Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/40949/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 3 July 2014	**On 25 July 2014**

Before

THE HONOURABLE MR JUSTICE HADDON-CAVE
UPPER TRIBUNAL JUDGE KOPIECZEK

Between

MRS ABIDEMI OLUSOLA DAIRO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Oji
For the Respondent: Mr C Avery

DETERMINATION AND REASONS

1. The appellant in this matter, Mrs Abidemi Dairo, seeks to appeal a decision of First-tier Tribunal Judge Oakley promulgated on 25 April 2014 in which he dismissed the appellant's appeal against the Secretary of State's decision dated 4 September 2013 to refuse her application for leave to remain in the United Kingdom as a dependant of her husband who had applied for indefinite leave to remain under the long residence rules.

2. The appeal, which is presented today by Ms Oji, is put on two bases. The first is that the judge did not consider the case appropriately on the basis of the relevant guidance which, it was submitted, required the caseworker to look into the family and private circumstances of the applicant where Section 2 of the application form SET(O) had been filled in. Section 2 of the form SET(O) version 07/2012 reads as follows:

> "Section 2 – Dependants who are also applying
>
> If you have a partner and/or any children under 18 who are living with you in the UK and who are … leave to remain as your dependants, this is where you their give details. 'Partner' means your spouse … or same-sex partner. If more than two children are applying please give their details on a photocopy of this page... The immigration rules for the long residence category do not allow dependants – see guidance…" [Emphasis added].

3. Section 2 of the form then goes on to set out various boxes into which are to be filled in giving partner's full name, including nationality, date of birth and other details. In this case, it appears that the boxes for partner's name, nationality, place of birth and date of birth etc. were filled in with the appellant's details by the appellant's husband. Ms Oji submits that it was because Section 2 of the form SET(O) was filled in, albeit in error, it was therefore somehow incumbent upon the caseworker to give effect to the guidance notes. The guidance notes provided:

> "However, if dependants have been included on a long residence application on a SET(O) form in error, you [the caseworker] must:
>
> a. refuse the dependants under the long residence Rules, and
>
> b. consider any private life claim raised on behalf of the dependant as well as the main applicant."

4. It is plain that Section 2 was incorrectly filled in. The form makes it quite clear that Section 2 does not apply in long residence category cases. It is, therefore, curious that the guidance appears to allow applicants who incorrectly fill in a form themselves to take advantage of that in the manner suggested by Ms Oji. Nevertheless, her point, however, takes her nowhere in this case because the first and second dot points quoted above are exactly what has been done in this case. The caseworker refused the appellant's application, and the private life claim raised by the appellant has been considered through the prism of Article 8 to which we now turn.

5. Article 8 is Ms Oji's second point. She submits that the judge did not consider the appellant's Article 8 rights adequately or at all and, in particular, she submits he did not address the various stages of Razgar [2004] UKHL 27 in relation to the appellant's husband's rights. We can deal with this aspect of the appeal shortly. Ms Oji has ignored Gulshan (Article 8-new Rules-correct approach) [2013] UKUT 00640 (IAC).

6. In our judgment, it is clear that before considering the Razgar steps, the judge was obliged to apply Gulshan (see paragraph 24 of his Determination and Reasons). Gulshan provides that compelling or compassionate reasons must be demonstrated as to why exceptionally recourse should be had to Article 8 when an applicant falls outside the Rules.

7. The judge went on in paragraph 25 to say as follows:

> "In this particular case, there is no reason that I can perceive for looking outside the Rules. The Appellant and her husband both come from Nigeria and there would be nothing to stop them returning as a family unit to live together and I therefore conclude that there is no reason for me to go on to consider the position of the Appellant under the 1950 Convention."

8. Earlier in his Determination and Reasons the judge had recorded various details about the appellant and her husband, namely, their arrival in the United Kingdom, the fact that the appellant had qualifications as did her husband and the fact that in his judgment "there should be no reason why they should not be able to establish themselves back in Nigeria" (see paragraph 22). He also recorded in paragraph 21 that the appellant had made no application for leave to remain in respect of their daughter. In our judgment, the judge had adequate material before him to take a view as to whether or not there were any "compelling" or "compassionate" reasons such as to amount to "exceptional circumstances" for resort to be had to Article 8. He dealt with the Gulshan question adequately, albeit briefly.

9. It is material to note that in paragraph 19 of the judgment the judge said as follows:

> "She may have lived in the United Kingdom for nearly 6 years, but the majority of her life has been spent in Nigeria and I conclude therefore that she would be unable to satisfy the provisions of paragraph 276ADE(i) (vi)."

10. It may be for that reason that it was that the appellant had not made a separate application for leave to remain and leave to have her stay in the United Kingdom regularised.

11. In our view, no criticism can be made of the learned judge's approach or his decision on the Gulsham question which was entirely orthodox. It was not necessary and would not have been appropriate, for him to have gone on to consider the Razgar stages because, as he indicated in paragraph 24, the relevant exceptional circumstances had not been demonstrated. We find it surprising that Ms Oji could seek to argue on appeal in ignorance of such a basic point as Gulshan. Her second ground is rejected.

12. For those reasons, the appeal is dismissed. The decision of the First-Tier Tribunal did not involve an error of law.

Signed _____ Date 21st July 2014

Mr Justice Haddon-Cave