



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

Appeal Number: VA/16955/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 8th October 2014

Determination

Promulgated

On 14th October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE ENTRY CLEARANCE OFFICER - WARSAW

Appellant

and

MS ABIODUN ABISOLA OGUBNYANWO

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer

For the Respondent: Mr Asomaning, Legal Representative

DETERMINATION AND REASONS

1. The Entry Clearance Officer appeals against the decision of the First-tier Tribunal (Judge Cheales) to allow the appeal against the decision to refuse the respondent's application for entry clearance to the United Kingdom in order to visit her uncle, Mr Wala Olujimi Ogunyanwo (hereafter, "the sponsor").

2. The First-tier Tribunal did not specify the ground under Section 84 of the Nationality, Immigration and Asylum Act 2002 upon which it had allowed the appeal. This in itself was an error of law, if not necessarily a material one. The need to specify the ground upon which the appeal had been allowed was of particular importance in this appeal, because the Tribunal's jurisdiction was restricted to allowing the appeal on grounds that either the decision was discriminatory or contrary the appellant's rights under the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms [see The Immigration Appeals (Family Visitor) Regulations 2012 (SI No 1532) which came into effect on the 9th July 2012, a matter of days before the date of the decision]. This meant that the appeal was unable to succeed, for example, on the ground that the decision had not been "in accordance with immigration rules".
3. The failure to specify the ground upon which the Tribunal allowed the appeal, has permitted Mr Asomaning to argue that was allowed on the ground that the decision was incompatible with the respondent's rights under Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. To this end, he prayed in aid the final sentence of paragraph 4 of the determination. This reads: "The decision is a disproportionate interference with her [the respondent's] Article 8 rights". However, it is obvious from the context within which that sentence appears, that the judge was merely summarising the appellant's grounds of appeal, rather than making a finding to that effect. The real clue as to the basis upon which the appeal was allowed, lies within the last sentence of paragraph 9. This reads: "I am satisfied that this is a genuine visit and that the Appellant will return to Ukraine at the end of the visit, and the appeal is allowed". This can only sensibly be interpreted as a finding that the appellant's intentions were compatible with the requirements of paragraph 41 of the Immigration Rules. As the Tribunal did not have jurisdiction to allow the appeal on that basis, it follows that the decision must be set aside and the appeal determined afresh.
4. Having indicated my decision to set aside the decision of the First-tier Tribunal, I heard submissions from each of the representatives as to whether the appeal should be allowed on the ground that the decision was incompatible with the respondent's right to respect for private and family life under Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.
5. Mr Asomaning submitted that the evidence demonstrated that the sponsor was financially supporting the respondent in her studies at her university in Crimea. I am satisfied, on a balance of probabilities, that this is correct. I am also satisfied, to the same standard, that the respondent has a particularly close emotional bond with the sponsor. However, this is not to suggest that she does not also have an emotionally close bond with her parents, who reside in Nigeria.
6. However, I am not satisfied that any of the above constitutes 'family life'. The respondent is an adult. Whilst she is not yet financially independent,

she nevertheless does not live with either the sponsor or her parents. Therefore, for all practical purposes, she is living an independent life.

7. Even had I found the existence of family life, however, the fact remains that Article 8 does not impose a general obligation upon a State to respect a family member's choice of residence. Whilst the respondent would obviously prefer to visit her uncle in the United Kingdom (as she has in the past) there is nothing to prevent him from visiting her in either Crimea or in her country of nationality (Nigeria). Neither is there anything to prevent the respondent from making a fresh application to visit the sponsor in the United Kingdom. I am not satisfied, therefore, that the decision engaged the potential operation of Article 8.
8. However, even if the potential operation of Article had been engaged, I would have been satisfied (for the reasons set out above) that the decision was lawful and proportionate in furtherance of the economic well being of the country through the consistent application of immigration controls.

Decision

9. The Entry Clearance Officer's appeal is allowed.
10. The decision of the First-tier Tribunal to allow the appeal against the refusal of entry clearance is set aside, and is substituted by a decision to dismiss that appeal.

Anonymity not directed.

Signed

Date

Deputy Judge of the Upper Tribunal