



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

Appeal Number: IA/37640/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24 July 2014**

**Determination given  
orally and promulgated  
On 30 July 2014**

**Before**

**THE HONOURABLE MR JUSTICE LEWIS  
UPPER TRIBUNAL JUDGE DAWSON**

**Between**

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

Appellant

**and**

**MISS CAROLINE WAWIRA NDAMBIRI**

Respondent

**Representation:**

For the Appellant: Ms J Isherwood, Home Office Presenting Officer  
For the Respondent: Ms S Saifolahi, Counsel

**DETERMINATION AND REASONS**

1. The Secretary of State has been granted permission to appeal the decision of the First-tier Tribunal Judge Abebrese who allowed the appeal by the respondent (whom we shall refer to as the claimant) against a decision refusing her leave to remain.
2. The facts briefly stated are that the claimant is a national of Kenya where she was born on 16 December 1980. She arrived in the United Kingdom on 14 June 2009 with entry clearance as a points-based system migrant

with leave to remain until October 2010 which was then extended until 8 October 2012.

3. On 30 September 2012 she made an application for further leave to remain as the un-married partner of a British national, Mr Simon Greenwood. The application disclosed that the claimant and Mr Greenwood were expecting their child to be born in the week commencing 23 October 2012. K was born on 26 October 2012 and is a British national. The couple became engaged on 14 February 2013.
4. The evidence before the First-tier Tribunal was that Mr Greenwood has been endeavouring to conclude divorce proceedings from his wife from whom he separated in October 2009. She had been uncooperative but it is now understood that a decree nisi has been granted.
5. The Secretary of State made no reference to these matters when she made her decision on 18 September 2013. That decision was a refusal to vary leave to remain and to remove the claimant. The reason was that the claimant had not met the requirements of the Rules, because she had lived with her partner for only eight months prior to the date of application whereas, for the purposes of this appeal, a partner means "living in a relationship with someone akin to marriage or civil partnership or at least two years prior to the date of application" (GEN.1.2 (iv) of Appendix FM).
6. The judge allowed the appeal under the Immigration Rules because he considered there were "omissions in the Secretary of State's decision to be significant in determining the outcome of the appeal with particular reference to insurmountable obstacles". He also considered that there had not been proper consideration by the Secretary of State of s.55 of the 2009 Act. Furthermore, he observed that the Secretary of State's representative had not cross-examined the claimant's partner as to his relationship with his son and whether he would be in a position to relocate to Kenya.
7. The Secretary of State has challenged this decision on the basis that the judge had not established what the insurmountable obstacles were to family life continuing in Kenya. Furthermore, the judge had not explained how the claimant had satisfied the requirements of the Rules. Her contention is that the proper course would have been for the case to be remitted to the Secretary of State for reconsideration.
8. The claimant's solicitors filed a Rule 24 response arguing that in fact the First-tier Tribunal had considered numerous factors as to the issue of insurmountable obstacles and had made positive credibility findings.
9. Ms Saifolahi and Ms Isherwood agreed that the decision of the First-tier Tribunal was infected by error of law. We consider that they were correct to do so. The judge materially erred in failing to make clear findings on the evidence and he failed to give any comprehensible reasons for allowing the appeal under the Immigration Rules. He did not say in his

determination which rule had been satisfied and on what basis. This error is material as it goes to the heart of the decision which we therefore set aside as we have been invited to do.

10. By way of disposal of this matter on behalf of the Secretary of State Ms Isherwood has indicated that the decision under appeal is withdrawn. For the claimant Ms Saifolahi does not wish to pursue any appeal in the Upper Tribunal.
11. By way of conclusion we allow the appeal by the Secretary of State and set aside the decision of the First-tier Tribunal. We do not remake the decision as the immigration decision under appeal has been withdrawn. There is no longer any appeal pending before the Upper Tribunal.

Signed

Date 25 July 2014



Upper Tribunal Judge Dawson