IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/46890/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 31 July 2014	**On 6 November 2014**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS FELICIA OLUREMI KEHINDE

Respondent

Representation:

For the Appellant (Secretary of State): Mr P Nath, Home Office Presenting Officer
For the Respondent (Mrs Kehinde): Mr F Oweka (Solicitor) of Samuel & Co Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against a decision of First-tier Tribunal Judge Monro promulgated on 31 March 2014 following a hearing at Hatton Cross on 17 March 2014. For ease of reference, throughout this determination I shall refer to the Secretary of State, who was the original respondent, as "the Secretary of State" and to Mrs Kehinde, who was the original appellant, as "the claimant".

2. This appeal was before me on 20 June 2014 when I found an error of law in Judge Monro's determination. What will now follow within this determination is a repetition of the substance of the Decision I gave following that hearing.

3. The claimant is a national of Nigeria who was born on 19 December 1937. Until the events which form the subject of this appeal she lived in Nigeria but a number of her children live in the United Kingdom. She entered this country on 7 August 2012 on a multi-visit visa valid from 5 September 2011 until 5 September 2016. The terms on which she is allowed to enter this country pursuant to this visa are that she is on every occasion she visits required to leave before the expiry of six months.

4. On this occasion the claimant did not leave before 7 February 2013 as she ought in accordance with the terms of her visa but on 14 February 2013 she applied for indefinite leave to remain in this country for a purpose not covered by the Immigration Rules. On 3 October 2013 this application was refused by the Secretary of State and a decision was taken to remove her by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The claimant appealed against this decision and it was this appeal which was heard before Judge Monro as noted above.

5. The Secretary of State's reasons for refusing the claimant's application and for issuing removal directions are set out at paragraph 2 of Judge Monro's determination and were as follows:

> "a) the appellant told the Entry Clearance Officer that she would visit for only three months
>
> b) it was asserted on the appellant's behalf that the situation in Kaduna is not stable and is subject to bomb attacks and that home help is becoming unreliable due to this
>
> c) the appellant has not stated how she is personally affected by this situation
>
> d) it is stated that the appellant has a son living in another part of Nigeria but the appellant has not given any reason why she could not relocate or live with him
>
> e) the medical condition from which the appellant suffers had been treated in Nigeria and no reason has been given as to why this could not continue
>
> f) it was not considered that returning the appellant would breach Article 2 or 3
>
> g) as leave is being sought for a purpose not covered by the Rules the application is refused under paragraph 322(1) and since the appellant declared that she was coming for three months only it is also refused

under 322(7) as she failed to honour the declaration as to the intended duration of her stay

h) the appellant does not meet the criteria relating to family or private life under Appendix FM and the application is refused under paragraph 276CE".

The statement of the Secretary of State's reasons was taken from the refusal letter.

6. Having heard evidence from the claimant and other members of her family Judge Monro allowed her appeal for the reasons set out within the determination. Amongst these reasons the judge stated as follows at paragraphs 27 and 28:

> "27. The appellant has not claimed asylum but clearly the situation in Kaduna is a worrying one for her and her family here, and I accept the evidence I have heard that home help has become very difficult to obtain in the current climate of violence.
>
> 28. I find that the combination of the appellant's age, medical condition, lack of network and support in Kaduna and local conditions are factors that impact significantly on the appellant's ability to live her private life, and that the private life she enjoys with her family in the United Kingdom, which is free of the fear that she experiences in Nigeria, cannot be replicated if she is returned there. Having carefully considered the evidence and relevant case law I find that the right of the respondent to operate a firm fair and consistent immigration policy has been outweighed in this case by the particular circumstances of this appellant and that the decision is not proportionate."

