



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

Appeal Number: IA/24386/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**on 15th May 2014**

**Determination  
Promulgated**

**On 08<sup>th</sup> Aug 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**APPELLANT**

**AND**

**MISS ANNETTE CHIOMA ATULOBİ**

**RESPONDENT**

**NO ANONYMITY ORDER**

**DETERMINATION AND REASONS**

1. This matter comes before me for remaking following a decision dated 28.5.2014. in which I found that the decision promulgated on 8<sup>th</sup> January 2014 of First-tier Tribunal Judge CM Jones contained a material error of law.
2. The Secretary of State is the appellant in this matter but for ease of reference I shall refer to Ms Atulobi as “the claimant” and to the Secretary of State as the respondent, reflecting their positions before the First-tier Tribunal.
3. The claimant, whose date of birth is 25 August 1971, is a citizen of Nigeria.

4. There has been a procedural irregularity in this matter. Directions were issued on 9th June 2014 requesting written submissions from both parties to be filed and served within 10 days of the date of issue. I received no written submissions within the given time limit and my determination dated 2.7.2014 was promulgated. I subsequently received notification that written submissions were received from the claimant's representatives on 18th June 2014. The submissions failed to come to my attention owing to administrative error. Accordingly I consider it in the interests of justice to set aside my determination pursuant to Rule 43 (1) and 43 (2)(d) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

5. I remake the decision having read the written submissions dated 18.6.2014 together with the previous materials that were before me.

6. As indicated above, in a decision dated 28.5.2014 I set aside the determination of the First-tier Tribunal having found a material error of law arising from a failure to follow guidance in *Gulshan*, no weight being placed on the failure to meet the immigration rules and the finding that the appellant was trafficked not being open to the Judge.

7. I rely on the unchallenged findings of fact as to the date the appellant entered the UK, the nature of her entry, details of former partnership, her illegal status in the UK, her work as a carer, having established a social network and the death of her British partner in 2012. It is common ground before me that the appellant has not shown that she has a family life in the UK. It is accepted that the appellant established a private life between 1994 and 2010 but during that time she had no lawful leave in the UK. The basis of her discretionary leave granted in 2010 was her relationship with her British partner. As in my error of law decision, there is insufficient evidence to show that the appellant was trafficked when she came to the UK. It is not in dispute that she cannot qualify for leave under any of the provisions of the Immigration Rules.

8. The claimant wished to be able to remain in the UK in order to tend to her deceased partner's grave and to continue close relations with his family. Whilst I accept the desire to continue relationships with her partner's family, there is no evidence to show that those relationships are strong and/or significant. Relations can be maintained by communication and visits between countries. The claimant can tend to her partner's grave on the occasion by visiting the UK. Her circumstances cannot be characterized as exceptional as a result.

9. In addition, the claimant has an elderly mother in Nigeria with whom she is in contact and she would return to some family life. She has skills that she can utilise in Nigeria, having worked in the UK as a carer.

10. The appellant has clearly been in the UK for an extensive amount of time but her status throughout that period was highly precarious as she was here illegally. Sad though the death of her British partner is, the circumstances set out above do not show that it would be unduly harsh to expect her to return to Nigeria or that the decision to refuse leave was disproportionate. The appeal under Article 8 of the ECHR must therefore fail.

DECISION

11. The Upper Tribunal determination dated 2.7.2014 is set aside under Rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and this determination replaces that dated 2.7.2014.
12. I remake the decision by refusing the appeal on human rights grounds.

Signed

Dated 7.8.2014

Deputy Upper Tribunal Judge G A Black

No anonymity order made.

As I have dismissed the appeal there is no fee award made.

Signed

Dated 7.8.2014

Deputy Upper Tribunal Judge GA Black