



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09889/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 19 June 2018

Decision & Reasons Promulgated
On 09 August 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

SM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Pickering, instructed by Paul Bullen & Co Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, SM, was born in 1985 and is a female citizen of Zimbabwe. She entered the United Kingdom illegally in September 2007 and claimed asylum. Her claim was refused and her subsequent appeal dismissed. She became appeal rights exhausted on 18 January 2018. She made further representations to the Secretary of State but these did not result in any further period of leave. However, the appellant remained living in the United Kingdom illegally before making a further application in January 2013 which led to a grant of discretionary leave (in order to exercise contact with a child). That leave terminated in August 2015 but, before the leave expired, the appellant made a further application which was refused by a decision of the Secretary of State dated 10 March 2016. It is that decision which is the subject of this appeal. The appellant's initial appeal to the First-tier Tribunal (Judge Dearden) was dismissed by a decision promulgated on 13 April 2017.

2. The appellant is employed as a carer by Ms YG and Ms KA. YG is a quadriplegic who lives in Somerset. KA is YG's partner who is also suffering ill-health. The appellant provides 24 hour care and lives in YG's house. The appellant's appeal is founded upon her Article 8 rights (private and family life) arising from her relationship with YG.
3. Judge Dearden acknowledged [30] that the appellant could not meet any of the requirements of HC 395 (as amended). He acknowledged also the "committed support, emotional bonds and strong sense of duty" arising from the appellant's relationship with YG. As a consequence, the judge found that the appellant had "to a relatively low standard established that she does have private and family life with YG. The answer to the first two *Razgar* questions are therefore 'yes'."
4. At [7] the judge "concluded that at all times her status in the United Kingdom has been unlawful or distinctly precarious and under those circumstances little weight should be given to her private and by necessary her family life during those periods. This in my conclusion is a very significant aspect of the appellant's appeal." The judge referred to the Upper Tribunal decision in *Lama* (*video recorded evidence - weight - Article 8 ECHR*) [2017] UKUT 00016 (IAC). The judge was aware that a carer could form very strong bonds engaging Article 8 but, in the final analysis, the illegality or unprecariousness of the appellant's immigration status (a factor not present in the same way in *Lama*) militated against the appellant's case and rendered her removal in consequence of the refusal of the application for leave proportionate.
5. First, the appellant asserts that the judge has wrongly characterised the nature of her residence in the United Kingdom. Between 2013 and 2015, the appellant had discretionary leave to remain. I do not entirely understand that argument. At [31(7)] the judge characterised the appellant's residence in the United Kingdom as "unlawful or distinctly precarious". The judge was not wrong to characterise the appellant's residence between 2013 and 2015 when discretionary leave as "precarious". Other than during that period, her residence has been unlawful (she entered illegally and failed to persuade the Secretary of State or the First-tier Tribunal that she should be granted refugee status).
6. Secondly, the appellant submits that, in his application of Section 117B of the 2002 Act (as amended), the judge has considered family life when the relevant Section (Section 117B(4)) deals only with private life. Again, I cannot see that the judge has erred in law. He has, quite reasonably, concluded that the appellant has formed her relationship with YG and any other aspects of her private life in the United Kingdom at a time when she had no lawful right to be in this country or her leave was precarious. Indeed, the judge considered those circumstances to be a significant reason for distinguishing the appellant's case from that of the appellant in *Lama*.
7. The appellant has stressed her wider value to the community, in particular through her charity work. I am satisfied that the judge has considered all the factors which are relevant to the determination of this appeal. At [31(4)] the judge acknowledged "the value of the appellant to the community" and that this value could be taken into account.
8. Fourthly, Miss Pickering, who appeared for the appellant before the Upper Tribunal, submitted that the judge's analysis lacked "nuance". The judge had failed to adopt a

holistic approach to the appeal as the Upper Tribunal had done in *Lama*. I find that the submission is without merit. Judge Dearden has produced a detailed and thoughtful decision which deals comprehensively with all aspects of this appeal. I reject also Miss Pickering's submission that the judge has produced contradictory findings. As I have recorded above, the judge found that the first two questions in *Razgar* were to be answered in the affirmative; he accepted that private and family life were engaged in this case because of the relationship between the appellant and YG. Article 8 was engaged notwithstanding the fact that the appellant is the employee of YG for whom she acts as a carer. At [31(9)], the judge stated that "Article 8 is not to be used to preserve an employment relationship even where there are great bonds of affection between employer and employee." That observation is not, in my opinion, inconsistent with the finding that the relationship between YG and the appellant was sufficiently strong to engage Article 8 in the first instance. The judge's second finding was made in the context of his observation that there were no compelling circumstances in this case. In other words, the relationship between YG and the appellant was sufficiently strong to engage Article 8 (and to lead to the first two questions of *Razgar* being answered in the affirmative); there was, however, nothing in the relationship which would lead the Tribunal to find that the final question in *Razgar* (as to proportionality) should necessarily be answered in favour of the appellant. Having found that Article 8 was engaged, the judge was not obliged to find that the decision to remove the appellant was disproportionate, as the grounds appear to suggest.

9. For the reasons I have given, I do not find that Judge Dearden has erred in law such that his decision falls to be set aside. The appeal is dismissed.

Notice of Decision

10. This appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

11. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 29 July 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

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

Signed

Date 29 July 2018

Upper Tribunal Judge Lane