



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

Appeal Number: IA/35077/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 1st April 2015**

**Decision & Reasons
Promulgated
On 14th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MRS CHIDINMA FLORENCE MADU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rashid - Counsel

For the Respondent: Mr G Harrison - Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mrs Chidinma Florence Madu, a citizen of Nigeria born 19th April 1988. She appeals against the determination of First-tier

Tribunal Judge K Henderson issued on 26th November 2014, dismissing under the Immigration Rules and Article 8 ECHR her appeal against the decision of the Respondent made on 21st August 2014 to refuse leave to remain and to remove her from the United Kingdom.

2. Permission to appeal was granted by First-tier Tribunal Judge Levin on 5th February 2015. He said:

“2. The Appellant asserts in her grounds that the Judge failed to consider documents within her bundle which were before the Judge and which showed that she met the financial requirements of the Rules.

3. Given the Judge’s findings in paragraph 18 of her decision that the Appellant could not meet the requirements of Appendix FM because of her failure to provide to the Respondent specified evidence with her application, and as the Judge was not precluded by paragraph D in the preamble to Appendix FM-SE from considering further documents not submitted with the application and as it is unclear from her decision whether she took into account the further documents submitted by the Appellant with her appeal it is arguable that the Judge’s decision is materially flawed.

4. It is also arguable that by her failure to identify and make findings in paragraph 16 of her decision which specified documents the Appellant had failed to provide and for what period the evidence was lacking that the Judge has failed to give adequate reasons for her findings.

5. It is further arguable that the Judge’s consideration of Article 8 outside of the Rules and her reliance upon **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC)** and **Nagre** amounted to an error of law as given in the judgment of the Court of Appeal in **MM (Lebanon) and Others [2014] EWCA Civ 985** the Judge arguably adopted the wrong approach.”

3. I have a response from the Respondent in which it is submitted that the Judge directed himself appropriately. It is submitted that the Appellant simply did not provide the evidence with her application or meet the requirements of the Rules with regard to documents submitted after the application.

4. At the start of the hearing Mr Harrison said that it is not clear from his file what documents were actually before Judge Henderson. The appeal was determined by Judge Henderson on the papers. At paragraph 14 she states that she did not have the Respondent’s bundle. Mr Harrison said that there is a Respondent’s bundle in his file with some relevant documents in it. He also had a bundle of original documents which

appeared to support the application. It is clear from paragraph 3 of the decision that Judge Henderson had some documents. She appears to have had some bank statements and some payslips but she notes the absence of other documents required under Appendix FM-SE. The Appellant's representative had provided some additional documents as noted at paragraph 9.

5. Mr Harrison said that in light of the confusion about the documents and about what was actually in the papers that were before the Judge when she made the decision he would have no objection to the appeal being reheard due to arguable procedural unfairness. Mr Rashid was content with that. The Appellant was at the hearing before me and I made it clear to her that it would be in her interests to attend an oral hearing.

Notice of Decision

I set aside the decision of Judge Henderson and remit the appeal to the First-tier Tribunal to be heard anew by a Judge other than Judge Henderson.

Signed

Date: 7th April 2015

N A Baird
Deputy Upper Tribunal Judge Baird