7. The Secretary of State as noted has appealed against this decision and the grounds, whilst succinct, are comprehensive. It is argued first that the judge

> "failed to identify the factors raising an arguable case that there are compelling circumstances not sufficiently recognised in the Rules to ground a grant of leave outside the Rules",

relying on the judgment given by Sales J in *Nagre* [2013] EWHC 720 in which the judge held as follows:

> "The new Rules do provide better explicit coverage of the factors identified in case law as relevant to analysis of claims under Article 8 than was formerly the position, so in many cases the main points for consideration in relation to Article 8 will be addressed by decision-makers applying the new Rules. It is only if, after doing that, there remains an arguable case that there may be good grounds for granting leave outside the Rules by reference to Article 8 that it will be necessary for Article 8 purposes to go on to consider whether there are

> compelling circumstances not sufficiently recognised under the new Rules to require the grant of such leave."

8. The reference to the "new Rules" within the judgment are those contained within Appendix FM and paragraph 276ADE of the Rules which came into effect in July 2012. It is asserted within the grounds that it was incumbent on the judge to identify what were the "compelling circumstances not sufficiently recognised under the new Rules to require the grant of such leave" and that the judge did not do so. While holding that the consideration under the Rules had not fully addressed all of the private life issues arising under Article 8, she had not listed those specific factors said to be such "compelling circumstances" which were not covered within the Rules.

9. It is then argued that the judge failed to have regard to the requirements in the EC-DR Section of Appendix FM which it is said "was a relevant Immigration Rule and thus a relevant consideration in the proportionality exercise". In this regard reliance was placed on the determination of this Tribunal in *Gulshan* [2013] UKUT 640 in which Cranston J (sitting with Upper Tribunal Judge Taylor) did not approve of a "*free-wheeling Article 8 analysis, unencumbered by the Rules*" which the Tribunal in that case held was "*not the correct approach*". The judge then goes on to find in that case that "*the Secretary of State had addressed Article 8 family aspects of the [appellant's] position through the Rules… The judge should have done likewise*."

10. The next submission contained within the grounds is that the judge had failed to have regard to "the public interest in firm immigration control, a relevant consideration in any Article 8 proportionality evaluation".

11. Essentially the argument in this case is that the judge did not consider the importance of maintaining a fair system of immigration control, not just because of the individual circumstances in any particular case but also because otherwise it would be impossible to maintain a fair system for everyone. In particular, reliance here was made on the earlier case of *Razgar* where the House of Lords had stated at paragraph 20 that considerations of proportionality

> "must always involve the striking of a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the Convention"

and that

> "decisions taken pursuant to the lawful operation of immigration control will be proportionate in all save a small minority of exceptional cases, identifiable only on a case by case basis."

12. Reliance was then placed upon the decision of the Court of Appeal in *FK & OK (Botswana)* [2013] EWCA Civ 238 in which Stanley Burnton LJ had held as follows:

> "The second reason is that the maintenance of immigration control is not an aim that is implied for the purposes of Article 8.2. Its maintenance is necessary in

> order to preserve or to foster the economic well-being of the country, in order to protect health and morals, and for the protection of the rights and freedoms of others. If there were no immigration control, enormous numbers of persons would be able to enter this country, and would be entitled to claim social security benefits, the benefits of the National Health Service, to be housed (or to compete for housing with those in this country) and to compete for employment with those already here. Their children would be entitled to be educated at the taxpayers' expense (as was the second appellant). All such matters (and I do not suggest that they are the only matters) go to the economic well-being of the country. That the individuals concerned in the present case are law-abiding (other than in respect of immigration controls) does not detract from the fact that the maintenance of a generally applicable immigration policy is, albeit indirectly, a legitimate aim for the purposes of Article 8.2."

13. Then reliance was also placed on the decision of this Tribunal in *Shahzad (Art 8: legitimate aim) Pakistan* [2014] UKUT 85 where at paragraph 25 the Upper Tribunal had criticised a First-tier Judge in the following terms:

