Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/41491/2014**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons**
On 29th September 2015	**Promulgated** **On 4th February 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

VIVIAN SAMIR RAMZY METRY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs R Frantzis, instructed by Simpson Millar, Solicitors
For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Vivian Samir Ramzy Metry, was born on 29 August 1983 and is a female citizen of Egypt. The appellant applied for leave to remain in the United Kingdom with her husband (the sponsor). Her application was refused by a decision of the respondent dated 18 October 2014 on the basis that she did not meet the requirements of paragraph 276ADE of HC 395 in respect of her private life in the United Kingdom. At the time of the

hearing before the First-tier Tribunal (9 January 2015) the appellant was pregnant with a child.

2. The grounds of appeal refer to the judge's alleged failure, in making a proportionality assessment under Article 8 ECHR (it appears to have been accepted that the appellant could not succeed under the Immigration Rules), to take account of "the fact that the child *is* a British citizen." As I have noted above, there was no child as at the date of the hearing but the child did exist having been born before the promulgation of the decision. The matter is further complicated because the judge recorded at [30] that Mrs Fell (the Home Office Presenting Officer) "very properly conceded that the appellant was unable to travel back to Egypt at the date of the hearing due to the advanced stage of her pregnancy." It appears to follow that that concession lost any relevance when the pregnancy came to an end that is before the promulgation of the decision. The only issue remains the judge's assessment of proportionality and whether that assessment was legally valid as at the date of the promulgation of his decision.

3. The judge took a number of factors into account in reaching his decision. He considered the case of *Chikwamba 2008 UKHL 40.* He noted that the appellant and sponsor intended to return to Egypt after a family visit (during which the appellant discovered her pregnancy) to enable her to make an application for leave to enter as a spouse in the normal way. The judge recorded that the appellant only relied upon her claimed ill-health during the course of her pregnancy as her reason for not returning to Egypt [48]. Indeed, the appellant explained that she wished to take the child to Egypt as soon as it was safe to do so after its birth so that the grandparents and other relatives living in that country might see the child. In assessing the appellant's evidence and her immigration history, the judge reached the conclusion that her evidence contained "significant discrepancies and inconsistencies and [was] less than truthful." The judge referred also to evidence provided by the respondent that an application made from Egypt was likely to be granted very quickly, there being a delay of only a few days between the submission of an application to the ECO and a decision. The judge also considered the position if the child had been born by the date of the hearing finding that "if Section 55 [of the Borders, Citizenship and Immigration Act 2009] is applicable to this appeal it will be in the child's best interests to accompany its mother and father to Egypt pending decision on its mother's application."

4. The judge was required to consider the evidence which was before him as at the date of the hearing in the First-tier Tribunal. There was no child at the date of that hearing. It was reasonable for the judge to take into account the appellant and sponsor's stated intention to return to Egypt to enable family members to see any child which may have been born and also, significantly, for the appellant to make an application out of country to enter the United Kingdom as a spouse. The grounds of appeal are therefore misleading by referring to the child in the present tense when that child did not exist either at the date of the hearing before the judge. On the facts that were before him at the date of the hearing, I find that the judge has reached a decision which was plainly available to him. If the

facts have now changed following promulgation of the decision, it is open to the appellant to make a fresh application to the Secretary of State. Alternatively, she may return to Egypt and make an application out of country in the normal way. In the circumstances, the appellant's appeal is dismissed.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed Date 20 December 2015

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 20 December 2015

Upper Tribunal Judge Clive Lane