



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/05808/2016

THE IMMIGRATION ACTS

Heard at Field House
On 24th August 2018

Decision & Reasons Promulgated
On 13th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

PRISCILLA UGBOAKU NWOGA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Malik, Counsel instructed by Global Solicitors & Advocates
For the Respondent: Ms M Kiss, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria whose date of birth is recorded as 10th June 1976. She applied for permanent residence as a family member with a retained right of residence on the termination of a marriage. A decision was made on 25th April 2016 to refuse the application and the Appellant appealed. The appeal was heard by Judge of the First-tier Tribunal Courtney sitting at Hatton Cross on 14th March 2018. Judge

Courtney dismissed the appeal having concerns about the quality of the evidence then relied upon.

2. Not content with that decision, by Notice dated 9th April 2018 the Appellant made application for permission to appeal to the Upper Tribunal relying on the case of **Baigazieva [2018] EWCA Civ 1088**. The understanding of the law prior to that case was that the relevant date was the termination of the marriage rather than the commencement of proceedings.
3. Ms Kiss accepts that there was an error of law in this matter, through no fault of the judge, because that case was not available at the material time. The issue for me then is whether to remake the decision or remit.
4. It was established before me that the relevant period for the retained right which would have given rise to the Appellant's entitlement to a residence card was 6th May 2012 to 5th May 2015, and as far as permanent residence was concerned Mr Malik invited me to find that there was sufficient evidence relating to the period 28th March 2013 to 28th March 2018 to entitle the Appellant to a permanent right of residence.
5. Being generous to Mr Malik, he has been disadvantaged in his ability to prepare the matter before me, certain it is that it would be unfair to the Appellant for me to deal with the matter. The question then is whether the matter should stay in the Upper Tribunal to be heard on another day when Mr Malik would be in a better place to present his client's case or have the matter remitted to the First-tier Tribunal.
6. Miss Kiss tells me that there are a number of issues still live in this case. She put the Appellant on notice as a matter going to the credibility in this appeal that the Appellant and the Sponsor still appear to be living at the same address. Whether that is in fact material will be a matter for the judge hearing the matter which I have decided would better be remitted to the First-tier Tribunal to be heard afresh and on the proper basis given the guidance in the case of **Baigazieva**.

Notice of Decision

7. There is a material error of law in the decision of the First-tier Tribunal. The decision of the First-tier Tribunal is set aside. The matter is remitted to the First-tier Tribunal to be heard afresh with no preserved findings.
8. No anonymity direction is made.

Signed

Date: 11 September 2018



Deputy Upper Tribunal Judge Zucker