Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/24424/2012

THE IMMIGRATION ACTS

Heard at Field House
On 21st February 2014

Judgment delivered orally at hearing
Determination Promulgated
On 28th February 2014

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

ENTRY CLEARANCE OFFICER-LAGOS

Appellant

and

JOAN OLUWASEYI ESUSA OYELADE

Respondent

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer
For the Respondent: Adegboyega Oluyale Adekumle-sponsor

DETERMINATION AND REASONS

1. The appellant in these proceedings is the Entry Clearance Officer. However, for convenience I refer to the parties as they were before the First-tier Tribunal.

2. Thus, the appellant was born on 26th August 2002 and applied for entry clearance as a Family (Visitor). The application for entry clearance was refused in a decision

dated 25th June 2012. The refusal was both under paragraph 46A of HC 395 (as amended) and under paragraph 320(7A). The 320(7A) refusal was in relation to a question that had been answered on the application form in terms of whether the appellant had ever have been deported, removed or otherwise required to leave any country including the UK. The application form said that she had not but the Entry Clearance Officer ("ECO") said that records revealed that she had been deported or required to leave Ireland in April 2006. It is said that that was a misrepresentation or concealing a material fact and it was on that basis that the refusal was made under paragraph 320(7A).

3. The appeal came before First-tier Tribunal Judge Moore. Having considered the evidence and hearing from the sponsor, Mr Adegboyega Oluyale Adekumle, as I have done today, he concluded that the refusal under paragraph 320(7A) was not made out by the ECO. He was satisfied that the appellant had established that she met the requirements of the Immigration Rules including in terms of intending only a visit for a limited period not exceeding six months and in terms of the intention to leave the United Kingdom at the end of the period of the visit. Thus, he allowed the appeal.

4. There is however, a difficultly with the essence of the appeal which I shall explain. A person who is refused entry clearance as a visitor can appeal to the Tribunal against that refusal only if the person is intending to visit a specific class of persons as set out in the Immigration Appeals (Family Visitor) Regulations 2003. They have subsequently been amended but those amended Regulations do not apply here.

5. The specified class of persons included an uncle or a first cousin. Mr Adekumle is the appellant's great uncle, being the uncle of the appellant's father. He explained to me that in his culture, his relationship to the appellant could not be categorised as 'great uncle' as it might be in the UK. He said, as I understood his evidence, that she would regard him as her father. The family visitor regulations are quite specific about the persons who are, for the purposes of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), to be regarded as a member of the applicant's family. If the application for entry clearance as a visitor is refused there can be no appeal unless it is on human rights or race discrimination grounds (section 88A of the 2002 Act).

6. No race discrimination or human rights grounds were raised in the notice of appeal to the First-tier Tribunal. On one view therefore, there was no valid appeal at all before the First-tier Tribunal because the appeal was not brought on those specified grounds. Even if there was a valid appeal before the First-tier Tribunal there was no evidence from which the First-tier judge could have concluded that there was an infringement of the appellant's human rights in any respect, in particular in relation to Article 8 of the ECHR. Similarly, there was no evidence before him of race discrimination.

7. The judge had no jurisdiction to consider the appeal under the Immigration Rules, whether under paragraph 46 or under paragraph 320(7A) and in doing so I am satisfied that he erred in law. So, whilst I note the judge's conclusions in relation to paragraph 320(7A) and in relation to the appellant's intention to leave the UK, I am not satisfied that he had jurisdiction to consider those issues.

8. It is unfortunate that the appeal was allowed to proceed before the First-tier Tribunal on that basis. There was a representative on behalf of the ECO. The appellant herself was not legally represented but the Home Office Presenting Officer should have pointed out to the judge the issue with jurisdiction. The notice of decision itself does indicate that the appeal was on limited grounds only, and thus there is no fault in the notice of decision. I set aside the decision of the First-tier Tribunal and I re-make the decision, dismissing the appeal.

9. I do not express any view about the merits of the appeal substantively, in particular about whether the appellant was intending, or it was intended on her behalf, that she should visit only for a limited period. I have no reason to doubt what I have been told about the close relationship between the sponsor and the appellant. But the simple fact of the matter is the judge had no jurisdiction to consider the appeal under the Immigration Rules and it is for that reason that the outcome is as I have explained it to be.

Signed

Upper Tribunal Judge Kopieczek 27/02/14