Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/03300/2019

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 20 February 2020	**On 19 March 2020**

Before

MR C M G OCKELTON, VICE PRESIDENT

Between

AMIE [F]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Da Silva, Fountain Solicitors.
For the Respondent: Mr Mills, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a national of Sierra Leone, born in 1964. She came to the United Kingdom in February 2007, with leave granted as a visitor until May 2007. She applied for an extension of that leave which was granted until 30 September 2007. Since then she has remained in the United Kingdom

without leave; a period now of over twelve years. Sometime in 2010 she applied for asylum. That was refused and her appeal rights were exhausted in 2011. She made the present application, I am told by Mr Da Silva who appeared on her behalf, on 5 April 2018.

2. The present application for leave to remain on human rights grounds is based on the appellant's relationship with her daughter. Her daughter is now 25 years old. She is profoundly deaf and has been from birth. There is no doubt about the biological relationship between the appellant and her daughter. Her daughter came to the United Kingdom in 2010 and after the appellant's claim for asylum failed the daughter made her own claim for asylum. Judging by the date at which that claim was granted I suspect that it was not made very promptly after 2011 but there is nothing clearly before me in relation to that. In any event the daughter's claim was granted, and her documents were issued in May 2017. The daughter thus has now leave to remain as a refugee.

3. Eleven months later the appellant made the present claim. That is based on her relationship with her daughter. It was refused, and the appellant appealed to the First-tier Tribunal. Her appeal was heard by Judge Boyes on 5 July 2019. In his determination the judge dismissed her appeal, and she now appeals with permission to this Tribunal.

4. The grounds of appeal drafted by Mr Da Silva are in rather general terms and in particular appear to fail to take into account any developments of the law following the implementation of the Immigration Act 2014. But the grounds, if I may summarise them under the heads under which Mr Da Silva summarised them, are as follows. Firstly, that the judge failed to make clear findings. It is not precisely clear what findings are said to be unclear but at paragraph 5 of the grounds the assertion is made that in the light of the judge's factual findings any conclusion that article 8 was not engaged was perverse and/or in ignorance of binding authority. Secondly, the grounds claim that the judge should have appreciated that he had not properly applied the test of proportionality in determining the appeal. Finally, the third ground is a general recital of the authorities on Article 8 as they were under the pre-2014 law and asserts that the judge failed properly to deal with the matter outside the Rules as well as within them.

5. I will deal with those grounds in summary before passing to the particular difficulties the appellant has in this appeal. In my judgement the grounds as pleaded wholly lack merit. It is not open to a firm of solicitors or its members to cite grounds which so lamentably fail to deal either with the terms of the determination against which an appeal is brought or with the current law. The truth of the matter is that so far as concerns the structure and the process of the judge's determination it lacks nothing. The judge clearly appreciated first, that this was an appeal on human rights grounds only; secondly, that an issue to be considered in a human rights appeal was whether the appellant was entitled to any relief under the Rules themselves; and thirdly, if the answer to that point was "no"

whether nevertheless this was one of the unusual cases where leave should be granted to a person despite not meeting the requirements of the Rules.

6. The judge considered the facts in some detail. He concluded that the appellant was not, or would not have been, entitled under the Rules: that is a conclusion against which there has been no challenge. He then went on specifically at paragraph 26 to look to the appellant's case outside the Rules. In doing so he again specifically applied Section 117B and its principles, a provision on which Mr Da Silva rather vaguely told me that the position was that the appellant met the requirements of Section 117B. I have no idea what that was supposed to mean.

7. So far as the grounds challenged the judge's process of looking at the matter in the way he should have done (looking at the matter outside the Rules) and assessing proportionality in accordance with the current law, as I say, it seems to me there is nothing at all in these grounds.

8. The grant of permission is one which looks as it might well do in the context of grounds of this nature, a little bit further into the case. In granting permission Judge Grant said this:

> "It is arguable that the judge has erred in law by giving inadequate reasons for his findings, and it is arguable that the judge has erred in law by making a mistake of fact in finding that there are no ties over and above normal emotional ties between the appellant and her disabled child in the light of the evidence from Anthony Jaffray, the Rev Richard Mckay and Andrew McCarthy."

