IAC-TH-WYL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/09654/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th May 2015	**On 8th June 2015**

Before

UPPER TRIBUNAL JUDGE RENTON

Between

PHYLLIS GAIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Dinh of Duncan Lewis Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of the USA born on 5th May 1938. The Appellant has a lengthy immigration history, but suffice it to say for the purposes of this appeal that she arrived in the UK on 18th August 2012 when she was given leave to enter as a visitor. When that leave was about to expire, on 31st January 2013 the Appellant made an application for leave to remain on human rights grounds. That application was refused on 20th March 2013 for the reasons set out in the Respondent's letter of that date. The Appellant appealed, and her appeal was heard by

First-tier Tribunal Judge Ferguson (the Judge) sitting at Hatton Cross on 15th July 2013. He allowed the appeal for the reasons given in his Determination dated 8th August 2013. The Respondent sought leave to appeal that decision, and after such permission was granted, Deputy Upper Tribunal Judge Hanbury sitting at Field House on 2nd October 2013 found a material error of law in the decision of the Judge and set that decision aside. Deputy Upper Tribunal Judge Hanbury then proceeded to re-make the decision and did so by dismissing the appeal of the Appellant against the Respondent's refusal of leave to remain. The Appellant was granted leave to appeal that decision to the Court of Appeal, and on 25th March 2015 the Court of Appeal ordered inter alia that "the appeal against the decision of Deputy Upper Tribunal Judge Hanbury of 9th January 2014 is allowed to the extent only that the case is remitted to a different constitution of the Upper Tribunal for re-determination on the merits". It is evident that the decision of the Court of Appeal recorded as **PG (USA) v SSHD [2015] EWCA Civ 118** was that the Judge had erred in law in coming to his decision and therefore that that decision should be set aside. The issue before me therefore is to re-make that decision on the merits of the case.

Evidence

2. The evidence which I have considered consists of the Appellant's bundle submitted with her representative's letter of 10th July 2013 including the Appellant's statement dated 24th June 2013 and statements of her daughter Angela Stuck and her son-in-law Corey Stuck of a similar date. I have also considered the evidence given to Judge Ferguson at the hearing on 15th July 2013 as recorded in his Determination and also that given to Judge Hanbury at the hearing before him on 2nd October 2013 and recorded in his Determination. Finally I have considered the documents contained in the Appellant's Supplementary Bundle submitted by her representatives with their letter of 9th May 2015.

3. The Appellant and her daughter gave evidence at the hearing before me and were cross-examined. I have made a note of that evidence in the Record of Proceedings and considered it in my deliberations.

Findings of Fact

4. The credibility of the evidence is not in dispute. I find that the Appellant was born in New York on 5th May 1938. She joined the US Foreign Service (Diplomatic Corp) in 1965 and thereafter worked at various posts abroad. In 1969 the Appellant married another member of the Diplomatic Corp, and on 26th May 1970 the Appellant's daughter Angela Louise Stuck was born. The family continued to live and work at postings abroad. However there were matrimonial difficulties, and from 1998 until her retirement in 2005 the Appellant worked in the USA and lived near to Washington DC. She was divorced in 2000. The Appellant then moved to York Town, Virginia to be nearer to her daughter, although subsequently the Appellant's daughter moved to live in Richmond, Virginia. The Appellant moved to join her there in 2010.

5. In Richmond the Appellant lived near to her daughter and her daughter's family, and they saw each other regularly. The Appellant's daughter had married, and her husband was a Christian minister and evangelist. They had three children, namely Alexa Renee Elizabeth Stuck born on 8th September 1994; Ryan Alexander Stuck born on 9th April 2000; and Jordan Ray Stuck born on 1st November 2003.

6. In 2012 the Appellant's son-in-law was posted to a ministry in London. It was intended that the whole family including the Appellant would move to London to live. The Appellant applied for a visa for that purpose but the application was refused. Eventually the Appellant followed her family to the UK as a visitor since when the Appellant has lived with her daughter and her daughter's family at a property in Sutton.

7. The Appellant has become an integral part of her daughter's family. She contributes towards the cost of running the home, and does the cooking. She has a close relationship with her grandchildren. Her only relative in the USA is her brother aged 84 years. They have never had a close relationship. The Appellant wishes to remain living with her daughter and her daughter's family.

8. The Appellant had various health problems. In 2006 the Appellant fell and fractured her left arm. Subsequently whilst living in Richmond, the Appellant tripped and dislocated her arm. Her daughter assisted her greatly with her recovery. The Appellant has type 2 diabetes, and in November 2012 fell causing an injury to her head which required stitches. In June 2013 the Appellant dislocated her right hip. She suffers from chronic iritis affecting her eyesight, and also an erratic heart beat known as arrhythmia. The Appellant takes medication for anxiety, mood swings, blood pressure, and depression.

9. The Appellant's son-in-law and his family came to the UK as a Tier 2 (Minister of Religion) Migrant and dependents. The visa expires on 31st August 2015. It is their intention to seek leave to remain in the UK.

10. The Appellant has effective health insurance and whilst in the UK has never been any sort of burden on the State. She has a pension and maintenance from her former husband. She also receives a rent from properties she owns in the USA. She could occupy one of those properties if needs be.

