



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/11407/2013

THE IMMIGRATION ACTS

Heard at Stoke on Trent
On 13 October 2014

Determination Promulgated
On 27 October 2014

Before

Deputy Upper Tribunal Judge Pickup

Between

Ruramai Manguwo
[No anonymity direction made]

Appellant

and

The Entry Clearance Officer Pretoria

Respondent

Representation:

For the appellant: Ms J Campbell, instructed by 1st Call UK Immigration Services
For the respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Ruramai Manguwo, date of birth 14.5.97, is a citizen of Zimbabwe.
2. This is her appeal against the determination of First-tier Tribunal Judge Hollingworth, who dismissed his appeal against the decision of the respondent, dated 23.4.13, to refuse entry clearance to the United Kingdom as the child of person granted refugee status pursuant to paragraph 352AA of the Immigration Rules. The

application was also refused under paragraph 320(7A). The Judge heard the appeal on 16.6.14.

3. First-tier Tribunal Judge Mailer granted permission to appeal on 4.8.14.
4. Thus the matter came before me on 13.10.14
5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Hollingworth should be set aside.
6. The refusal decision referenced a previous application, made in 2009, in which the appellant made false representations as to her identity and relationship with a sponsor in the UK. The application was refused and a subsequent appeal dismissed.
7. In making the application the subject of this appeal the appellant failed to disclose that previous application. The refusal decision went on to point out that having been refused under 320(7A), any future application may be refused under paragraph 320(7B). The application was not, however, being refused under 320(7B) and I note that it applies only to a person age 18 or over, when this appellant is under that age.
8. Paragraph 320(7A) provides for mandatory refusal on grounds of false representation or the failure to disclose material facts. Case law has established that this requires dishonesty but it is also clear that it need not be on the part of the appellant herself. The failure to disclose the previous false application could well have founded a refusal under 320(7A), but it is clear that was not the basis on which the application was refused. The refusal decision expressly states that the application was refused under paragraph 320(7A) because "false representations were made in your previous visa application."
9. In dismissing the appeal, Judge Hollingworth appears to have misunderstood the basis of the refusal decision and in the process confused 320(7A) with 320(7B). At §35 he stated that the "findings under paragraphs 320(7A) and (7B) are upheld." That was an error of law. There was no 320(7B) decision and because of the appellant's age one could not be made in this case. As far as 320(7A) is concerned, the judge may have been misled by counsel representing the appellant, who conceded that the appellant could not meet the requirements of the Rules and that the refusal under 320(7A) was "entirely sustainable," (§17). However, as the decision was made on the basis of false representations in the 2009 decision, it was not in accordance with the law. As drafted, 320(7A) appears to relate only to the application being considered and not past history, which is catered for by 320(7B).
10. Mr Harrison accepted that the refusal decision was in error and could not stand and thus in the circumstances did not resist Ms Campbell's error of law submissions.
11. In the circumstances, I find that there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside and remade, by

allowing the appeal to the limited extent that it remains for the Secretary of State to make a decision that is in accordance with the law.

Conclusion & Decision:

12. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by allowing it to the limited extent only that it remains for the Secretary of State to make a decision in accordance with the law.



Signed:

Date: 13 October 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make a full fee award.

Reasons: The appeal has been allowed.

A handwritten signature in black ink, appearing to read 'Pickup', written in a cursive style.

Signed:

Date: 13 October 2014

Deputy Upper Tribunal Judge Pickup