could not be justly determined now. Mr C said that the decision appealed against was incomplete as the legacy policy issue had not been determined. But after further questioning, Mr C accepted that they were ready to proceed with the appeal. The suggestion that the appeal was not ready for hearing referred to the fact that the JR proceedings had not concluded.

13. The judge's reasons for refusing the adjournment application are set out in paragraph 11. He noted there were parallel proceedings in the High Court and these proceedings could only be pursued if all remedies in lower courts had been exhausted. He considered there would be some considerable delay before the appeal could be re-listed, and therefore the appeal ought to proceed today.

14. The judge's account of the remainder of the hearing is set out in paragraphs 12 to 19 of his subsequent determination. Mr C said the appeal would proceed on submissions only. The judge expressed some surprise at this in view of the fact-sensitive nature of an Article 8 appeal. Mr C submitted that no significant changes had occurred since the decision in 2011. The judge informed Mr C that he would consider whether evidence was needed as the hearing proceeded.

15. Mr C referred to the appellant's immigration history set out in the respondent's bundle. She had last been granted discretionary leave to remain when she was aged 21. His core submission was that there was no significant change in circumstances since 2011: the appellant had been an adult in 2011. In addition, the respondent only considered the application under the new Rules and no consideration of Article 8

"generally" had taken place. The other factors relevant to Article 8 overlapped with the legacy issues.

16. Judge Widdup asked Mr C what circumstances should have been taken into account. He said the length of the appellant's residence was relevant. The appellant had lived in the UK since 2006. She had no convictions and leave had previously been granted to her. Her circumstances had been strengthened by the additional time she had now spent in the United Kingdom, and by the fact that she was working and contributing to the UK economy.

17. At this point the judge told Mr C that he was being asked to decide these issues in an evidential vacuum. The judge asked Ms McGrath if she had any objection to the appellant being asked questions. She said she did not provided they were confined to issues about her employment. The judge assessed it would be appropriate if he asked the appellant the questions, and neither representative objected. The judge went on to elicit the following evidence from the appellant which is set out in paragraph 16:

> The appellant said that she works twenty hours per week as a cashier at Morrisons in Peckham. She earns £600pm. She is not now a student. She has worked there for a year. She has no other part-time work. She has an HND in health and social care level 6 and could work as a care worker with children or in health related work. She would like to work full-time in a hospital and could work as a healthcare assistant. She cannot now do so without leave to remain. She was asked by Ms McGrath if there was any reason why she could not do that work in Uganda. She said "not really" and then said she did not think so because it was a different system and she would be retrained. Mr [C] had no questions.

18. In her closing submissions on behalf of the respondent, Ms McGrath relied on the refusal letter and submitted there had been a substantial change of circumstances since 2011: the appellant had been working and could lead an independent life. Her experience with UK qualifications would assist her in Uganda. Mr C submitted in reply that the appellant's case was that she was <u>not</u> (my emphasis) dependent on her mother in 2011, and that therefore nothing had changed. In addition it was not reasonable in all the circumstances for her to return to Uganda. It was common ground that the respondent had written to the appellant saying that her case would be considered within the legacy policy.

19. The judge's conclusions are set out in paragraphs 20 following of his subsequent determination. He was very surprised the appellant representatives did not take the simple step of preparing witness statements by the appellant and her mother and stepfather about the appellant's past and present circumstances. Each Article 8 case was highly fact sensitive. In this case he has been invited to decide the appeal on the basis that there had been no real change in circumstances since 2011. However, save for the evidence prompted by him about the appellant's work and qualifications for work, no evidence had been put before him to enable to make a comparison of the appellant's personal and financial circumstances in 2011 and now, or to prove the

appellant was independent of her mother in 2011. In addition no hearing bundle was prepared, save that which related to the adjournment application.

20. At paragraph 27 the judge observed that the core submission of the appellant was that she was not dependent on her mother in 2011 nor was she now: that meant that she did not have any family life with her. He accepted that she had a private life and that this had been acquired since 2006. Her private life included her relationship with her mother and stepfather, but he had no evidence of the strength of that relationship.

21. On the issue of proportionality, the judge held that the following factors weighed in favour of the respondent, namely the fact that the appellant came to the UK without leave to enter or remain and was only granted discretionary leave to remain when she was aged 19.

22. The appellant was now working on a qualification which provided her with the prospect of full-time work in a healthcare setting. That qualification was obtained in the UK. She was independent of her mother. She had led a law-abiding life in the UK. She was brought up in Uganda until she was 16. It was impossible to assess the circumstances which awaited her in Uganda if she returned there because no evidence had been adduced by the appellant on this.