> "Although making reference to 'the legitimate aim of securing the economic well-being of the UK by sensible immigration control' (which clearly identified that this head extended to the general (or 'macro') level, he wholly confined his actual assessment of the weight to be attached to the legitimate aim pursued by the decision of the [Secretary of State] to a simple calculus at the individual or 'micro' level, so that all that appeared in the balance sheet were the funds the claimant had paid in course fees and the fact that he had enough to maintain and accommodate himself. He wholly overlooked that even in cases where there is no cost to the state incurred by an individual student in terms of fees and maintenance and accommodation, the Immigration Rules reflect an assessment made by the government with the sanction of Parliament of what requirements are necessary in order to ensure sufficient control on the number of persons entering into or being able to stay in the UK and for how long and under what conditions. Their terms quintessentially require an assessment at the 'macro' level. He failed to take into account whether general aspects of 'economic well-being', including the need to limit the numbers who have access to public services and the benefits of the NHS and who are able to compete for housing and for employment with those already here: see *FK & OK* [11]…"

The Error of Law Hearing

14. Having heard submissions on behalf of both parties (which are set out within paragraphs 13 to 17 of my earlier decision) I found that Judge Monro's determination had contained an error of law such that the decision had to be re-made. I gave my reasons as now follows.

15. I found that the claimant clearly did not have any right to remain in this country under the substantive Rule. Her claim essentially was founded on her Article 8 rights which had to be considered first under paragraph 276ADE of the Rules in

conjunction with Appendix FM. What was required (as is clear from existing jurisprudence) was a consideration of whether, having weighed up fairly all the factors both as to why the claimant should be allowed to remain and why it is in the wider public interest that she should not, it would be "unjustifiably harsh" to require her to return.

16. I agreed with Ms Kenny (who represented the Secretary of State at the error of law hearing), relying on the grounds of appeal, that the public interest reasons why the Immigration Rules should be enforced could not just be considered on the "micro" level but had to be considered on the "macro" level as well (to use the wording contained within *Shahzad*). In other words, it was not sufficient simply to have regard to whether or not the claimant was being looked after by her family without immediate recourse to public funds, but it was necessary also to consider this country's need to have a system of immigration control which is fairly and consistently enforced for the benefit of everyone.

17. The general expectation must be that where a person comes to this country under a visit visa which allows that person to remain for up to six months at a time (especially in circumstances where that person has told the Entry Clearance Officer that she intended only to remain for three months) that person would leave within the time she was permitted to remain here and did not overstay. I found that it did not appear from Judge Monro's determination that she had given proper consideration to the importance of maintaining a fair and consistent immigration policy for the benefit of society in general. If she had considered this, it was not apparent from the determination that she had, which was why I considered that this aspect of that determination was inadequately reasoned.

18. I found that it was also not clear from the determination what weight the judge had given to the various factors referred to within the determination. Although it is not incumbent on the judge to set out every single piece of evidence and every single factor within the determination, nonetheless a judge is required to set out the reasons in such a way that someone reading the determination can be satisfied that the judge has had proper regard to all the arguments. Regrettably, in this case this was not apparent from the determination.

19. I found that the starting point in this case in light of current jurisprudence must be that the expectation would be that this claimant should have returned home and that before being allowed to remain she needs to establish that the circumstances were sufficiently compelling that it would be "unjustifiably harsh" for her to return to Nigeria. I then stated that while it may be that she would be able to do so, it was not clear from Judge Monro's determination that she had ever asked herself this question. It accordingly followed that Judge Monro's determination must be set aside and the decision re-made.

20. Following discussion and having had regard to paragraph 7 of the President's Practice Statement, I considered that it was appropriate to re-make the decision

myself rather than remit the appeal back to the First-tier Tribunal for re-hearing. I had particular regard to paragraph 7.2 of the statement where it was said that:

> "The Upper Tribunal is likely on each such occasion [where an error of law has been found] to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal and that an appeal should only be remitted in circumstances where either the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal, or where the nature or extent of any judicial fact-finding which was necessary in order to the decision to be re-made is such that, having regard to the overriding objective in Rule 2, it was appropriate to remit the case to the First-tier Tribunal."

21. I also had regard to what was said at 7.3, which is that:

> "Re-making rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact-finding is necessary".

22. In this case, I considered that even though I would have to carry out some further fact-finding the overriding objective could best be maintained by my re-hearing the appeal.

