



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

Appeal Number: IA/45011/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 27 August 2014**

**Determination
Promulgated
On 1st Sept 2014**

Before

UPPER TRIBUNAL JUDGE SOUTHERN

Between

MRS ELIZABETH KISAIKU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Paxi-Cato, Counsel instructed by Augustine Clement
Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer


DETERMINATION AND REASONS

1. The appellant has been granted permission to appeal against the decision of First-tier Tribunal Judge Majid who, by a determination promulgated on 20 May 2014, dismissed the appellant's appeal.
2. The judge was wrong to say at paragraph 1 of the determination that the appeal was against a decision to refuse leave to remain because this was in fact an appeal against a decision to curtail leave to enter or remain as a visitor.

3. At paragraph 2 of his determination the judge identified the immigration decision as being contained in a letter dated 20 February 2014. However, that is not an immigration decision at all but a review by the Entry Clearance Manager of the Entry Clearance Officer's decision to curtail leave.
4. At paragraphs 6 and 10 of the determination the judge talks about the appellant overstaying but it was not part of the respondent's case that the appellant had overstayed any grant of leave. The complaint of the respondent was that the applicant had used a multi-visit visa to effectively reside in this country but as no visit was more than six months she could not be said to have overstayed any particular admission or grant of leave as a visitor. The judge therefore misunderstood not just the nature of the appeal before him but also the factual basis upon which the respondent took the decision under challenge.
5. At paragraph 19 of the determination the judge says that the appellant did not adhere to conditions of her leave under paragraph 41 of HC 395 but the judge does not say in what way he finds her to have been in breach of her conditions of leave. Also at paragraph 19 the judge says that the appellant is needed more by her grandchildren in Nigeria so that the appellant "cannot persuade me" he said "to allow her to remain in this country." I confess that I cannot see what the reasoning is that leads to that conclusion or how that represents an arguably sound basis upon which to dismiss this appeal.
6. This is a confused and wholly inadequate determination that simply fails to address the matters that were in issue between the parties. The parties are entitled to see that the judge who determines the appeal understands what is in issue between them and that the judge has engaged properly with those issues. That is not the case here. There has been no real attempt to resolve the matters in issue between the parties. That is sufficient to demonstrate that the judge has made an error of law in attempting to determine this appeal such that his decision cannot stand.
7. Mr Walker who appears for the respondent quite properly does not seek to suggest otherwise. There has effectively been no determination of the appeal at all by the First-tier Tribunal. There has been no attempt to make proper findings of fact. In those circumstances the appeal to the Upper Tribunal is allowed to the extent that the decision of the judge will be set aside and the appeal will be remitted to the First-tier Tribunal for determination afresh by a judge other than Dr Majid.

Signed

Date 27 August 2014



Upper Tribunal Judge Southern