



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

Appeal Number: IA/39886/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 September 2015**

**Decision & Reasons
Promulgated
On 30 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**MRS ANNALIZA BONGON TRINIDAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Sowerby, Counsel

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

DECISION AND REASONS

1. This is an appeal against a decision by First-tier Tribunal Judge O'Garro promulgated on 27th March 2015, in which she allowed an appeal against the decision of the respondent of 10th October 2014 to refuse an application for leave to remain as an Overseas Domestic Worker in a private household.

2. The appellant is the Secretary of State for the Home Department and the Respondent to this appeal, is Mrs. Annaliza Bongo Trinidad. However for ease of reference, in the course of this determination I shall adopt the parties' status as it was before the First-tier Tribunal. I shall in this determination, refer to Mrs. Annaliza Bongo Trinidad as the Appellant and the Secretary of State as the Respondent.
3. Permission to appeal was granted by First-tier Tribunal Judge Holmes on 15th May 2015. The matter comes before me to consider whether or not the determination by First-tier Tribunal Judge O'Garro involved the making of a material error of law, and if so, to remake the decision.

Background

4. The appellant originally entered the United Kingdom as an Overseas Domestic Worker in a private household on 9th September 2011 with a visa valid until 11th February 2012. The leave to remain granted to her was subsequently extended to 6th August 2014. On 20th July 2014 she again applied for further leave to remain as an Overseas Domestic Worker in a private household and that application was refused on 10th October 2014. That refusal was the subject of the appeal before First-tier Tribunal Judge O'Garro.
5. The reasons for refusal dated 10th October 2014 make reference to paragraphs 159F and 159EA of the immigration rules that set out the requirements for leave to remain as an overseas domestic worker. The respondent was not satisfied that the appellant met the requirements of paragraph 159EA(iii) and (iv), and the application was therefore refused under paragraph 159F of the Immigration Rules. The respondent concluded from the evidence submitted in support of the application, that the evidence established that the Appellant worked for Natalie Abrahams rather than Annmiek Sala-Barents.

The appeal before the First-tier Tribunal

6. First-tier Tribunal Judge O'Garro heard evidence from the appellant and her current employer, Annemiek Barrents. The evidence of the appellant and her employer is set out at paragraphs [7] to [15] of the decision and it serves no purpose to repeat that evidence here.
7. In reaching her decision, First-tier Tribunal Judge O'Garro found as follows;

"21. The only contentious issue is to be satisfied that the appellant does not intend to take employment except as a domestic worker in the private household of the employer. The respondent was not satisfied that the appellant met this requirement of the rules because there is evidence that she had worked for a friend of her employer when she should only have been in the employ of her employer Ms Barrents.

22. I find that the appellant has given a credible explanation why she had taken up the part-time temporary work which ended in June 2014, when her employer found out that the appellant should only be working in her household.

...

24. I found both the appellant and her employer to be witnesses of truth and for this reason I accept that the appellant was unaware that she could not work outside her employer household and that she does not intend to take employment outside of her employer household in the future.

25. On the totality of the evidence before me, I am satisfied that the appellant made a genuine mistake when she went to work for Ms

Abrahams. I find that the appellant intends to work in her employer's household as a domestic worker and has no intention of working in any other household. I therefore find that the appellant meets the requirements of Paragraph 159EA".

The Grounds of appeal

8. The grounds of appeal are succinct. The respondent refers to paragraph 159EA(v)¹ of the immigration rules, which provides that one of the requirements to be met for an extension of stay as a domestic worker in a private household is that the applicant "does not intend to take employment except as a domestic worker in the private household of the employer.." . The respondent refers to the observation made at paragraph [21] of the decision that there is evidence that the Appellant had worked for a friend of her employer when she should only have been in the employ of her employer, Ms Barrents. The respondent contends that at paragraph [24] of the decision, the Judge accepts that the appellant was unaware that she should not work outside her employers household, and that having found that the appellant was a credible witness and had worked outside the employers household, the judge should have dismissed the appeal.

DISCUSSION

9. The respondent does not challenge the findings made by First-tier Tribunal Judge O'Garro that I have referred to at paragraph 7 above. That is unsurprising, because, as Mr Walker rightly conceded, those were plainly findings that were open to the Judge who had had the benefit of hearing from the appellant and her witness, and to form a view as to their credibility.

¹ This is erroneously referred to as rule 159EA(v). The Respondent sets out the relevant requirement of the rule, which is at 159EA(iv).

10. When read together, paragraphs 159EA(iii) and (iv) of the immigration rules require *inter alia* that an applicant must establish that he or she continues to be required for employment for the period of the extension sought as a full-time domestic worker in a private household under the same roof as the employer, and that the applicant does not intend to take employment except as a full-time domestic worker in the private household referred to in sub-paragraph 159EA(iii). The use of the words “continues to be required for employment for the period of the extension sought ...” in paragraph 159EA(iii) are important, because in assessing the application, the focus is upon what is to happen in the future.
11. In determining whether an applicant does not intend to take employment except as a full-time domestic worker in the private household referred to in sub-paragraph 159EA(iii), the respondent and the Tribunal is entitled to take into account what has happened in the past. Where the evidence is that the applicant has taken other employment outside of the employment as a full-time domestic worker in the past, that might weigh heavily against an applicant and may properly lead to a conclusion or finding that an applicant cannot meet the requirements of paragraph 159EA(iv). However, it does not necessarily follow that where the applicant has taken other employment outside of the employment as a full-time domestic worker in the past, the requirements of paragraph 159EA(iv) cannot be met. Each case will turn upon the evidence before the decision maker.
12. In this case, having heard the evidence, the Judge expressly found at paragraphs [24] and [25] of her decision that the appellant made a genuine mistake when she went to work for Ms Abrahams. The Judge found that the appellant intends to work in her employer’s household as a domestic worker and has no intention of working in any other household. Those were findings that were open to the Judge and are not challenged in the appeal before me.

13. It was therefore open to the Judge to find, as she did at paragraph [25] of her decision that the appellant meets the requirements of paragraph 159EA of the immigration rules, and to allow the appeal.
14. In those circumstances, there is no material error of law in the decision of the First-tier Tribunal.

Notice of Decision

15. The appeal is dismissed.
16. No anonymity direction is applied for and none is made.

Signed

Date

Deputy Upper Tribunal Judge Mandalia

FEE AWARD

17. The First-tier Tribunal made no fee award.

Signed

Date

Deputy Upper Tribunal Judge Mandalia