23. Accordingly, I adjourned the hearing until 31 July 2014 following which hearing I would re-make the decision, and I directed that the claimant would be permitted to adduce further evidence in support of her appeal and in particular directed to her argument that it would be "unjustifiably harsh" to require her to return to Nigeria. However, I also directed that this evidence should be filed with the Tribunal and served on the respondent by no later than Friday, 11 July 2014 and that this evidence should include in respect of every witness it was intended should give evidence, including the claimant, a witness statement capable of standing as evidence-in-chief.

The Resumed Hearing

24. Regrettably, the directions which I made following the earlier hearing were not served on the parties until very close to the resumed hearing and so the statements were not served in accordance with the directions which I had given. However, in light of the explanation given for this (which was that the directions had not been served) on behalf of the Secretary of State, Mr Nath very properly did not object to the claimant and members of her family giving evidence, which they did.

25. Accordingly, I heard evidence from the appellant and from members of her family, who were cross-examined. I then heard submissions on behalf of both the claimant and the Secretary of State. As I attempted to record everything which was said to me both by the witnesses and by the respective representatives within the Record of Proceedings which I took, I shall not set out below a full record of these proceedings, but shall refer only to such of the evidence and submissions as is necessary for the purposes of this determination. However, I have had regard to everything which

was said to me during the course of the hearing, as well as to all the documents contained within the file.

Discussion

26. As I have already indicated, in order for the claimant's appeal to succeed it is not sufficient that she establishes merely that on a micro level there is little cost to the country in allowing her to remain. If that were so, then there would be little point in having the Rules in place. As made clear by this Tribunal in *Shahzad*, the Tribunal must give great weight to the legitimate and necessary aim of securing the economic wellbeing of the country by maintaining sensible immigration control. As the Tribunal noted in *Shahzad*, this includes "the need to limit the numbers who have access to public services and the benefits of the NHS and who are able to compete for housing and for employment with those already here".

27. The Tribunal also has to have in mind the provisions of part 5A of the Nationality, Immigration and Asylum Act 2002, which was inserted by Section 19 of the Immigration Act 2014, of which the relevant parts provide as follows:

> "19. **Article 8 of the ECHR: public interest consideration**
>
> After part 5 of the Nationality, Immigration and Asylum Act 2002 insert –
>
> "**PART 5A**
>
> **ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS**
>
> **117A Application of this Part**
>
> (1) This part applies where a court or Tribunal is required to determine whether a decision made under the Immigration Act –
>
> (a) breaches a person's right to respect for private and family life under Article 8, and
>
> (b) as a result would be unlawful under Section 6 of the Human Rights Act 1998.
>
> (2) In considering the public interest question the court or Tribunal must (in particular) have regard –
>
> (a) in all cases, to the considerations listed in Section 117B, and
>
> (b) in cases concerning the deportation of foreign criminals, to the considerations listed in Section 117C.
>
> (3) In sub-Section (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C [this applies to foreign criminals, and is therefore not relevant in this case]..." ".

28. These provisions reinforce what was said by this Tribunal in *Shahzad* as to the need for the Tribunal to give great weight to the public interest in maintaining effective immigration controls. This is now set out in terms at paragraph 117B(1). So far as

117B(2) is concerned, the claimant clearly speaks English and with regard to 117B(3), having heard the evidence from the members of her family, I am entirely satisfied that she will be "financially independent" in the sense that her family have more than sufficient funds in order to maintain her adequately. The daughter with whom the claimant currently lives earns about £40,000 a year as a care home manager while her husband is a senior manager in a hospital and earns about £50,000 a year. While the claimant would doubtless utilise some of the health services available in this country, I do not consider that in any meaningful sense it can properly be said that if she is allowed to stay she would be a "burden on taxpayers". While this does not lessen the weight which must be given by the Tribunal to the public interest in enforcing effective immigration control, and does not reduce the requirement for the claimant to show that her removal would still be "unjustifiably harsh", it does nonetheless mean that she does not have the additional hurdle of overcoming this particular objection.

