



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/14057/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 3 July 2017**

**Decision & Reasons  
Promulgated  
On 7 July 2017**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**JACQUELINE TEBOGO MACHOLA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Cole, Parker Rhodes Hickmotts, Solicitors  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Jacqueline Tebogo Machola, was born on 22 June 1967 and is a female citizen of Botswana. She appealed against the decision of the respondent dated 9 December 2015 refusing the appellant's human rights claim. The First-tier Tribunal (Judge Sullivan) in a decision promulgated on 3 November 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. I find that the appeal should be allowed. I have reached that decision for the following reasons. The basis of the appellant's application for further leave to remain rested upon her claimed relationship with a Mr Thurlow. The judge at [10] noted that the Presenting Officer at the First-tier Tribunal hearing sought to challenge the genuineness of the relationship between

the appellant and Mr Thurlow. The judge stated that, “I am satisfied the appellant has had the opportunity to deal with that issue as well as those raised in the refusal”. The appellant before the First-tier Tribunal had not been legally represented. The problem with the judge’s analysis is that the question of the subsisting relationship between the appellant and Mr Thurlow *had* (contrary to what the Presenting Officer seems to have believed) been dealt with in the refusal letter on page 2 where it is stated unequivocally that , “you [the appellant] have a genuine and subsisting relationship with your British partner”. Any reading of that sentence can only admit the interpretation that the respondent accepted that the appellant’s relationship with Mr Thurlow was genuine and subsisting. The statement is not conditional nor is it suggested that the refusal letter was simply setting out the appellant’s case only to reject it. I find that the sentence which I have quoted is an unequivocal acceptance by the respondent that the relationship between the appellant and Mr Thurlow was genuine and subsisting as at the date of the refusal (9 December 2015). It is clear from the judge’s decision and from the submissions made by the Presenting Officer recorded in that decision that it was not being suggested that the relationship had broken down since the date of the refusal letter. Rather, the Presenting Officer took the view that the relationship had never been genuine or, at the very least, as close as the appellant had claimed. I find that the appellant was effectively ambushed by this submission which had not been made at all prior to the First-tier Tribunal hearing.

3. Mr Diwnycz helpfully read part of the Presenting Officer’s internal file record which indicated that he did not believe that the refusal letter had touched on the question of the genuineness of the relationship. I accept that the Presenting Officer had taken this case as a “float” and that he may have had very limited time to read the papers but it is unfortunate that he does not appear to have noticed that the Secretary of State had accepted that the relationship was genuine. Because he did not notice that admission, he did not seek to explain why the position of the Secretary of State had changed by the time the case reached the First-tier Tribunal. It appears that the judge was also unaware of the contents of the refusal letter since he did not call upon the Presenting Officer to explain the change in the Secretary of State’s position.
4. There are other grounds of appeal but I do not intend to deal with those. I find that the appellant was not given a fair hearing before the First-tier Tribunal and that the decision of that Tribunal must be set aside and the matter remitted to the First-tier Tribunal to remake the decision. None of the findings of fact shall stand.

### **Notice of Decision**

5. The decision of the First-tier Tribunal promulgated on 3 November 2016 is set aside. None of the findings of fact shall stand. The appeal is remitted to the First-tier Tribunal (not Judge R Sullivan) for that Tribunal to remake the decision.

6. No anonymity direction is made.

Signed

Date 6 JULY 2017

Upper Tribunal Judge Clive Lane