9. Mr Da Silva began his submissions before me this morning with the matters arising from that grant, rather than with any reference to his grounds. As a result I have looked in some detail at the evidence which is said to support the appellant's case in that way. As I have said the appellant's daughter who is recognised as a refugee is profoundly deaf. That is something which naturally affects every aspect of her life and no doubt of her mother's life as well. However, it is quite wrong to say that the judge did not take it into account. I think it is fair to say that he made no specific reference to the supporting evidence, and it is possible that is partly a consequence of the fact that the supporting evidence was sent into the Tribunal, both very late and under cover of a letter from Mr Da Silva which instead of saying that it was supporting evidence said simply that it was an index. But the evidence to which reference is made in any event does not support the case that Mr Da Silva attempts to make. The material in question shows that despite her disabilities the daughter is a fully functioning member of society. That is precisely what one would expect. She has the advantage of technological assistance in this country which of course cannot remove her disability but it can enable her to function.

10. The letter from Andrew McCarthy says that she is working in the Bristol Refugee Rights Centre. I will recite the relevant passage:-

> "Aimee's daughter Lucy is also a volunteer at Bristol Refugee Rights. Despite the fact [that] she can't hear and almost none of the other volunteers and staff here can sign she is always one of the most hard-working and helpful members of the team. Her excellent character, strength and resilience in such difficult circumstances as she has faced is a testament to Aimee as a mother. Having known the two for 5 years I can say with confidence that their bond is one of deep love and strength and is vital to the well-being of each of them."

The letter goes on to say that the author regards Bristol as the appellant's home.

11. The letter from Anthony Jaffray says that the appellant and her daughter lived together and it is said that the appellant provides vital support to Lucy "given Lucy's condition". The letter from the Rev Richard McKay points out that he too knows the two of them and knows their love and affection. Interestingly, it is noted there also that Lucy, the daughter, is a Lay Minister of the Eucharist in the parish church.

12. The appellant's case is essentially that her daughter's disability means that she needs her to do everything for her. That is clearly not the case. The position is that there is of course the close bond of affection between mother and daughter that one would expect between two closely related people who live together and have lived together for a long time. But there is no doubt at all that those who see Lucy at work and at church generally see her as a person who is able, competent and hardworking. This is not the picture of a person whose disabilities are such that she has a high dependency on her mother; besides which there is no evidence from any professional indicating any medical or social needs of the daughter, whether fulfilled by her mother or not. There is no documentary evidence supporting the mother's claim of having to do everything for her daughter, and there is as well some evidence in the appellant's own history which casts considerable doubt upon what is said about the appellant's daughter's needs. I have already set that history out. It is to be noted from it that the appellant decided to come here as a visitor, not as an asylum seeker, in 2007. She left her daughter, then in her early teens, behind. Her daughter had to function without her mother for four years between the ages of about 11 and 15 before the daughter came to the United Kingdom.

13. As Mr Da Silva accepted during the course of argument if the daughter could live without her mother in Sierra Leone for four years in her early teens with her mother providing assistance from abroad there is simply no reason why the same situation should now not apply in reverse with her daughter in the United Kingdom, lawfully here with all the benefits of health and social care available here, while her mother provides assistance from abroad as she did all those years ago.

14. The relationship between the mother and daughter as adults has been formed entirely while the appellant is in the United Kingdom unlawfully. It therefore has to be given little weight. The primary question, as the judge

appreciated, was to determine the extent to which Article 8 was engaged in this case. The relationship is clearly that between mother and daughter, but they are both adults. The relationship is one which is no doubt close, but despite Mr Da Silva's earnest submissions it does not seem to me that, even given the length of time that they have been living together, and even given the daughter's disability, there is anything more in it than might be expected in the circumstances, that is to say, the relationship between a loving mother and a loving daughter. If that is right, Article 8 is not engaged. But even if Article 8 was engaged, I entirely agree with the judge's assessment of proportionality. Little weight is to be given to the relationship because it was developed whilst the appellant was in the UK unlawfully and indeed for a considerable period of time while the daughter's status was precarious.

15. The relationship is not shown to be one of real dependency either now on the basis of evidence or in the past when one can assume the need would have been greater. It is now accepted on behalf of appellant that the relationship could continue in the future if the two of them were split by distance as it did between 2007 and 2011 when they were split by distance.

16. Looking at the matter as a whole there is no basis at all for saying that the judge erred in his assessment of the material before him or in the process that he brought to that assessment. I therefore find that his decision did not involve an error of law and I dismiss the appeal to this Tribunal.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 10 March 2020