29. With regard to 117B(4) and (5) this claimant's private and family life was not established merely in the small period during which she has remained in this country after the expiry of her right to remain pursuant to her visit visa, but over her lifetime. Having heard the evidence I am satisfied that it was because of these ties that her family did not wish her to return. Accordingly, having considered Section 117A and 117B of the 1972 Act (as inserted by Section 19 of the Immigration Act 2014) it is now necessary to consider this appeal with reference to the factors which I identified in my earlier decision, as set out above.

30. I now consider the reasons given by the Secretary of State for refusing the claimant's application as set out at paragraph 5 above. I shall adopt the same numbering as contained within that paragraph:

    (a) Although it is not disputed that the claimant told the Entry Clearance Officer that she intended to visit for only three months, I accept the evidence given to me that that had been her genuine intention at the time. I accept that she was persuaded by her children and son-in-law to remain because they were worried as to the consequences were she to return. Although (as I find below) I do not consider that the level of risk posed by the activities of Boku Haram within Kaduna (which is where the claimant lives in Nigeria) are at such a level as to entitle her to humanitarian protection, nonetheless I do accept that these activities (to which reference is made at Annex E of the COI Report of 14 June 2013, to which I was referred) are such that the claimant would have great difficulty in obtaining day-to-day support within Kaduna which she would need. This was a factor taken into consideration by Judge Monro, and although her decision must be set aside because she did not demonstrate that she necessarily gave sufficient weight to the public interest in removal, I agree with her finding that the claimant would find it difficult to obtain the necessary level of support on return. This is a factor which in itself carries some weight, but it is also relevant when considering whether or not the claimant's family in this country had a reason for wanting their mother to

remain. The background evidence which I have seen suggests that the situation was deteriorating within Kaduna progressively.

(b and c) I heard evidence as to how the claimant would be personally affected by the deteriorating situation in Kaduna, which was to the effect that whereas formerly she could employ people to assist her in the home, because of the deteriorating situation, nobody would now stay for any length of time.

(d) Regarding the claimant's son who lives in Abuja, I accept that the claimant has only had very limited contact with him, and that this is because she does not get on with her daughter-in-law. I heard evidence, which I accept, that in the period since the claimant has been in this country she has only spoken on the phone with this son once, and also that he and his wife live in a two bedroom flat together with their children. I do not consider it would be either reasonable or realistic to expect this claimant, at the age of 76, to leave the area within Nigeria where she currently has a home in order to live in cramped circumstances with a son and his family with whom she does not get on. Further, on the balance of probabilities, on the basis of the evidence which has been put before the Tribunal, I do not consider that her son would permit her to do so, either.

(e) I do not consider that the claimant's medical conditions as referred to in evidence are such as to give rise to a free standing Article 8 claim and nor do I consider these medical conditions to be a significant factor in this claim (save insofar as the Tribunal recognises that the claimant would have difficulty in coping with her day-to-day needs without support).

(f) The return of this claimant would not breach Article 3 rights either.

(g) The claimant is not entitled to permission to remain under the Rules, so this objection does not touch directly on her Article 8 claim. However, were I satisfied that the claimant had always intended to remain, notwithstanding what she had told the Entry Clearance Officer before she came, this would have been a factor to which I would have attached weight when considering whether her removal would be disproportionate for Article 8 purposes. For the reasons I have already given, I do not so find.

(h) It is not suggested that the claimant meets the criteria relating to family or private life under Appendix FM. The basis of her claim is that her removal would be in breach of her Article 8 rights.

31. Having set out my conclusions with regard to the matters raised by the Secretary of State, I must now consider this appeal having regard to the very great public interest in maintaining a fair and consistent system of immigration control. As I have already stated, it is clear from current jurisprudence that a claim can only succeed under Article 8 outside the provisions of 276ADE and Appendix FM where there are compelling circumstances not specifically recognised within the Rules such that the

consequences of removal would be "unjustifiably harsh". This would only be the case rarely, such that it would be the exception rather than the rule.

