



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number:
VA/18638/2013**

THE IMMIGRATION ACTS

Heard at Field House

On December 17, 2014

**Decision & Reason
Promulgated**

On December 22, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE ENTRY CLEARANCE OFFICER

Appellant

and

**MS THERESE NJOUGUELA SOUOP EPSE TACHOUM
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Duffy (Home Office Presenting Officer)

For the Respondent: Mr Wainwright (Legal Representative)

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.

2. The appellant, born January 16, 1949 is a citizen of Cameroon. On August 10, 2013 she submitted an application for a family visit visa to visit her daughter and son-in-law. The respondent refused her application under the Immigration Rules on September 26, 2013.
3. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on October 22, 2013 and raised human rights in her appeal. The respondent considered those grounds of appeal but maintained her position in a letter dated February 20, 2014. On August 15, 2014 Judge of the First Tier Tribunal Majid (hereinafter referred to as the "FtTJ") heard her appeal. He allowed the appeal under both the Immigration Rules and Human Rights in a decision promulgated on August 29, 2014.
4. The respondent lodged grounds of appeal on September 4, 2014 submitting the FtTJ erred in allowing the appeal under the Immigration Rules and failed to give adequate reason for allowing the appeal under article 8 ECHR. On November 7, 2014 Judge of the First-tier Tribunal Colyer granted permission to appeal finding it arguable the FtTJ may have erred for the reasons outlined in the respondent's grounds of appeal.
5. The sponsor did not attend but Mr Wainwright was content to proceed in her absence. He accepted at the outset the FtTJ had erred by allowing the appeal under the Immigration Rules because there was no right of appeal to the tribunal in respect of that decision. He did argue though that the FtTJ was entitled to allow the appeal on human rights grounds because the visit was genuine, the FtTJ felt she met the requirements of the Immigration Rules and at paragraph [16] the FtTJ had found reasons for family life and refusing the application would be disproportionate especially as the sponsor was expecting a child.
6. Mr Duffy submitted there was no automatic right to family life but even if there was family life it was not being interfered with and the FtTJ had failed to consider the evidence. In particular, the appellant had never been to see her daughter in the United Kingdom and their last direct contact was in 2012 when the sponsor visited the appellant in Cameroon. He submitted the case fell at that point and the FtTJ erred by proceeding any further.

ASSESSMENT OF ERROR OF LAW

7. For the reason set out above in paragraph [5] and the respondent's grounds of appeal I am satisfied there has been a material error in respect of the allowing of the appeal under the Immigration Rules. Since June 25, 2013 there are no rights of

appeal under the Immigration Rules for visit visa appeals and the FtTJ erred materially in allowing the appeal. The respondent was not represented and whilst the FtTJ should have been alert to this issue it is regrettable Mr Wainwright actively pursued this issue at the original hearing. Whilst compliance with the Rules is a factor potentially in an article 8 claim there are no circumstances where a FtTJ can be invited to allow the appeal under the Rules. I therefore set aside that decision under the Rules. I do not dismiss the appeal under the Rules quite simply because there is no jurisdiction to make a decision on that aspect of the appeal.

8. I have considered the FtTJ's decision to allow the appeal on article 8 grounds.
9. The FtTJ set out case law in paragraphs [15], [16], [18] and [19] of his determination. He made no findings on the evidence save that he concluded in paragraph [21] that the appeal should be allowed. It is clear he allowed the appeal on article 8 grounds purely based on the fact the Rules were, in his opinion, met. I am satisfied that is the incorrect approach to take.
10. In order to succeed under article 8 ECHR the appellant would have to demonstrate that there was family life and that the right had been interfered with. If the appellant satisfied those requirements then the remaining tests as set out in Razgar [2004] UKHL 00027 would also have to be considered.
11. The evidence before the FtTJ was limited. Her daughter is a Cameroonian national who was in the United Kingdom and had studied here, and was now working. The appellant's application form revealed that she had not travelled to the United Kingdom to see her although an earlier application from February 2013 had previously been refused. She last saw her daughter in April 2012. Her daughter was an adult and there was extremely tenuous family life based on the above history.
12. In allowing the appeal under article 8 the FtTJ paid no attention to the history but simply based his decision on the fact he was satisfied the appellant met the Rules. That approach is flawed and I find an error in law.
13. The FtTJ had no evidence before him of family life beyond their adult relationship. There was no evidence the parties had seen each other for over two years. The family life they had was possibly telephone contact and I am satisfied refusing the appeal under article 8 ECHR would not interfere with that contact.

14. I therefore find that the appellant has failed to show that any family life would be interfered with and accordingly I remake the decision on article 8 ECHR and I dismiss it.

DECISION

15. There was a material error of law and I set aside the whole decision.
16. I dismiss the appeal under article 8 ECHR.
17. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated: **December 22, 2014**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I set aside the decision to make a fee award.

Signed:

Dated: **December 22, 2014**

Deputy Upper Tribunal Judge Alis