23. The judge went on to address in detail the appellant's case under legacy. He found at paragraph 38 the legacy issue had no bearing whatsoever on proportionality for two reasons. Firstly the asylum claim was withdrawn and was thereby concluded. Secondly no legitimate expectation could arise that the case would be considered under legacy. So the legacy issue was not one which was of weight in assessing proportionality. In contrast, the length of time spent by the appellant in the United Kingdom since her arrival was a matter of clear relevance and importance.

24. The judge reached the following conclusion at paragraph 40:

> In considering whether that factor and the other relevant factors as such the decision can be said to be disproportionate, I take into account the appellant has skills which may be an advantage to her in Uganda. She is now an independent adult who is capable of supporting herself. Taking all matters into account relevant to proportionality I find the interests of the appellant are outweighed by the legitimate aim of immigration control and her return to Uganda is not therefore disproportionate.

The Application for Permission to Appeal

25. The appellant instructed new legal representatives, who settled extensive grounds for permission to appeal to the Upper Tribunal. Ground 1 is that the judge should have adjourned the appeal to allow the judicial review proceedings to be concluded. Ground 2 is the judge should have adjourned the appeal to allow the appeal to be properly prepared.

26. Ground 3 is not a separate ground as such, but an application to adduce evidence that was not before the First-tier Tribunal in order to buttress ground 2.

27. Ground 4 is not a separate ground of appeal as such, but contains observations on the implications of the legacy programme which are, presumably, designed to underpin ground 1.

28. Ground 5 is that the appellant's case was incorrectly considered under the new Immigration Rules. Ground 6 is that, if the Immigration Rules did apply (contrary to the appellant's primary case), her appeal should have been allowed under Rule 276ADE(vi) as she had no ties (including social, cultural or family) with the country to which she would have to go if required to leave the United Kingdom.

The Grant of Permission to Appeal

29. On 13 June 2014 Designated Judge Baird granted permission to appeal for the following reasons:

> Whilst I appreciate and accept the appellant was on the face of it represented it is clear that the decision was made without any statements having been provided and without evidence from her family, on the basis of the documents provided by the respondent and the few questions asked by the judge about the appellant's employment. The appellant's statement lists errors of fact that were made by the judge including a finding that the appellant had withdrawn an asylum claim and that she had never made one, that she lives independently from her family which she does not. The lack of preparation was commented on by the judge and it seems to me to be arguable that the judge ought to have adjourned the appeal. It is arguable too that he erred in his understanding of the facts of the case which may have led to an error of law.

The Hearing in the Upper Tribunal

30. At the hearing before me, Mr Hawkins reported that the appellant had been refused permission to proceed with her claim for judicial review, and therefore that ground of appeal fell away. But the concerns expressed by Designated Judge Baird when granting permission to appeal remained valid. In reply, Mr Bramble relied on the Rule 24 response settled by Mr Sebastian Kandola of the Specialist Appeals Team on 26 June 2014 where he said:

> There is no obligation for the Tribunal to adjourn a hearing just to await the outcome of a legacy decision either by the SSHD or by another court: **AZ (Asylum – legacy cases) Afghanistan [2013] UKUT 270 (IAC)** (10 June 2013). The judge did not err in law in failing to adjourn because the solicitors had decided not to prepare their client's case on the basis that they thought they would get an adjournment, nor on the basis that instructing Counsel acted without instructions against the best interests of his client – the appellant's remedy lies before the officer's solicitor supervision or the Bar Council not the Upper Tribunal, it can only interfere with an FTT decision if there was a material error of law not because the appellant's legal team acted incompetently.

31. Mr Hawkins informed me that an official complaint had been made about the Croydon Firm of Solicitors, and the complaint had been referred to a legal ombudsman. No complaint had been made against the barrister. If the complaint against the solicitors was upheld, this would be of no comfort to the appellant who had been deprived of a fair hearing before the First-tier Tribunal as a consequence of

evidence of her emotional dependency on her parents not being deployed in evidence.

Discussion

32. Although not cited to me, in determining this appeal I have had regard to **MM (Unfairness: E & R) Sudan [2014] UKUT 00105 (IAC)** a decision of the President and Upper Tribunal Judge Southern. The headnote reads as follows:

> 1. Where there is a defect or impropriety of a procedural nature in the proceedings at first instance, this may amount to a material error of law requiring the decision of the First-tier Tribunal to be set aside.
>
> 2. A successful appeal is not dependent on the demonstration of some failing on the part of the FTT. Thus no error of law may be found to have occurred in circumstances where some material evidence, through no fault of the FTT, was not considered, with a resulting unfairness (**E & R v Secretary of State for the Home Department [2004] EWCA Civ 49**).