32. As this claimant cannot succeed under the specific provisions within the Rules, it is incumbent now on this Tribunal to consider whether or not, when considering all the factors in this case, her removal would nonetheless be "unjustifiably harsh".

33. The claimant is a 76 year old lady, who, I accept (having heard evidence on this point) has very few friends now left in Kaduna. As her children told the Tribunal, although she does still have some ties there, most of her former friends have either died or moved away. Although she has a son living in Abuja, she is not close to him and has only limited contact with this son and his family. While her medical condition on its own is not such that her removal would be in breach of her Article 3 or Article 8 rights, it does make her more reliant on day to day assistance with the tasks she would have to carry out, such as shopping and keeping the house, and because of the current situation in Kaduna, which shows no sign of improving, she would find it difficult, if not impossible, to obtain such help. Although I have had to set aside Judge Monro's decision for the reasons I have given, I nonetheless agree with her finding, at paragraph 28 of her determination, "that the combination of the [claimant's] age, medical condition, lack of network and support in Kaduna and local conditions are factors that impact significantly on [her] ability to live her private life, and that the private life she enjoys with her family in the United Kingdom, which is free of the fear that she experiences in Nigeria, cannot be replicated if she is returned there".

34. I accept that the claimant was previously being maintained with the assistance of the financial support she was receiving from her family in this country. Although the Rules have now been changed, I consider that had this claimant applied prior to 9 July 2012 for indefinite leave to enter this country as the parent dependent relative of a person present and settled in the United Kingdom under paragraph 317 of the Rules, that application would have been likely to succeed. The requirement set out in paragraph 317(i)(a) is satisfied (she is over 65 and on her own); 317(ii) is satisfied because she would have been joining her children present and settled in this country; 317(iii) would have been satisfied, because I accept that she was then "financially wholly or mainly dependent" on her children in this country.

35. I am also satisfied that the maintenance and accommodation requirement set out in paragraphs 317(iv) and (iva) are satisfied and in particular, as provided within (v) she has no other close relative in her own country to whom she could turn for financial support. This follows on from my findings in relation to her son, as set out above.

36. Although the current appeal cannot succeed on the basis of a near-miss, when considering the position of this claimant overall, especially in the context of a suggestion that she always intended to overstay, the fact that had she so intended, she would until very shortly before she came have been able to arrange to do so lawfully in accordance with the Rules then in force, is not irrelevant.

37. The claimant's son-in-law said in evidence that his real fear was that if returned now his mother-in-law would be obliged to live out the remainder of her life as a lonely old woman, in increasing isolation, with little day-to-day help available, in circumstances where she had a loving family (including children and grandchildren to whom she is close) in this country, who are in a position to maintain and accommodate her adequately. I find that this fear is justified. Accordingly, the cost to this individual claimant of the Secretary of State maintaining a strict system of immigration control (which is for the benefit of the public generally) is that instead of being able to live out the remainder of her days surrounded by a family who love her and care for her, she would instead be obliged to return to an existence which would become increasingly isolated and miserable, and where she would lack even the day to day support which might make her existence tolerable.

38. I am entirely satisfied that were this to be the case, the effect on her family as well would be devastating.

39. It is in the context of these findings that I have to consider whether the compassionate factors in this case are sufficiently compelling that I can fairly find that the consequences of her removal would be "unjustifiably harsh" notwithstanding the great weight which has to be given to the public interest in only rarely and exceptionally granting permission to remain under Article 8 to someone who otherwise cannot succeed under the Rules.

40. In my judgment, having considered very carefully all the factors in this case, this is one of those very rare cases where the reasons for allowing this claimant to remain are sufficiently compelling as to outweigh that public interest.

41. It accordingly follows that this appeal must be allowed, and I so find.

Decision

I set aside the determination of First-tier Tribunal Judge Monro as containing an error of law and substitute the following decision:

The claimant's appeal is allowed, on human rights grounds, Article 8.

Signed: Date: 31 October 2014

Upper Tribunal Judge Craig