



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/11313/2013

THE IMMIGRATION ACTS

Heard at Field House
On 30 July 2014

Determination Promulgated
On 5 August 2014

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MRS BRIGITTE EPSE GNAGNO NGUESSAN

Appellant

and

ENTRY CLEARANCE OFFICER - ACCRA

Respondent

Representation:

For the Appellant: Sponsor, Mr. Adou Nguessan
For the Respondent: Mr. L Tarlow HOPO

DETERMINATION AND REASONS

1. The respondent has been granted permission to appeal the decision of First-tier Tribunal Judge Carroll allowing the appeal of the appellant against the refusal of the ECO to grant her entry clearance to the UK as the spouse of Mr. Nguessan, a British

national born in Ivory Coast who is present and settled in the UK. The judge allowed the appeal under Article 8 of the ECHR.

2. The appellant and the sponsor are the parents of two daughters born in Ivory Coast on 6 February 2007 and 12 March 2009. Both of the appellant's daughters are British nationals.
3. The judge was satisfied that the sponsor is employed as a bus driver for London Central Bus Company. The judge said there was ample evidence to show that he is in a well-paid job. There was a letter from his employers (Go-Ahead - London) dated 21 January 2013 showing that he has been working for them since December 2006. A further letter dated 10 May 2013 confirmed that the sponsor's basic salary was £24,941 (and although overtime is usually available, it cannot be guaranteed). The P60s in the respondent's bundle for the years 2012 and 2013 showed the sponsor's pay to be £34,995 for the tax year to April 2012 and £41,158 for the tax year to April 2013. Bank statements had been submitted showing regular deposits of the sponsor's salary in his account with Nationwide. There were also a number of payslips but, as the ECO observed, these did not always cover the same period as the bank statements. The judge found that although the evidence confirmed that the sponsor was in a well-paid permanent employment, he was unable to satisfy the immigration rules as there was not all of the documentation needed to support the application.
4. The sponsor sought to re-argue this issue because he said that he had provided further documentary evidence to the First-tier Tribunal to support his income. However, he did admit that when the appellant made the application, he was not able to supply all the required documents because some of them were in his locker at home.
5. On the sponsor's own evidence it is not arguable that the judge erred in law in her finding that the appellant was unable to satisfy the immigration rules for the reason given by her.
6. The respondent was granted permission to appeal the judge's decision under Article 8 of the ECHR. The grounds argued that the judge failed to make any reference whatsoever to current case law and made no findings as to whether there exist exceptional circumstances which would enable the appellant's application to be considered outside the Immigration Rules. The judge did not identify what unjustified hardship would be caused by the respondent's decision.
7. At paragraph 8 the judge found as follows:

“As I have noted above the sponsor is the father of two British nationals born in Ivory Coast. He clearly enjoys family life for the purposes of Article 8 with his wife and daughters. He visits them in Ivory Coast when possible and his wife has visited him the United Kingdom (in 2012). The three airfares for the appellant and her daughters to visit the United Kingdom represent a

prohibitive sum of money, albeit that both the appellant and sponsor are both in full-time work. The sponsor explained that it is very difficult for the family to carry on as a family unit by means of occasional, expensive visits by the sponsor to Ivory Coast. As a British national, he cannot be expected to relocate to Ivory Coast and his two daughters are British nationals, entitled to enter the United Kingdom without leave.

8. I accepted Mr. Tarlow's submission that before the move to consider Article 8 proportionality, the judge needed to consider whether there were compelling circumstances not sufficiently recognised under the Immigration Rules as per **R(Nagre) v SSHD [2013] EWHC 720 (Admin)** and **Gulshan [2013] UKUT 00640 (IAC)**. The judge's failure to consider, considering that the appellant could not satisfy the immigration rules, was an error of law such that her decision cannot stand.
9. I heard evidence from the sponsor in order to remake the decision in respect of the appellant's appeal under Article 8.
10. The sponsor said that he is a bus driver. It is a stressful job. When he returns home from work he is alone. He has two children. His wife is now six months' pregnant. He does not see his children. If he wants to see his family, he has to go to Ivory Coast. He went to Ivory Coast twice last year and has been twice this year. He intends to go again in November when his wife gives birth. The trips to Ivory Coast cost a lot of money. He would like his wife to be with him as this would give him the strength to carry on with his job. He has been given a final warning by his employers because of his stress which causes him to lose concentration when he is driving the bus. He is scared of flying but he has no choice if he has to see his wife and daughters. The stressful situation they are in has led to arguments on the phone. He loves his wife and would like the family to be together.
11. It has not been argued by the respondent that the sponsor is unable to support his wife and daughters in the UK. The appellant was unable to meet the requirements of the Immigration Rules because the sponsor failed to submit all the necessary documents to support his earnings. I accept that there is no near miss in the Immigration Rules. However, balancing the appellant's failure to meet the financial requirements of the Immigration Rules with the evidence given by the sponsor, I find that there are compelling circumstances not sufficiently recognised by the Immigration Rules which justify the grant of entry clearance to the appellant.
12. The appellant has two daughters who are British who are now 7 and 5 years old. They should be growing up in the United Kingdom. They are being deprived of the benefits they are entitled to as British nations. They do not require a visa to enter the UK. However, if they entered the UK without their mother, the sponsor would have to give up work in order to care for them due to their young age. At a time when the Government is clamouring for people to return to work, it would be unduly harsh if the sponsor had to give up a well-paid job and be a stay-at-home father and live off

benefits. He has admirably maintained a family life with the appellant and his daughters in the best possible way under the circumstances.

13. I accept the sponsor's evidence that his job is stressful. He has been given a final warning by his employers as a result of not concentrating fully on his driving. The sponsor is responsible for carrying members of the public on his bus and the nature of his job is such that any negligence or recklessness by him could cause harm to the general public. I find that this is a further compelling reason why the appeal of his wife should be allowed.
14. For the above reasons, I allow the appellant's appeal under Article 8.

Signed
Upper Tribunal Judge Eshun

Date