33. As discussed in paragraph [19] of the decision, in **E & R** Carnwath LJ found that the unfairness in that case arose from the combination of five factors:

> (i) an erroneous impression created by mistake as to, or ignorance of, a relevant fact (the availability of reliable evidence to support her case);
>
> (ii) the fact was established, in the sense that, if attention had been drawn to the point, the correct position could have been shown by objective and uncontentious evidence;
>
> (iii) the claimant could not fairly be held responsible for the error;
>
> (iv) although there was no duty on the board itself, or the police, to do the claimant's work of proving her case, all the participants had a shared interest in cooperating to achieve the correct result;
>
> (v) the mistaken impression played a material part in the reasoning.

34. Carnwath LJ went on to hold at paragraph [66] that the time had now come to accept the mistake of fact giving rise to unfairness was a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties shared an interest in cooperating to achieve the correct result. Asylum law was undoubtedly such an area. Without seeking to lay down a precise code:

> First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been established, in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisors) was not responsible for the mistake. Fourthly, the mistake must have played a material (but not necessarily decisive) part in the Tribunal's reasoning.

35. At paragraph [21] of **MM**, the Presidential panel held that simple logic meant that the decision in **E & R** applied fully to appeals from the First-tier Tribunal to the Upper Tribunal. The panel considered it important to emphasise in appeals of the present kind the criterion to be applied was not that of reasonableness. In that respect, the present case was a paradigm of its type. The judge's conduct of the hearing at first instance was beyond reproach. The irregularity which had been exposed was entirely unrelated to how the hearing was conducted. The judge could not possibly be faulted for the non-emergence of the solicitor's letter. By any showing, the judge acted responsibly and reasonably throughout. However, as the authorities demonstrated clearly, the criterion to be applied on review was fairness, not reasonableness.

36. The panel went on to find on the facts the judge had plainly disbelieved the appellant's claim concerning her instructions. This belief was grounded substantially on a mistake of fact, namely the erroneous belief that no such instructions had been given by the appellant and no such letter had been written. The judge in terms found the appellant to be mendacious and this became one of the important building blocks in his overall assessment that her claims were not worthy of belief. The resulting unfairness to the appellant was palpable. The panel continued in paragraph [25]:

> The pivotal importance of the error of fact upon which the reasoning of the judge was demonstrably based helps to explain why, in appeals raising issues of international protection, there is room for departure from the inflexible application of common law rules and principles where this is necessary to redress unfairness. This is particularly so where the respondent has in the words of Carnwath LJ in **E & R**, paragraph [66], failed to cooperate to achieve a correct result. As we have seen, generally, the first of the **Ladd v Marshall** principles require that the new evidence which was not considered at the earlier hearing could not with reasonable diligence have been obtained at that stage. Plainly that cannot be said here because the letter was written by the very solicitors who were presenting the case before the Tribunal and so it was available. It was established that neither the Rule in **Al-Mehdawi v SSHD [1991] AC 887** (that a procedural failure caused by an appellant's own representative did not lead to an appeal being in breach of the rules of natural justice) nor a failure to meet the first of the **Ladd v Marshall** principles applies with full rigour in asylum and human rights appeals: see **EGFP (Iran) v SSHD [2007] EWCA Civ 13**. The decision of the Court of Appeal in **E and R v Secretary of State** points toward a broader approach, in which the common right to a fair hearing predominates. We consider that this appeal must succeed accordingly.

37. **MM** is in play here, as the primary error of law challenge mounted by Mr Hawkins is that the appellant was deprived of a fair hearing before the First-tier Tribunal due to gross incompetence and professional misconduct on the part of her legal representatives, both the solicitors and the barrister. It is for this reason that I have not identified the firm or the barrister by name.

38. It is convenient to consider first the error of law challenge in the terms in which it was framed by Designated Judge Baird when granting permission, which was to the effect that the judge was at fault in not ensuring that the appellant received a fair

hearing. If such a case is made out, it is not necessary to enter into the more problematic territory of the alleged misconduct of the appellant's previous representatives.

Judge at fault in failing to adjourn?

39. There was no error of law on the part of the judge in not agreeing to adjourn the appeal hearing pending the outcome of the appellant's claim for judicial review. The judge gave adequate reasons in his determination for refusing an adjournment on this basis.

40. It is argued that the judge ought to have adjourned the appeal on another ground, which was to enable the Croydon Firm to take witness statements from the appellant and family members in support of her claim under Article 8. It is argued that the judge was aware that the case had not been properly prepared, as evidenced by his expressions of surprise as to the lack of witness statement evidence, and therefore he should have ruled that the appeal could not be justly determined without an adjournment.