Decision and Reasons

11. It is not in dispute that the Appellant cannot qualify for leave to remain under the Immigration Rules which include paragraph 276ADE and Appendix FM of HC 395. However, as has been commented often during the long history of this appeal, in this case the Immigration Rules do not amount to a complete code, and therefore I must consider if the original decision of the Respondent amounts to a disproportionate breach of the Appellant's Article 8 ECHR rights. I will decide that issue by answering the five questions posed by the late Lord Bingham in **R (Razgar) v SSHD [2004] UKHL 27**. I must take account of the factors set out in Section 117B of the Nationality, Immigration and Asylum Act 2002, and I must

bear in mind that following the decision in **ZH (Tanzania) [2011] UKSC 4** the best interests of any minor children are a primary consideration, although not the primary consideration, nor a paramount consideration. The Appellant's two younger grandchildren are minor children.

12. The first question posed in **Razgar** is whether the Respondent's decision amounts to an interference by a public authority with the exercise of the Appellant's right to respect for her private or family life. To answer that question, I must first decide if the Appellant has a family or private life in the UK. The Appellant's family in the UK consists of her adult daughter, her son-in-law, and her three grandchildren now aged 20, 15, and 11 years respectively. Because of the age of and the nature of the relationship with these people I find that the Appellant does not have a family life in the UK. The Appellant is financially independent, and clearly on the evidence capable of looking after herself and therefore I am not satisfied that it has been shown that there is a degree of dependency between the Appellant and her family in the UK in excess of the normal emotional ties. However, I am satisfied that the Appellant has a private life in the UK based upon her relationship with her family and the wider community built up over the years since her arrival in the UK in August 2012. It is evident that there would be an interference with that family life should the Appellant return to the USA.

13. The second question to be answered is whether such interference would have consequences of such gravity as potentially to engage the operation of Article 8. It was decided in **AG (Eritrea) v SSHD [2007] EWCA Civ 801** and **VW (Uganda) v SSHD [2009] EWCA Civ 5** that the threshold which has to be crossed to answer this question in the affirmative is not high. Indeed, little more than a technical or inconsequential interference is necessary. I therefore find that the interference is of sufficient gravity to engage the Appellant's Article 8 rights.

14. The answers to the third and fourth questions are not in dispute. I find the Respondent has shown that the interference will be in accordance with the law, and necessary in a democratic society to maintain immigration control which is required for the economic well-being of the country.

15. The answer to the fifth question is the nub of this appeal. That question is whether the interference is proportionate to the legitimate public end sought to be achieved by the Respondent's decision. This consideration requires a balancing exercise between the public interest and the circumstances of the Appellant.

16. I find that the public interest attracts considerable weight. The fact of the matter is that the Appellant cannot qualify for leave to remain under the Immigration Rules. As noted at paragraph 28 of **PG (USA) v SSHD**, the policy of the government is that "migrant workers should not be able to bring a wide group of relatives or dependants to the UK to live for an extended period or to settle in this country".

17. The Appellant falls within this category. The Appellant herself was granted leave to enter the UK only as a visitor and should have departed by 7th February 2013.

18. Turning to the remaining considerations set out in Section 117B of the 2002 Act, it is of course the case that the Appellant can speak English and that she is not a financial burden on the State. However, a part of the Appellant's private life has been developed after her leave to enter the UK had expired, and therefore when her immigration status was precarious.

19. I find that less weight is to be attached to the personal circumstances of the Appellant. I accept that the Appellant has a close relationship with her daughter and her daughter's family. She lived in close proximity to them in Richmond, USA from 2010, and it was the intention that she should come to the UK with her daughter and her daughter's family when that family emigrated in connection with the employment of the Appellant's son-in-law. The Appellant has lived in the household of her daughter since her arrival in the UK in August 2012. Since then the Appellant has played a full part in the life of that family, assisting, for example, with the cooking. Further, since her arrival in the UK the Appellant has formed part of the congregation of her son-in-law's church and she has many friends there. However, the Appellant's daughter and her family only have limited leave to remain in the UK until August 2015. The evidence is that they will seek further leave to remain, but at the time of writing their time in the UK will extend for less than another three months. If they do return to the USA, the Appellant can re-establish her private life with them there. In the meantime, the Appellant can keep in contact with her daughter and her daughter's family by modern methods of electronic communication, and if their separation extends beyond August 2015, there can be reciprocal visits. I understand that it will be difficult for the Appellant and her daughter's family to separate at this stage and that they prefer the daily close contact which they have enjoyed in the UK, but there will be no hardship in the Appellant returning to the USA where she has property interests and will therefore have a home, and also the finance to support herself. The Appellant appears to be somewhat accident prone, and does have medical conditions for which she receives treatment, but there is no medical evidence to indicate that she would be unable to look after herself if she resumed living in the USA.

20. The Appellant has enjoyed a close relationship with her grandchildren, particularly those who are still minors, and those grandchildren will of course miss the Appellant if she returns to the USA. However, otherwise there is no evidence before me that there would be any detriment to their best interests if the Appellant is unsuccessful in this appeal.

21. I therefore find that the public interest carries the greatest weight and that the decision of the Respondent is not disproportionate. This appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal has already been set aside. I re-make that decision by dismissing the appeal.

Anonymity

There has been no previous anonymity direction and I find no reason to make one.

Signed Date

Upper Tribunal Judge Renton