



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
VA/15888/2013**

APPEAL NUMBER:

THE IMMIGRATION ACTS

**Heard at: Field House
On: 10 November 2014**

**Decision & Reasons
Promulgated
On: 28 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

ENTRY CLEARANCE OFFICER: ABUJA

Appellant

and

**MISS EMMANUELA NSKIAN-STEPHEN
NO ANONYMITY DIRECTION MADE**

Respondent

Representation

**For the Appellant: Ms S Sreereman, Senior Home Office Presenting
Officer**

For the Respondent: No appearance

DECISION AND REASONS

1. For the sake of convenience I shall refer to the appellant as the entry clearance officer and the respondent as the claimant.

2. The claimant was born on 14 March 2012 and is a Nigerian national. She is the daughter of Mrs Mpapameari Nskian. The latter's appeal was allowed by the First-tier Tribunal. The appellant only appeals the decision allowing the claimant's appeal.
3. The notice of hearing setting out the date, time and place was served on the claimant's sponsor on 25 April 2014 at the address on record. I stood the matter down until shortly before 4pm on 10 November 2014. However, there was still no appearance for the claimant. I accordingly proceeded to hear the appeal in accordance with the Upper Tribunal Rules.
4. The claimant's and her mother's appeals were both allowed by First-tier Tribunal Judge Rhys-Davies in a determination promulgated on 7 July 2014. She allowed the appeals under the Immigration Rules.
5. She found that it was credible that the claimant and her mother had an "entirely legitimate reason" to visit the UK. It was reasonable for the sponsor and Mr Williams to offer reciprocal hospitality to Mrs Nskian. This was to be for a short holiday in the UK. She would wish to bring her daughter, the claimant, with her while the older boys would be able to stay with their father during her short absence.
6. The Judge considered their appeals on the merits and found that the mother and the claimant had satisfied the relevant provisions under paragraphs 41 and 46A of the Immigration Rules.
7. On 14th October 2014, First-tier Tribunal Judge Holmes granted the entry clearance officer permission to appeal against the determination. It was arguable that the Judge had failed to appreciate that the claimant sought to visit individuals who were not within the specified class of persons within the 2012 Regulations in force from 9th July 2012. There was accordingly only a limited right of appeal. The grounds did not raise any Equality Act complaint and only raised Article 8 in the "baldest terms."
8. Judge Holmes stated that the Judge purported to allow the appeal arguably without making any finding that she wished to visit a person within the specified class. There was no finding made in respect of discrimination. Nor was there a finding that the decision was not proportionate to the legitimate public interest that the entry clearance officer sought to protect.
9. Ms Sreeraman noted that the date of application was 5 June 2013. It was refused on 26 June 2013. The Immigration Appeals (Family Visitor) Regulations 2012 came into force on 9 July 2012 and were accordingly applicable to this appeal. The claimant was not a relevant member of the family of the sponsor. She is a niece of the sponsor and her husband.

Unlike her mother, who wished to visit her partner, Mr Williams, the claimant had no relevant family member.

10. The Judge made no findings and did not consider or engage with Article 8. In particular, there was no consideration as to whether in any event the decision of the appellant was proportionate in the circumstances.
11. The changes made by the Crime and Courts Act (s.52) amended s.88A of the Nationality, Immigration and Asylum Act 2002 so as to remove the right of appeal for persons visiting specified family members. Although they are still able to bring an appeal on the residual grounds in s.84(1)(b) and (c) of the 2002 Act, namely on human rights and race relations grounds, this restricted claimants to those grounds.
12. The entry clearance officer noted in the reasons for refusal dated 26th June 2013 that the claimant's right of appeal was limited to the grounds referred to in s.84(1)(c) of the 2002 Act. However, the First-tier Tribunal Judge did not consider the limited right of appeal which accordingly limited her jurisdiction, but allowed the appeal on the merits.
13. I have had regard to the sponsor's witness statement before the First-tier Tribunal. She is the elder sister of Mrs Nskian. She is the aunt of the claimant. Her partner is Mr Williams. They invited the claimant and her mother to the UK as a thank you gift for the assistance given during the burial of their mother. There is no reference to human rights, and in particular Article 8.
14. The grounds of appeal before the First-tier Tribunal contained generic grounds including the contention that the decision is wrong and contrary to the UK's obligations under the European Convention of Human Rights. It is contended that "of the client's human rights would be breached under Article 8 as there is private and family life in the UK." There are no grounds or evidence produced relating to race discrimination or discrimination.
15. I find that the refusal of her application did not breach her Article 8 rights. There is no interference with her family life as it currently exists. She will remain with her father when her mother visits the UK. There are two other young children in the family. Nor are there any grounds relating to discrimination or race relations.
16. I find that the decision of the First-tier Tribunal involved the making of a material error of law. I accordingly set aside that determination and re-make it.
17. The claimant has not provided any evidence that the entry clearance officer's decision was unlawful on the basis of any alleged discrimination in

the exercise of public function so far as relating to race within the Equality Act 2010. Nor has any evidence been produced that the decision was unlawful pursuant to s.6 of the Human Rights Act 1998 and in particular that the entry clearance officer acted contrary to the Human Rights Convention rendering the decision incompatible with her Article 8 rights.

18. I accordingly find that the claimant has not shown on the balance of probabilities that her right to respect for family or private life has been breached or that she has in any way been discriminated against.

NOTICE OF DECISION

The claimant's appeal is dismissed.

I set aside the claimant's fee award.

Signed

Date 27/11/2014

C R Mailer
Deputy Upper Tribunal Judge