



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/23707/2016

THE IMMIGRATION ACTS

Heard at Field House
On 4 May 2018

Decision & Reasons Promulgated
On 24 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

MR M. D. FORRESTER

(ANONYMITY DIRECTION NOT MADE)

Appellant

Respondent

Representation

For the appellant: Ms Z Kiss, Senior Presenting Officer
For the respondent: not represented

DECISION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department and the respondent is a citizen of Jamaica born on 25 May 1982. However, for convenience, I refer below to them in the designations they had before the First-tier Tribunal.

2. The appellant appealed to the First-tier Tribunal against the decision of the respondent to refuse his application for entry clearance pursuant to paragraph 46A of the Immigration Rules. First-tier Tribunal Judge Saunders allowed the appellant's appeal under the immigration rules.
3. Permission to appeal was granted to the respondent by first Tier Tribunal Judge Shimmin stating that it is arguable that the First-tier Tribunal erred in allowing the appellant's appeal pursuant to the Immigration Rules as the appellant did not have a right of appeal other than on human rights and race relations grounds.
4. The First-tier Tribunal judges findings are as follows, in summary. The appellant produced evidence that she is an approved foster carer of five years standing and that she has been in a relationship with the appellant for over three years in 2015 and that the police check had been done in relation to the appellant in Jamaica confirming that he is not on the criminal data base. At the hearing the sponsor also produced a passport showing that she had stamps or visits to Jamaica every year since 2012 and she showed from her mobile telephone she had been receiving fortnightly payments of £868. Having taken into account the documentary evidence and having seen and heard from the sponsor who confirmed that the appellant could only stay for a short period because of his commitment as a farmer and his need to return to work and that he was travelling to see not only the appellant but also her elder father and the child that she was fostering.
5. The Judge found that the appellant is in the genuine and subsisting relationship with the sponsor and has demonstrated that he has sufficient funds available to cover the cost of his visit without working or assessing public funds and therefore allowed his appeal under the immigration rules.
6. The Judge made a material misdirection of law because there is no right of appeal for family visitors under the immigration rules. The appellant's right of appeal is limited to two grounds which are human rights grounds and race relations. Pursuant to s88A of the 2014 Act only if there is a decision to refuse the appellants application under Article 8 of the European Convention on Human Rights does the appellant have a right of appeal.
7. There is no such refusal by the respondent and therefore the appellant has no right of appeal. The Judge therefore had no jurisdiction to hear or allow the appeal on any other ground.
8. The appellant grounds of appeal did not seek to rely on human rights grounds or the Race Relations Act and the Judges jurisdiction to hear the appeal was therefore limited to these two grounds.

DECISION

In the circumstances the Secretary of State's appeal is allowed against the decision that the decision of the ECO was not in accordance with the law and I set aside the decision in so far as it relates to that decision. This therefore disposes of the appeal.

Signed by

A Deputy Judge of the Upper Tribunal

Ms S Chana

Dated this 20th day of May 2018