



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/07643/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 6 March 2014

Determination Promulgated
On 7 April 2014

Before

MR C G M OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN

Between

IMMIGRATION OFFICER, EDINBURGH AIRPORT

Appellant

and

KEHINDE ABEEBT OLAPADE

Respondent

For the Appellant: No appearance
For the Respondent: Ms Gough, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

- 1) This determination refers to parties as they were in the First-tier Tribunal.
- 2) The appellant identifies herself as a citizen of Nigeria, born on 1 January 1989.

- 3) At Edinburgh Airport on 20 March 2013 the respondent issued the appellant with the following decision:

You hold a current visa and have asked for leave to enter the UK as a visitor for 2 weeks but I am satisfied that a change of circumstances has taken place ... removing the basis of your claim to admission ...

I have reached this decision based on a number of factors including; you have now informed us that are approximately 20 weeks pregnant. Furthermore, I am not satisfied that you are able to maintain and accommodate yourself without recourse to employment or public funds. The financial outlay on your proposed visit for the reasons you have given is not commensurate with your current social and economic circumstances.

When applying for the visa you stated you had £1,500 available for your trip. However ... since discovering you are pregnant much of this money has been used for accommodation for you and your baby You have stated that the motivation behind the trip is to purchase goods for yourself and your baby and have £600 available to do this. You have stated that you intend to visit the Louis Vuitton shop although you do not know where this is and you intent to purchase gloves, shoes and a handbag for yourself ... at approximately £200. ... You wish to visit Mothercare and purchase various items for your baby. Beyond these 2 shops you appeared to lack any knowledge of what the UK has to offer a genuine visitor. You have confirmed that the trip cost you £790 ... the equivalent of 3 months full income.

... on the balance of probabilities and given the change of circumstances I am not satisfied that you are genuinely seeking entry as a visitor for the limited period as stated by you ...

I therefore refuse you entry to the UK under paragraph 43 of HC395 ...

- 4) Directions were given for the appellant's removal to Lagos on 29 March 2013. She was also notified that if she appealed she would not be required to leave the UK while the appeal was in progress. Her notice of appeal is dated 25 and marked as received by the FtT on 28 March 2013. In her grounds she says that she would be staying with her uncle and therefore able to maintain and accommodate herself, and that her pregnancy should not have been seen as a change of circumstances. She attaches a copy letter from an obstetrician in Nigeria, dated March 5 2013, confirming that she was expected to deliver on 15 July 2013.
- 5) The appellant did not seek an oral hearing. Her case came for decision "on the papers" before First-tier Tribunal Judge Thornton, who allowed her appeal by determination promulgated on 28 October 2013. The judge said at paragraph 12 that pregnancy did not constitute a change of circumstances. At paragraph 13, the judge noted that the appellant had advised that she had given birth to twin girls on 6 July 2013, and went on:

However, first, I may only consider the circumstances appertaining at the time of the decision to refuse. Secondly, the notice of refusal of leave to enter informed her that ... she would not be required to leave the UK while the appeal was in progress. Therefore, the fact that the appellant has remained in the UK ... cannot be taken into account in considering whether the respondent has discharged the burden of proof ... in relation to the ... decision to refuse leave to enter. ...

... The respondent has failed to prove that there has been a change of circumstances since entry clearance was issued that had removed the basis of the appellant's claim to admission.

6) The Immigration Officer appeals to the Upper Tribunal on the following grounds:

... To meet the requirements for leave to enter as a visitor an intention to leave at the end of the visit must be demonstrated. The appellant was not pregnant when she made her application, therefore the Entry Clearance Officer did not have the opportunity to consider how it may affect her intentions ... the judge has not adequately reasoned his finding that the appellant's pregnancy has no bearing on her intentions as a visitor ...

- 7) The appellant did not appear and was not represented before us. The file showed that notice of the hearing was sent to her at the address she most recently notified to the tribunal. The Presenting Officer had no information about any further change of address, and no information that the appellant might have left the country. We proceeded with the hearing under Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
- 8) The appellant had by the time of arrival in the UK spent much of the money she originally said she had available for her trip. That alone was a change of circumstances which at least warranted enquiry and consideration by the Immigration Officer. The judge overlooked that.
- 9) The judge was wrong to consider that pregnancy did not constitute a change of circumstances. The basis of the appellant's claim to admission was that she intended only a short visit. The fact that she was now due to give birth was capable of altering that.
- 10) The judge was right to note that the onus was on the Immigration Officer, and that the judge was to take account of the circumstances appertaining at the time of the decision under appeal. However, it was relevant to consider post-decision facts throwing light on the circumstances as at that date.
- 11) In her communication to the tribunal of 15 July 2013, the appellant gave an address in Dundee, and advised that she had given birth by caesarean section, and was still under medical supervision. She did not say that the births had taken place at private expense, or that any National Health Service costs had been reimbursed. What is known of her financial circumstances suggests that she is rather unlikely to have paid such expenses.
- 12) The judge's reasons for allowing the appeal were these – pregnancy is not a change of circumstances; later circumstances were irrelevant; and remaining in the UK was irrelevant. The first two reasons do not withstand scrutiny. The judge also failed to notice the change of circumstances in that much of the available money was spent before arrival.
- 13) It may have been proper to disregard the fact that the appellant remained in the UK. She was not obliged to do so, but had she left before the determination of her appeal it

would have been deemed to have been abandoned under s. 104. She would have lost the chance of remedying her immigration record.

- 14) In light of all the above, we are satisfied that the judge did not give sustainable reasons for the decision, and ought to have held that the respondent had established change of circumstances such as to remove the basis of the appellant's claim to admission.
- 15) We allow the Immigration Officer's appeal to the Upper Tribunal. The First-tier Tribunal determination is **set aside**. We substitute the following decision: the appellant's appeal, as originally brought to the First-tier Tribunal, is **dismissed**.

A handwritten signature in black ink, appearing to read 'Hugh Maclemon'. The signature is written in a cursive style with a large, stylized initial 'H'.

11 March 2014
Judge of the Upper Tribunal