41. But the judge could not be expected to go behind the position taken by appellant's Counsel. Mr C did not seek an adjournment in order that further evidence could be adduced in support of the Article 8 claim. In any event, the appellant was present in court, as were her parents, who the judge noted were sitting at the back. So the letter of support written by Mr Rogers could have served as their evidence-in-chief, and they could have been tendered for cross-examination. Mr C elected not to call any evidence, apparently on the basis that it was self-evident that there had been no material change of circumstances since 2011, when the appellant had been granted discretionary leave to remain, despite already being an adult. This was the sole basis on which Counsel argued that the appeal against refusal of discretionary leave to remain should be allowed.

42. With regard to the Article 8 claim, Counsel's case was that the refusal decision represented disproportionate interference with the appellant's right to respect for her private life, having regard to her length of residence in the United Kingdom and her aspirations, and the fact that she should have been granted discretionary leave to remain under legacy. Alternatively, the decision under Article 8 was not in accordance with the law, as her eligibility for leave to remain under legacy had not been considered.

43. Given the nature of the case that was being advanced on the appellant's behalf by Counsel, from the judge's perspective the appeal could be justly determined without an adjournment.

44. Objectively, the case which was being advanced was a very weak one on the authorities (as it was a pure private life claim) and also because of the lack of evidence underpinning the central assertion of Counsel that the appellant was independent in 2011, and therefore there had been no material change of circumstances justifying the appellant not being granted further discretionary leave

to remain as an independent adult. But it would not have been proper for the judge to descend into the arena and inform Counsel that the case which was being advanced was unlikely to succeed, still less to adjourn the hearing on the speculative basis that evidence transformative of the appellant's case was available, but had not yet been elicited from the appellant or her parents by Counsel's instructing solicitors.

45. In short, it was in accordance with the overriding objective for the judge to proceed with the appeal hearing, once he had justifiably ruled against the appellant on the application for an adjournment in order to await the outcome of the proceedings for judicial review.

Material mistakes of fact?

46. Based on what the appellant said in the her witness statement dated 14 May 2014, Designated Judge Baird was of the view that it was arguable that the judge had erred in his understanding of the facts of the case, with the consequence that his findings were vitiated by an error of law. This contention does not stand up to scrutiny. The judge fully understood the facts of the case, as they were presented to him.

47. At paragraph 38, the judge states that the asylum claim was withdrawn and was thereby concluded. If he was referring to a claim by the appellant, this may have been an error, as it is not suggested in the appellant's immigration history that she herself ever made an asylum claim. But in the judicial review documents provided to the judge it was alleged by the Croydon Firm that the appellant had made an asylum claim. So if there is a mistake of fact, it is one for which the representatives are responsible. But in any event it is not a mistake of fact which has any bearing on the judge's conclusions on the relevance of the legacy claim in the proportionality assessment.

48. The core mistake of fact asserted by the appellant in her witness statement is that, contrary to the case advanced by Counsel at the hearing, she remains emotionally and financially dependent on her mother. She also helps care for her stepfather, a British citizen, who has hearing difficulties and has been diagnosed with cancer; and she lives with her brother, Isaac Gidudu, who was born on 21 October 1978 and who has been granted ILR.

49. As none of this was canvassed in the evidence before the judge, he acted reasonably in determining the appellant's appeal on the evidence that was before him, which was Mr Rogers' letter of support testifying to her independence and the oral evidence which he elicited from the appellant on the topic of returning to Uganda. As this evidence reasonably led to the dismissal of the appeal under Rule 276ADE and Article 8, grounds 5 and 6 fall away.

Procedural Unfairness?

50. I have asked myself whether there has nonetheless been procedural unfairness, having regard to the observations made by the Upper Tribunal in paragraph [25] of **MM**. I answer this question in the negative. The general Rule remains that the

mistake of fact relied upon must not be the responsibility of the appellant or the legal advisors. Moreover, the asserted mistake of fact cannot be said to be uncontroversial or objectively verifiable. What is now said by the appellant sits uneasily with the picture presented by the contents of her application for further discretionary leave, the letter of support from Mr Rogers and the grounds of appeal to the First-tier Tribunal. While the latter asserted the appellant's continuing dependency on her mother, the facts relied on pointed in the opposite direction. Up to and including the hearing in the First-tier Tribunal, the Article 8 claim was squarely based on private life and legacy considerations, not on the proposition that the appellant at the age of 23 still had ties to her mother and stepfather which went beyond normal emotional ties, such that there was continuing family life between parents and child for the purposes of Article 8.

51. Accordingly, I am not persuaded that the appellant is entitled to relief on **MM** grounds from the alleged incompetence of her previous solicitors, in their preparations for the hearing, and the alleged incompetence of her barrister in the conduct of the hearing.

Decision

52. The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands.

Signed Date

Deputy Upper Tribunal Judge Monson