



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

Appeal Number: HU/01850/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 16 November 2018**

**Decision & Reasons
Promulgated
On 6 December 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**GLORIA [P]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Heaver, Solicitor instructed by Hennessey & Hammudi, Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Mrs [P] against the Secretary of State's decision of 11 December 2017 refusing her application on human rights grounds for leave to remain in the United Kingdom.
2. There was an earlier hearing before me in July where I found an error of law in the decision of the judge below. It is not a matter of any criticism of him, he simply was not provided with any documentation and it looks as there may have been a confusion in that the appellant thought that the

Secretary of State would provide the documentation and so she did not need to. We have those documents now but matters have moved on somewhat.

3. It is accepted on her behalf that the previous grant of indefinite leave to remain had lapsed and when she was granted a visit visa on return to the United Kingdom that was the end of that leave and the only basis upon which she can succeed therefore now is on the basis of Article 8 outside the Rules.
4. The family circumstances have changed somewhat as well. The children, twins, are in school in the United Kingdom, they are jointly UK/US citizens, they are in the process of studying for their GCSEs. Mr Scott has had to go back to California because his company was sold to Wave Computers and he is an employee of Wave Computers and he is having for now to work for them in California.
5. In the very helpful written submissions I have from Mr Melvin while not conceding the appeal he takes a realistic view of the facts of the case and says at paragraph 18 the court may decide that it would be disproportionate to require Mrs [P] to meet the requirements of the Immigration Rules under the five year route by returning, with or without the family, to make an application for entry clearance or settlement and allow this appeal under the ten year route which may involve more expense in the long run. I think that is realistic. It seems to me in the family circumstances as they are that it would be wholly disproportionate to require either Mr Scott to give up his job in California, come to the United Kingdom, get a job here and seek to meet the requirements of the Rules or for Mrs [P] to go to California and apply from there. Mrs [P] is here as the sole guardian of her sons in the United Kingdom. If she were to have to leave California with them to make an application then as Mr Heaver says that would ultimately be considered in Sheffield, it would take several months and they are at a crucial stage in their education.
6. So, bringing all these matters together it seems to me that the argument for disproportionality of refusal is clearly made out in this case and accordingly the appeal is allowed under Article 8 of the European Convention on Human Rights.

No anonymity direction is made.



Signed
Upper Tribunal Judge Allen

Date

21 November 2018