



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

Appeal Number: PA/14275/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2018**

**Decision & Reasons
Promulgated
On 15 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SK

(ANONYMITY ORDER CONTINUED)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Presenting Officer
For the Respondent: Ms S Meyer, Solicitor appearing through Camden
Community Law Centre

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.

2. The Claimant, a national of Congo Brazzaville, (not the DRC), date of birth [] 1981, appealed against the Secretary of State's decision, dated 20 December 2016, to refuse an asylum claim made on 27 June 2016. The matter came before First-tier Tribunal Judge P G Wright who on 2 October 2017 dismissed her appeal on refugee, Humanitarian Protection, Article 2 and 3 ECHR grounds and allowed the appeal with reference to paragraph 276ADE(1)(vi) of the Immigration Rules HC 395 as amended (the Rules). In those circumstances the Judge did not make any findings on Article 8 ECHR either in relation to the Appellant's health or in terms of private life in the United Kingdom outside of the Rules.
3. The Secretary of State's decision letter considered the matter by reference to the asylum claim, Humanitarian Protection and Articles 2 and 3 ECHR in terms of risk on a return of ill-treatment at the hands of her claimed persecutors. The Secretary of State did not generally consider Article 8 ECHR outside of the Rules but did consider Article 3 ECHR with reference to medical grounds. She concluded there was no basis because of the case law to show the real risk of that being breached. The Judge received evidence about the general issues and made no findings either by reference to Articles 3 or 8 in relation to health grounds.
4. The application for permission to appeal was solely confined to the Judge's findings allowing the appeal under paragraph 276ADE of the Rules. There was no cross-appeal by the Claimant in relation to the dismissal of her claims for protection in the UK. Ms Meyer indicated that that was a mistake or an omission which should not have occurred but was not the fault of the Claimant. Mr Tufan's position was that the Secretary of State in the grounds seeking permission expressly confined them to challenging the decision with reference to paragraph 276ADE of the Rules and was not challenging the asylum and protection claims which I take it embraced Articles 2 and 3 ECHR as well.

5. Ms Meyer would were she able to wish to pursue the challenge to those adverse findings on the asylum protection claim but there are no such grounds, permission has not been given and no draft grounds were submitted at the hearing in connection with or why, it was said, the Judge had erred in law when addressing the asylum/protection claims. In those circumstances it did not seem to me having regard to the Upper Tribunal's Procedure Rules that it was appropriate for the basis of an appeal to be extended to include a cross-appeal on those un specified 'grounds' and issues.
6. However, having looked at this decision, which in many respects attempted to properly address the issues of the protection claim, I can see no **Robinson** obvious reason, to interfere with the Judge's decision. I do however find that the Judge's explanation, bearing in mind the factual circumstances with which he was faced in terms of the Claimant's presence in the United Kingdom, demonstrated that the consideration required under the Rules was not properly undertaken; as the Secretary of State has contended: Given that the Appellant is absent from Congo Brazzaville it seemed to me that the assessment of the circumstances she faced on return needed to be more comprehensively addressed as to whether there were the necessary obstacles to integration bearing in mind the time that she has been out of that country is relatively short.
7. For those reasons I am satisfied that the Judge did not properly address the issue of return to Congo Brazzaville and the matter needs to be looked at again.
8. I am satisfied also that the Judge had before him issues raised on health grounds under Articles 3 and 8 ECHR but failed to deal with them. Which it is clear on the case law represent considerable difficulties for anyone to cross let alone this Appellant but I do not prejudge that issue. In the circumstances I am satisfied the Judge made an error of law by not properly assessing the implications of private life under paragraph

276ADE(1)(vi) of the Immigration Rules in relation to difficulties on re-integration and the Original Tribunal's decision cannot stand.

DECISION

9. The appeal of the Secretary of state is allowed to the extent that the appeal is remade in the First-tier Tribunal (IAC) upon the issues set out below.

ISSUES

10. Private life arising under the Immigration Rules paragraph 276ADE(1)(vi). Health issues relating to Articles 3 and 8 ECHR. Private life issues relating to Article 8 ECHR outside of the Rules. This is without prejudice to the Secretary of State's contentions that the Article 8 is not engaged outside of the Rules.

DIRECTIONS

1. Relist for hearing in the First-tier Tribunal Hatton Cross. Not before First-tier Tribunal Judge P G Wright nor before First-tier Tribunal Judge J Grimmett.
2. Lingala interpreter required.
3. Time estimate two hours.
4. Any further evidence relating to health and Article 8 issues to be served on the IAC and on the Secretary of State not later than fourteen days before a further hearing.

5. Skeleton argument addressing the legal issues to be provided by the Claimant's representative not later than fourteen days before the further hearing.
6. The Respondent to serve any reply in respect of the issues not later than seven days before the further hearing.
7. Any further directions and applications in relation to the admission of evidence to be made to the First-tier Tribunal.
8. List for a PTR if sought by the parties in writing with reason.

ANONYMITY

An anonymity order was made and is continued.

DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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 6 March 2018

Deputy Upper Tribunal Judge Davey