



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

Appeal Number: IA/19336/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 March 2015**

**Decision & Reasons  
Promulgated  
On 27 March 2015**

**Before**

**MR JUSTICE MALES  
DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**FATMATA ROSELYN DORCAS ALLEN  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

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

For the Respondent: Mr M Iqbal, Counsel, instructed by Samuel Ross Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State with the permission of First-tier Tribunal Judge Zucker from a determination dated 5 December 2014 by First-tier Tribunal Judge Samini which allowed the appeal of Ms Fatmata Allen against the decision of the Secretary of State in a letter dated 18 April 2014 to remove her under Section 10 of the Immigration and Asylum Act 1999.

2. The First-tier Tribunal allowed Ms Allen's appeal under the Immigration Rules holding that she satisfied the requirements of paragraph 276ADE(1) (vi) and also allowed her appeal under Article 8 of the European Convention on Human Rights. Ms Allen is a national of Sierra Leone. She was born on 7 May 1979. She lived in Sierra Leone for the first 22 years of her life at which point she came to this country on a student visa. That was in August 2002. The visa was valid until October 2004. Extensions were granted until 26 February 2007 on which date she applied for leave to remain as a dependent relative but that was refused on 20 July 2007.
3. On 30 September 2010 she applied for leave to remain on ten year long residency grounds but that was refused on 21 October 2010. On 21 September 2013 she applied for leave to remain outside the Rules. She was served with notice of liability to administrative removal. She was found by the Secretary of State to have remained in the United Kingdom illegally for over six years. The Secretary of State refused her application in a letter dated 18 April 2014.
4. The refusal letter determined that Ms Allen failed to satisfy the requirements set out in paragraph 276ADE(1) of the Rules, those being the requirements to be met by an applicant for leave to remain on the grounds of private life. The Rule in force at the date of her application and at the date of the refusal letter provided as follows:
  - "1. The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application the applicant
    - (vi) subject to subparagraph (ii) is aged 18 years or above, has lived continuously in the UK for less than twenty years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which she would have to go if required to leave the UK."
5. That was the Rule which the Secretary of State determined Ms Allen failed to satisfy. The refusal letter said that although Ms Allen may not have lived continuously in Sierra Leone since 2002 it was considered that she had resided there for the majority of her life and it was not accepted that she had severed all ties including social, cultural and family ties with Sierra Leone.
6. The findings of the First-tier Judge were as follows. Ms Allen had studied in the United Kingdom. She has two uncles living here who have supported her financially. She no longer has any relatives living in Sierra Leone. Her father was the only remaining relative living there, apart from a sister whom I will mention in a moment, and he died in 2012. Her mother had gone missing during the civil war. She had three sisters, one living in the United States, one in Malaysia and the youngest sister who was 18 years old at the time of the determination was about to leave Sierra Leone to join her sister in Malaysia.

7. The First-tier Judge found that the evidence given by Ms Allen was credible, there were no inconsistencies in her evidence and she was consistent and genuine in saying that she had no relatives in Sierra Leone apart from her 18 year old sister who was due to travel to Malaysia that very week. The sister who was about to travel was said to be traumatised due to her father's health (at all events, that is what the decision says, although we suspect that this is a typographical error for "death").

8. The determination then continued :

"I accept the appellant's oral evidence that she has no ties in her country of origin. I accept the appellant's oral evidence which has not been challenged before me to the effect that the appellant has no social or cultural ties to Sierra Leone. I accept that the appellant satisfied the burden of proof to the required standard of balance of probability that she does not have any ties to her country of origin. The appellant has satisfied the requirements of paragraph 276ADE(1)(vi) that she has no ties to her country of origin."

9. The judge then went on to consider the alternative case based on family and private life in the United Kingdom for the purpose of Article 8.

10. The sole ground of appeal which has been argued before us today concerning the question whether the appellant satisfied the Rules is that the First-tier Tribunal applied the wrong Rule. The Rule which was in force at the date of the application and the decision by the Secretary of State was as we have already set out. There was a Rule change, however, which took effect in July 2014 which replaced the test of "no ties" with a test of "very significant obstacles" to integration. In the July 2014 version of the Rules paragraph (vi) reads:

"Subject to subparagraph (ii) is aged 18 years or above, has lived continuously in the UK for less than twenty years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

11. Although the explanatory memorandum to the Statement of Changes in these Immigration Rules states that this wording represents a clarification of the original policy intention, rather than a substantive change, it seems to us that the test of "no ties" is different from the test of "very significant obstacles". It is not difficult to imagine a case where a person might have no ties to a country or might no longer have ties to a country but would in fact, because of their personality or other characteristics or material circumstances, face no real obstacles in integrating into the country in question.

12. The question which arises on this appeal, therefore, is what is the applicable version of the Rules. If the "very significant obstacles" test applies it would be clear, as the Secretary of State contends, that this was not the test which the First-tier Judge applied. However, we accept Mr Iqbal's submission on behalf of Ms Allen that the applicable test is that

which applied at the date of the application. That is what the Rule says in its introductory words. That was also, as it happened, the Rule which applied at the date of the decision by the Secretary of State which is the subject of Ms Allen's appeal, albeit that a different test had been introduced by the time of the hearing before the First-tier Tribunal. Because of the difference in wording and substance, we do not think it can be said that the "very significant obstacles" wording should inform or be applied to the "no ties" test which was there in the Rules before the July 2014 change.

13. The position, therefore, is that the First-tier Tribunal Judge applied the correct Rule. He made a finding which was a finding of fact that Ms Allen had no ties of any kind to Sierra Leone. He accepted her evidence about the absence of family ties. He also accepted specifically that she had no social or cultural ties to Sierra Leone. It is true that she lived there for the first 22 years of her life of which the last few years were as an adult but nevertheless we do not think that that is such a powerful factor as to demonstrate that the First-tier Tribunal Judge must have made an error of law in making the finding which we have set out above.
14. It follows that there is no error of law in the determination by the First-tier Tribunal so far as the appeal under the Immigration Rules is concerned.
15. In those circumstances it is unnecessary to consider the position under Article 8. That alternative ground of appeal would only arise if there is no right to remain within the Rules. We will simply say that it appears, so far as that is concerned, that if we had taken a different view on the position under the Immigration Rules there would have been considerable force in the Secretary of State's grounds of appeal against that part of the First-tier Tribunal's determination. Mr Iqbal realistically accepted this but as it is Ms Allen succeeds within the Rules and the appeal is therefore dismissed.

### **NOTICE OF DECISION**

The decision of the First-tier Tribunal Judge contained no errors of law and stands.

Ms Allen's appeal remains allowed under the Immigration Rules.

No anonymity direction is made.

Signed

Date **17 March 2015**

Mr Justice Males